



THE CREDIT CRISIS AND ITS IMPACT ON FINANCIAL SETTLEMENTS UPON A MARRIAGE BREAKDOWN

Given the fall in property prices and the devaluation of many shares, saving schemes, pensions and other assets which normally require to be carved up upon a marriage breakdown, the courts are now increasingly being asked to revisit agreements or orders, which have already been made or approved.

Recently, such a case came before the Northern Irish Ancillary Relief courts. The Master was asked to consider whether an agreed settlement in 2007, in which the

husband had agreed to pay a lump sum of £300,000 to the wife, could be varied downwards, given a subsequent significant fall in the property's value. At the time of the agreement, the husband had attempted to raise capital to pay the wife's lump sum and then subsequently tried to sell part of the land, rejecting an offer which he thought did not reflect the value of the land at the time. However, some 18–20 months after the agreed settlement, the wife had still not received any part of her lump sum and both parties sought to refer the matter back to court.

One issue which the husband sought to pursue, was an application to vary the agreed settlement downwards, as a result of the intervening factor of the collapse in property prices, which resulted in the value of the property in question having decreased by around £400,000. It was argued on his behalf, that this was an 'unforeseen event' which might potentially permit a court to reopen a matrimonial agreement, under the principles as set out in the previous case of *Edgar v Edgar* (1981) 2 FLR.

In considering the facts of the case, the Master also acknowledged the comments of Mrs Justice Hale in *Cornick v Cornick* (1994) 2 FLR, who said that 'a change in circumstances which has taken place since the date of the order...would not normally give rise to any case for re-opening matters' She went on to say that 'capital settlements are by their nature intended to be final and they have to be based on a snap shot taken at the time of the trial.'

In the circumstances of this particular case, a significant fall in the value of the property, since the date of the agreement, was not in itself a sufficient ground to persuade the court to re-open the financial settlement. The fact that the husband previously rejected an offer to buy part of the land was also a factor.

There are limited circumstances in which a court will consider revisiting a previously approved agreement or court order, such as, when it has been based on a substantial mistake, usually arising from a fraud, misrepresentation or material non-disclosure. However, it seems that only in the most exceptional of cases, will a supervening event result in a successful application to vary. The strength of the public policy interest that there should be finality in litigation will seemingly be an imperative consideration.

If you have any queries in respect of the resolution of finances relating to a marriage breakdown, you should contact a solicitor who specialises in this area of law for advice and assistance.