



## PROPERTY SETTLEMENTS: DO YOU GET EXTRA CREDIT FOR SPECIAL SKILLS AND HARD WORK?

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By **Michael Lynch**, 17 February 2015

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Many couples still adopt traditional roles during their marriage or de facto relationship. One party (often the husband) is the main breadwinner for the family, and the other party (often the wife) is the primary carer for the children and the main homemaker for the family.

It is a common question whether the contribution each party makes to the accumulation of the parties asset pool is the same in these circumstances, and how that will effect what each party gets in a property settlement.

What if the breadwinner is a high income professional or skilled entrepreneur who accumulates a significant fortune? A recent case looked at this question.

#### The Law:

When married or de facto partners separate, the law directs that one of the factors to be considered in determining a property division are the contributions made by each spouse.

In a situation where there is a long marriage with children and where the parties have made different types of contributions (i.e. breadwinner verse homemaker) the Court will not usually give greater weight to one partys contribution than those of the other.

There have historically been some exceptions to this principle in big money cases i.e. where the parties have acquired a substantial fortune and this has been due to the particular skills of one party (usually the husband) and an adjustment has been made to reflect what is often termed the special contribution the husband has made. However, the doctrine of special contribution appears to be falling out of favour with the Court.

#### The Facts:

- The parties were married for 36 years and had 4 children.
- At the time the parties were married they each had an interest in a property. By the time they separated, they had accumulated an asset pool of just under \$10 million.
- The husband was the main breadwinner for the family and managed the parties property investments and share portfolio.



- The wife was the primary carer for the children and the main homemaker, although she also worked in the husbands business and in other employment during the marriage.
- The wife sought 55% of the asset pool. She said that the parties contributions during the relationship were equal, however she should get an extra 5% for post-separation events.
- The husband sought 70% of the asset pool on the basis that the parties substantial wealth was essentially generated through his skill and expertise specifically his hard work and his acumen in choosing and managing properties and his expertise in managing the parties share portfolio.

#### **Court Findings:**

- The basis of the previous cases which gave extra credit to the breadwinner with special skills was that each party's contribution should be judged by reference to their own sphere, and should not necessarily be equal i.e. The quality of the contribution made by a wife as home maker or parent may vary enormously, from the inadequate to the adequate to the exceptionally good. She may be an admirable housewife in every way or she may fulfil little more than minimal requirements. Similarly the contribution of the breadwinner may vary enormously and deserves to be evaluated in comparison with that of the other party.
- The Judge in this case criticised these earlier decisions on the basis of gender bias, saying: Under the [previous] approach the dice was loaded against a wife who performed a role as homemaker and parent. One might ask how she could compete with a high flying businessman. Clean the floors such that one could eat off them? Iron her husbands shirts to within an inch of their lives? Make the bathroom tiles sparkle such that one has to put on sunglasses to take a shower?
- Many recent cases have now criticised the special contribution doctrine on the basis that the homemaker role is usually undervalued because it is not possible to accurately compare the different roles of breadwinner and homemaker. There is no level playing field because you are comparing fundamentally different activities. A breadwinner contribution can be objectively assessed by reference to such things as, that party's employment record, income and the value of the assets acquired, whereas an assessment of the quality of a homemaker contribution to the family is vulnerable to subjective value judgments as to what constitutes a competent homemaker and parent.

#### **Court Order:**

- The Court did not give the Husband any extra credit for his special skills and assessed his contribution as breadwinner as being equal to the Wifes contributions, including her main role as parent and homemaker.
- The Court did not make any other adjustments for future needs factors, and therefore the parties asset pool was divided equally (50/50) between the Husband and the Wife.

#### **ABOUT MICHAEL LYNCH**



Michael has practiced for over 25 years, specialising in **Family Law and De Facto Relationship Law**. He is well recognised and respected as one of Queensland's leading **Family Law Specialists** and has extensive experience in complex Family Law matters, including **Property Settlement** and Children's matters.

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