

"WIFE DUMPED BY NOTE IN LETTERBOX AWARDED \$10,000 A MONTH"

Ongoing Maintenance After The Split

Recent headlines in the New Zealand Herald proclaimed "Wife dumped by note in letterbox awarded \$10,000 a month"¹ ;

and

"Berlusconi divorce deal may set record"² .

To most New Zealanders \$10,000 per month is pretty healthy maintenance. But the long suffering wife of Italian prime minister Silvio Berlusconi is apparently demanding NZD6.9m per month. Reportedly, he is offering a mere NZD556,000 per month.

When does maintenance have to be paid?

Under New Zealand law, maintenance may be payable by one partner to another after the end of the relationship when the less-wealthy partner has reasonable needs that he or she cannot meet because of specified circumstances. The Court considers:

- whether the claimant is able to meet his or her reasonable needs (this requires evidence of the claimant's income and expenses);
- whether the person from whom maintenance is sought, can afford to pay;
- if the first two factors are established, the reason for the inability of the claimant to meet their own needs. Qualifying reasons include:
 - the inability to become self supporting because of the division of functions within the relationship (eg one partner stops work to care for the children);
 - the inability to obtain work that is reasonable and pays enough;
 - the responsibility for care of children at the end of the relationship;
 - any physical or mental disability;
 - the living standard of the couple while they were living together;
 - the need to retrain and upskill for work.

Maintenance can be required to be paid either as an interim measure (for no longer than six months) or for such further period as the Court thinks is reasonable having regard to various factors and weighing those against the principle of a "clean-break", which is central to New Zealand's relationship property regime. After divorce it is more difficult to obtain maintenance.

¹ 27 November 2009, A5

² 28 November 2009, A25

DCK v RK, High Court, Auckland, 20 November 2009

After receiving the note in the letterbox (together with a relationship property agreement signed by the husband and certified by his lawyer), the wife remained living in the mortgage-free \$7m family home. But, she had been accustomed to winters in the Mediterranean and a \$42,000 annual allowance for clothing. She applied for an interim spousal maintenance award for a period of six months, and was awarded \$60,000.

Given the lifestyle the parties had enjoyed before separation, the Family Court Judge found that the wife's budget of \$10,000 per month for six months was reasonable. On appeal, the High Court agreed. The High Court Judge said:

[the wife] is entitled to maintain her previous lifestyle, in the immediate future, while she takes time to re-establish herself financially and take responsibility for her own financial situation. In the context of the family's previous expenditure, while [the couple] were living together, an interim award of \$60,000, payable over a period of six months, is not disproportionate or unreasonable.

Whether, if the wife applies for ongoing maintenance, she will receive such a generous sum remains to be seen. But this case emphasises that the non-earning spouse is entitled to maintain his/her previous lifestyle immediately after the separation of the parties.

The amount of maintenance awarded in this case is at the high end in New Zealand. The amount of maintenance, and the duration of maintenance, will vary according to the particular facts of each case.

Protecting Yourself?

So, can you protect yourself in a relationship property agreement from the obligation to pay maintenance in the event of a split, or include a minimum or maximum amount for maintenance obligations following a split? Any agreement can certainly try to achieve this objective but the Family Court has a broad power under section 182 of the Family Proceedings Act 1980 to vary a maintenance agreement (after a divorce or dissolution of civil union) to take into account changes in circumstances of the parties since the date of the agreement. So, particular care needs to be taken with the drafting of the maintenance provisions of any settlement agreement, and they may be susceptible to variation by the Court in the future.

For further information contact Vanessa Bruton or Joanna Caen (t: 09 979 2138 - e: caen@brookfields.co.nz)

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