

# APPLICATION FOR PROPERTY SETTLEMENT 18 YEARS OUT OF TIME?

7 December 2020

For a married couple time runs out for bringing an application for property settlement to the court 12 months after a divorce order has been made. (For defacto couples it is 2 years after the date of separation). If you miss this deadline you are in trouble as you can only then proceed with the Application if the court specifically allows it.

So how long is too long? The court recently considered an Application that was 18 years late!!

## The Facts

Shortly after separation, the wife's solicitors wrote to the husband and proposed that the wife retain a motor vehicle and some items of furniture. In exchange the wife would transfer her interest in the jointly owned property to the husband, which at that time had equity of approximately \$15,000.

The parties were divorced the following year. No property division agreement was reached, nor were any Orders made by the court. The house remained in joint names and the wife remained jointly liable under the mortgage.

Some years later, the wife consulted a solicitor. She argued that this was the first time she became aware of the limitation date, after her solicitors in 1994 failed to advise her of the limitation date. As she acted for herself in the divorce, she also argued that she failed to see the notation on the divorce certificate referring to the limitation date.

The husband had the benefit of living in the jointly owned property. The equity in the house had increased to approximately \$300,000. The wife filed a court application to commence property proceedings 'out of time'.

Whilst the Judge found that 'hardship' to the wife existed, as she would need to pursue remedies in the State Court as the property remained jointly owned, the court was not satisfied that she had provided an adequate explanation for the delay when there was a notation on the divorce order that there was a limitation date and she had previously consulted solicitors. The Judge also held it was prejudicial to the husband for property proceedings to be commenced so far out of time.

The Judge dismissed the wife's application. The wife appealed.

## The Appeal

The Appeal Court found that there was some explanation for the delay on the part of the wife but it also noted that the husband had been equally inactive in formalising matters. Whilst either of the parties could make an application to the State Courts, this option did not reduce the hardship to the wife, as the State Courts could not take into consideration the wife's contributions to the children and other relevant matters.

## **The Court Ordered**

The appeal was granted and the wife was allowed to proceed with her application for property proceedings 'out of time'.