Tales from the Amazon - Could the Bezos divorce have a different outcome in Australian Courts?

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Family and relationship law / property / settlement / assessment / divorce / separation / contributions

There is nothing like a media splash about a billionaire's marriage breakdown to bring attention to the Family Court system.

Last month, arguably the world's richest man and Amazon CEO, Mr Bezos announced that he and his wife would separate after 16 years of marriage and four children. Like the rest of the world, I started thinking about the division of their assets and whether his former wife was entitled to half of "his" fortune, despite Amazon being founded after they'd commenced cohabitation and where it seems (from the media) that his wife assisted him in the early stages of the business.

Unlike the United States of America where the division of matrimonial assets is a State-based system where each State has its own legislation, the Australian law governing the division of matrimonial and de facto property is determined at a federal level, meaning it is the same in all States and Territories.

Under Australian Family Law, all property and financial resources (as at the date of agreement or date of hearing in the Family Law Court) is identified and valued regardless of the property being acquired prior to, during or after the marriage or relationship for the purpose of determining each party's property settlement entitlement.

The Family Law Act requires an assessment of each party's contributions, being financial, non-financial and to the welfare of the family (such as a homemaker and/or parent) to the property and financial resource.

If Mr Bezos's property settlement was determined by the Family Courts in Australia, they may hear arguments by Mr Bezos **that his financial contributions are greater than the contributions of his wife** due to his "special skills" and/or "business acumen" in building a billion dollar empire from scratch. .

Mr Bezos' wife, who has supported him in his business venture from the beginning, appears to argue she sacrificed her career to support him, looked after the family and the parties four children, socialised and attended business functions with him would argue that her contributions to the matrimonial asset pool were equal to that of her husband.

The Australian Courts have most recently focused their jurisprudence on acknowledging that in long marriages, and where the Court is satisfied that both parties have contributed equally albeit in different and agreed roles adopted by them during their marriage or relationship (for example where one spouse is the agreed primary breadwinner and the other spouse is the agreed primary homemaker and parent), the Court could assess contributions as equal. This is despite the obvious fact that one parties' contributions as primary breadwinner have created very substantial wealth, whereas the other party's contributions have not created the same wealth.

Whilst there was jurisprudence previously to support an argument for a differential in the assessment of contributions in favour of the party who creates significant wealth (these cases were commonly referred to as the "special contribution" or "special skills" cases), the recent decisions of the Australian Family Law courts indicate a party is required to establish more than mere creation of wealth during a relationship to warrant a significant adjustment in their favour.

It is important to acknowledge that these comments do not apply to all cases where parties have substantial wealth, such as where:

- one or both parties have acquired wealth prior to their relationship;
- the relationship was not long;
- parties conducted separated finances;
- there are no children;
- the Court is not satisfied that the spouses did contribute equally; and
- wealth was acquired by gifts or inheritances to one of both parties.

However, would the Australian Family Law Courts assess contributions as equal in a case where one party has built a billion dollar empire from scratch? One of the closest cases in monetary terms and length of relationship is *Gelb & Gelb* [2007] FamCA 514, where the matrimonial asset pool was approximately $833 million. In that case, the parties were married for approximately 23 years and had two children during the course of the relationship. The husband in his interim applications stated "*his wife had little or no involvement with his business during their marriage." The wife's evidence was contrary to that of the husband and she set "out in some detail a history of her support with entertainment of colleagues and business associates and her husband's active encouragement of her support and involvement in that milieu as representing assistance to him in the business."* However the courts involvement in this case seems to have ceased after the interim hearing. One can only assume the parties negotiated a private agreement without the need for further court intervention.

It is safe to say the Australian Family Law courts have not encountered a matter of the same magnitude and, therefore, it is difficult to state with any degree of certainty if the Australian Family Law courts would divide the fortune of the Bezos family equally. However, there is good case authority supporting such an argument.

The Court's approach to "big money" cases per se (the wealth being accumulated during the marriage and post separation and all other contributions being equal or of no significance) is now best reflected in decisions such as:

- *Hoffman* [2014] FamCAFC 92 (36 years of marriage, 4 children and a matrimonial pool of $10 million - 50% / 50% outcome)
- *Fields & Smith* [2015] FamCAFC 57 (29 years marriage, 3 children $32million to $ 39 million) 50% /50% outcome).

These cases rejected the argument there was a particular type of contribution that related to "special skills" or "special talents", with the result that such a finding "is productive of a particular finding, or range of findings in respect of contribution". In *Hoffman* the Full Court stated:

> *In each case, we consider that the point being made is that there is no principle or guideline (or indeed anything else emerging from s79), that renders the direct contribution of income or capital more important – or "special" – when compared against indirect contributions and, in particular, contributions to the home or the welfare of the family…*

In *Fields & Smith*, the Full Court found:

> *If it is necessary to make the point again, and to highlight it for the purpose of this appeal, we add our endorsement to what has been made clear in the authorities referred and to the Full Court's comments in [52] of Hoffman, that the words of s79 do not provide endorsement for any category of contribution related to any class of property (for*

> *example, high wealth) being, by virtue of that category or class, more valuable or important that another. In each case the contributions made by the parties must be evaluated in the context of the facts particular to that case.*
>
> *As we have already said at [42] and [43] the notion, if there ever was one, that for some reason the wealth of parties itself, particularly in relation to business interests, should axiomatically mean that the party involved in the business is entitled to more, and according to senior counsel for the husband in this case, significantly more, has been put to rest.*
>
> *These parties made significant contributions in differing but intersecting spheres. In our view, there is no basis for differentiating between them. In Mallet the High Court said that equality was not the starting point, that much can be readily accepted. That is not to prevent equality from being the conclusion once contributions and other relevant factors have been evaluated. Here the parties had organised their financial affairs in a manner which strongly pointed to a joint endeavour, at least during the continuance of the marriage and up until their separation. All their financial dealings were consistent with that position.*
>
> *That is not to say, however, that in different cases, differences in contributions might not be relevant.*

Despite the Full Court finding that high wealth alone will not result in the creator receiving a greater share of the property pool, the fundamental principles about the assessment of contributions remain the same.

For more information or discussion, please contact HopgoodGanim Lawyers' Family and Relationship Law team.

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