

IN THE HIGH COURT OF THE COOK ISLANDS
HELD T RAROTONGA
(CIVIL DIVISION)

DP NO. 6/2007

IN THE MATTER of the Matrimonial Property Act 1976 (as applied in the Cook Islands by the Matrimonial Property Act 1991-02)

BETWEEN **MIRIAMA PIERRE** of Rarotonga,
Director of Dental Services
Applicant

AND **NGATUNGANE MAXIMUM PIERRE** of Australia,
Occupation unknown
Respondent

Mr C Little for Applicant
Date: 13 September 2007

ORAL DECISION OF WESTON J

1. Mr Little appeared before me today in support of this application for orders under the Matrimonial Property 1976 which is applied in the Cook Islands in terms of the Matrimonial Property Act 1991-92.
2. I heard submissions from Mr Little. He took me through affidavits that had been lodged on behalf of the Applicant and I also heard evidence from her. Two issues concerned me and I took the opportunity to explore with both Mr Little and the Applicant.
3. First, was the question of service. As far as can be told, the Respondent has never received copies of the application or any

affidavits or indeed a settlement offer contained in a letter of 20 November 2006. Having heard evidence on the topic, it appears to me that the Respondent has deliberately avoided receiving these documents.

4. The address of 23 Lancaster Street to which the papers were sent, but subsequently returned, is the address of a son of the couple. As far as the Applicant knows, the Respondent lives with that son.
5. The Applicant also told me that she had had discussions with some of her children. While, for quite sensible reasons, they wish to avoid having any involvement in the matrimonial property dispute, she gained the clear impression that they were in communication with their father and that he would have some knowledge that the application was in train.
6. I have also seen affidavits of service showing that the proceeding at various stages was advertised in the Sydney Morning Herald.
7. In all the circumstances, I am satisfied that the Applicant has done all she can to draw this matter to the Respondent's attention. Furthermore, I am satisfied that the Respondent knows what is going on but has simply chosen to take no further steps.
8. The second matter that concerned me was the New Zealand superannuation fund which was paid for by the Applicant, and which continues to be paid for by her following the separation of

the couple in late 2000 or early 2001. Prima facie, this appears to be matrimonial property and not separate property as has been claimed. It may well be that the Respondent had some superannuation entitlement himself but the detail of this is uncertain and it may well have been cashed in, in the 1980s.

9. I am satisfied, though, that the various properties which are the subject of the application were provided to the couple from the Applicant's family. Other than nominal lease payments, nothing was paid for those. Yet, the Applicant is prepared to concede to the Respondent effectively half the value of those properties.
10. To the extent then that the superannuation fund is a matrimonial property asset, and has a value, it seems to me that it is more than offset by the preparedness of the Applicant to split assets 50/50 when she would have a powerful argument for having made an unequal contribution to the acquisition of those assets.
11. In the circumstances then, I am prepared to give the orders sought and I invite Mr Little to supply a draft order for my approval. For his assistance, it is my intention that the proposal set out in paragraph 23 of the Applicant's most recent affidavit is the basis of my order. In addition, I declare that the superannuation fund, the Matavera section and the savings account are separate property. Strictly, I do not need to address the Honda motor vehicle but in case there is no doubt it appears to me clear that this is an after acquired asset and does not fall to be addressed by me as part of this. I do not need to

make any order for costs. The Applicant accepts that she will be bearing these.

12. Equally, I do not make any orders that the Applicant is to take further steps to notify the Respondent that these orders have been made by the High Court of the Cook Islands held at Rarotonga. His attitude to date suggests he is not interested in the matter. Equally, Mr Little has satisfied me that the steps he proposes taking adequately protect the Respondent's interest to the extent he has any real interest in the matter.

Judge