



EDITORIAL

You may be aware of some recent high profile cases involving relationship property. You may have also considered how your property might be distributed if your relationship should break down. This is a subject many people don't want to think about at the start of a new relationship or even when circumstances change, but failure to address it can lead to much heartache at a later time.

In this issue, Every Rose has its Thorn considers separate property and looks at a recent Supreme Court decision that clarifies the value of contributions by a non-owning partner towards an increase in the value of separate property. It makes an interesting read. If you have any questions regarding this subject and/or feel you may need to do something about your own situation, please let us know.

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Every Rose has its Thorn

New Zealand's highest appellate court, the Supreme Court, has recently delivered its decision in *Rose v Rose*. The case is about the classification of property. The Property (Relationships) Act 1976 ('the Act') defines relationship property and separate property. Relationship property is the pool of common property that, upon separation, is to be divided equally, unless there are extraordinary circumstances that would make equal sharing repugnant to justice. Separate property is owned by one party and generally remains as separate property upon separation. However, *Rose v Rose* shows there are pathways whereby separate property can become relationship property.

Relationship Property

Relationship property as defined in the Act includes:

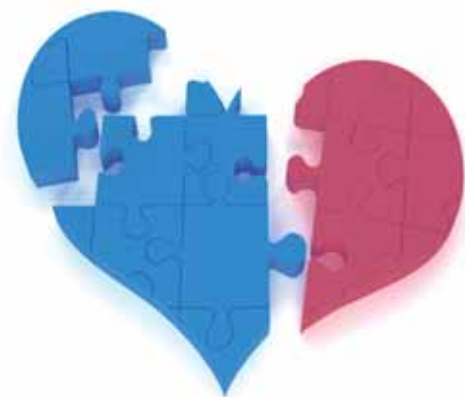
- the family home – whether acquired before or during the relationship
- family chattels – whether acquired before or during the relationship
- all property jointly owned
- property owned immediately before the relationship began, if it was acquired in contemplation of the relationship and it was intended for the common use or the common benefit of the partners
- all property acquired after the relationship began, unless it is separate property (s9 and s9A) or the succession, survivorship, trust and gift provisions apply (s10)
- increases or gains in relationship property, subject to exceptions
- increases in the value of one partner's separate property, if the increase is attributable to:
 - the use of relationship property
 - the direct or indirect actions of the other spouse or partner

Separate Property

Separate property is defined in the Act as being any property that is not relationship property.

Rose v Rose

The basic approach of the courts has been that if the non-owning partner contributes to an increase in the value of the other partner's



separate property that increase in value becomes relationship property.

In this case, Mr Rose's separate property included a farm that he owned prior to the marriage.

Mrs Rose sought to share the increase in the value of the farm at the date of separation. Mrs Rose argued that during the course of the marriage relationship her outside earnings combined with her duties as a homemaker enabled her husband to keep his farm and develop it into a vineyard. During the term of the marriage relationship the farm appreciated in value significantly due to inflationary pressures and its location within a prime grape growing region of Marlborough.

The Court accepted Mrs Rose's argument and decided Mrs Rose was entitled to a 40% share in the increase in the value of the separate property. Mr Rose was given a

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60% share giving him greater credit for the inflation and general increase in the value of the land.

It is considered a landmark decision because despite the apparent indirectness of Mrs Rose's contributions, she was awarded a 40% share of the increase in the value of the separate property.

A Suggestion

One way you may possibly prevent separate property becoming relationship property is to record it in a 'contracting-out' agreement (sometimes known as a 'section 21 agreement'). A contracting-out agreement is a document that records how you and your partner will divide your property if you should separate.

Some contracting out agreements go so far as you state that no matter what the contributions made to the relationship by the other partner during the life of the relationship, all property it is to remain separate property. These agreements need to be reviewed regularly to ensure they accurately reflect the circumstances of the relationship.

HUGH COTTRELL

MML is very excited to announce that Hugh Cottrell joined the firm as a partner on 17 August 2009. Hugh is a highly respected senior lawyer and will be a huge asset to the firm. He is known for his focus on personal client service. His ethics and philosophies are very much in tune with our own. In addition to his role as a commercial and property lawyer, Hugh has an active interest in family law, acts as Counsel for the Child and performs mediation services for the Ministry of Justice. We are delighted to have Hugh on board and we look forward to a long association with him and his many clients.



The Personal Property Securities Register

How to Secure your Debts

The Personal Property Securities Register ('the Register') is an electronic record of any debt security interests held against any personal property (except land) owned by an individual or organisation. In order to register a security interest over property a creditor needs to have ownership rights in the property.

Purpose of Register

If someone owes you money ("the debtor") for personal property you have provided to them and your agreement allows you to secure a charge, then you have a security interest in that property. Your security interest attaches to that property for the purposes of the Personal Property Securities Act 1999 if you have given value to the debtor and the debtor has rights in that property. For example, an electrician installs lighting into a shop and the shop-owner fails to pay for it. The electrician has given 'value' to the shop-owner (the lighting) and the shop-owner has 'rights' in the lighting because they own it. Therefore, the electrician has a security interest in the lighting.

The purpose of the Register is to allow you to further protect your security interest by registering it. This enables you to enforce your security interest against a third party. For example, a debtor may sell property that you have a security interest in to a third party. If your security interest is registered then you are able to enforce your interest against that third party.

Priority of secured parties

The goods that you have a security interest in may also be subject to a security interest from

another party. By registering a security interest on the Register, you are granted priority over other unregistered security interests. If all security interests are registered, then priority is given in order of the date of registration. Therefore, when it comes to registering a security interest against goods, time is of the essence.

Registering your security interest

In order for you to register an interest on the Register, you must register a financing statement. The cost for registering a financing statement is \$3.00 and the process for doing so is as follows:

You must set up a Secured Party Group ID ("group ID") the first time you access the Register. All future registrations are made under this group ID. Once you have set up your group ID then you are able to register a financing statement against your debtor.

The following details are necessary in order to register a financing statement:

- In regards to a debtor that is an individual; full name, date of birth and address.
- In regards to a debtor that is an organisation; type of organisation i.e. company, partnership or trust and organisation's contact address.

It is imperative to obtain this information from a debtor when entering into a security agreement as the fields are mandatory and a financing statement cannot be registered without it.

You must also enter information about the collateral (personal property) including the type (e.g. goods) and a description.



Searching the register

The Register can be searched by anyone at a fee of \$1.00. The following searches are all available on the Register:

- Debtor Person Search
- Debtor Organisation Search
- Motor Vehicle Search
- Aircraft Serial Number Search
- Financing Statement Number Search

It is advisable to search the Register before entering into an agreement to sell, supply or buy in order to avoid people that repeatedly do not pay their debts.

Mortlock McCormack Law can provide training to you to enable you to complete registration and searching.

The Night Sky

By Sue McCormack

Many of you will remember the days of camping in the back garden, looking at the sky and seeing all the stars overhead. With most Kiwis living in a city with street lamps and buildings lighting up their surrounds, it is now very difficult to experience the joys of looking at the stars. When my friends and I visited the Mt John Observatory at Lake Tekapo with our client and guided night sky tour operator, Earth and Sky, the constellations were pointed out and explained to us and we witnessed Saturn rising above the mountains. It was a magical experience and one that brought lots of "oohing" and "ahhing" from us all.

Difficult as it is for us in New Zealand to spot the stars within our suburban environment, imagine what it is like for half of the world's population who are no longer able to see the stars. As the night sky is becoming less familiar to most people, Earth and Sky have discovered that Tekapo, with its low building numbers, sparse population and low light pollution, is in strong demand from people around the world wanting to go on a night time tour of the Mt John Observatory and have the opportunity to look at the night sky and stars.



Sue and Graeme at Mt John daytime

With the help of Margaret Austin, Graeme Murray, the University of Canterbury, the Mackenzie District Council and others, the Mackenzie Country is on the cusp of becoming home to one of the first UNESCO World Heritage Starlight Reserves - a national park in the sky. Lake Tekapo is considered a hot favourite because the Mt Cook / Mackenzie Country night sky is dark, easily accessible and is protected by special lighting ordinances preventing light pollution. A Starlight Reserve is a site committed to protect the quality of the night sky for future generations because of its associated cultural,



Sue and Graeme at Mt John nighttime

scientific, astronomical, environmental, natural and eco-tourism related values.

UNESCO will make a decision on the proposed Starlight Reserve proposals at a special meeting in Rio de Janeiro in June of next year. The final announcement on what countries will obtain this new, unique World Heritage status is expected in 2011.

Graeme Murray and the Starlight Reserve Committee are now waiting with baited breath in the hope that UNESCO sees the light!!!! We at Mortlock McCormack Law wish them luck in reaching this very important milestone.

Cross Lease Ownership

Ownership of a cross lease property means you own a share of the underlying land and lease flats (or houses) to yourself and other owners for (normally) 999 years. A cross lease plan is annexed to the certificate of title and is commonly referred to as the 'Flats Plan'. This shows common areas, restricted areas and delineates the area of each flat.

The common areas

The common areas, for example a driveway, may be used by all owners by virtue of their joint ownership of the land (if marked as a common area on their lease). There will be a covenant that the common area is not to be used for any purpose other than access for vehicles and pedestrians.

The restricted areas

The restricted areas are intended to provide each owner with a private area for their use such as a courtyard or garden. The rights that the owner enjoys over the restricted area depend on the actual terms of the lease itself. It is imperative that a prospective purchaser search all the leases of the property to ascertain the full extent of all restricted areas.

The flats

The area of each flat should be clearly delineated on the plan. A prospective purchaser should take the opportunity to compare the Flats Plan with the actual buildings on the property to ensure that there have been no additions, alterations, or demolitions which are not shown



or recorded on the Flats Plan. The alterations or additions may encroach either on to the common area or on to a restricted area and the owner has no leasehold title to them, and is in breach of the lease if consent is not sought and the Flats Plan altered.

Objecting to title

If you are purchasing a cross-leased property you can object to the title if the Flats Plan is defective. You are able to object to the title

subsequent to signing an agreement for sale and purchase, provided you do so within the correct timeframe.

If alterations or additions have been made to the flats so the exterior dimensions have changed, the vendor will be unable to give you a legitimate leasehold title to the alterations/additions and the title is defective.

On receiving an objection notice from a purchaser, the vendor usually has one of three options. They can correct the title, advise they will not correct the Flats Plan in which case the purchaser can either cancel the agreement or purchase with a defective Flats Plan, or negotiate with the purchaser.

To correct the title, the vendor must:

- have a cross-lease plan of the alterations or additions prepared and deposited in the Land Registry Office, and
- surrender the cross-lease and have a new cross-lease of the altered or enlarged building executed and registered.

This process is costly and relies on the co-operation of all parties.

In summary, a cross-lease title should be checked carefully to ensure the restricted areas, common areas and the Flats Plan is correct. If you want to purchase a cross leased property and there is a problem with the Flats Plan, you may be able to have the vendor rectify the issue and proceed accordingly.

SNIPPETS

RESIDENTIAL TENANCIES AMENDMENT BILL

In May 2009 the Residential Tenancies Bill was introduced to Parliament to further clarify the rights and obligations of landlords and tenants. It is designed to encourage the development of a rental market that provides stable, quality housing to those who rent their homes. Until the Bill is passed into law the existing provisions of the Residential Tenancies Act 1986 remain in force.

The changes include:

- extending the provisions of the Act to include tenants in boarding houses and some rented accommodation where meals or cleaning services are provided
- introducing common principles to indicate when landlords or tenants are responsible for charges such as water or rates
- introducing a more transparent process for terminating or renewing tenancies
- increasing the value of fines and exemplary damages to encourage landlords and tenants to comply with obligations under the Act
- providing for residential tenancy disputes to be resolved more quickly, fairly and cost effectively with improved dispute resolution processes
- improving the enforceability of Tenancy Tribunal Orders, and
- prohibiting tenants being charged 'letting fees'.

COMBATING ILLEGAL STREET RACING

Introduced to Parliament in May 2009, the Land Transport (Enforcement Powers) Amendment Bill and the Vehicle Confiscation and Seizure Bill are the Government's responses to the ongoing problems of illegal street-racing around the country. The Bills are designed to work in unison and will enhance the powers of police and road controlling authorities to tackle this problem.

The new laws are targeted at only a small portion of the community. For everyday responsible drivers, nothing will change.



The Land Transport (Enforcement Powers) Amendment Bill will:

- allow local authorities to create bylaws that prevent vehicles cruising city streets
- allow the compulsory impoundment of vehicles involved in illegal street racing, and
- contain tougher penalties for noise offences, failure to give driver details, licence breaches and registration plate offences.

The Vehicle Confiscation and Seizure Bill will:

- allow vehicles to be seized and destroyed as a last-resort option to punish and deter the most serious repeat offenders of illegal street racing
- allow vehicles repeatedly used by people with overdue traffic fines to be sold to pay those fines
- allow vehicles owned by third parties who allow an offender to use his or her vehicle to be confiscated, and
- clarify legislation so vehicles can be confiscated by the Courts from an impoundment yard.

Are interested in seeing the movie 'The Young Victoria'?



She was the Queen of an Empire but her heart belonged to one man...

Starring: Emily Blunt, Rupert Friend, Paul Bettany, Miranda Richardson, and Jim Broadbent

There is a FUNDRAISING SHOWING on Sunday 20th September at 3.30pm at The Reading Cinema, The Palms with proceeds towards the SPECIAL NEEDS LIBRARY.

Tickets \$16.00 each

Please contact Belinda Mortlock for tickets by email to law@mmlaw.co.nz or phone 03 3299 455

MML is proud to be the honorary solicitor to the Special Needs Library.

IMPORTANT NOTICE!!

New Agreement for Sale & Purchase of real estate forms

For many years the Auckland District Law Society and the Real Estate Institute of New Zealand had produced the industry standard for buying and selling property. Recently the REINZ has decided to produce its own form which contains a number of significant differences to the "standard" and there are important implications for buyers, sellers, real estate agents, lawyers and others involved in conveyancing.

Our next newsletter will contain a comprehensive article on the new form. However as there are some significant changes we urge anyone looking at either buying or selling property to contact us first to obtain advice about how the new form will effect the sales and purchase process.

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