

Tax and Family Law Matters

5 March 2015

Case Study - Outline

John (45) and Mandy (43) had been married for 18 years when they separated in February 2011. They have two children, Harry (17) and Edward (15). Through no fault of their solicitors, there has been a lengthy delay in the parties reaching an agreement as to how their assets will be divided, however it appears that a settlement may now take place.

John is an architect, and runs a successful design company, servicing both commercial and residential clients. Mandy, was a bookkeeper prior to having the children, and looked after the management accounting for John's business at various times over the course of the marriage, other than when she took leave to have the children. Mandy ceased working in the business in December 2010.

Mandy drives an Audi A4, purchased by John's business in 2010 for \$95,000. John drives a BMW X5, again owned by the business.

The architecture business is operated through a company, Gorgeous Designs Pty Limited, incorporated in 2000. John and Mandy own 1 ordinary share each in the capital of the company, and John is the sole director. The single expert has valued the company at \$3.5 million. This value includes a commercial investment property, purchased by the company in 2004 for \$300,000 and now worth \$1 million.

John and Mandy purchased their four bedroom home in a beachside suburb in early 2010 for \$1.2 million (incl purchase costs) as joint tenants. To purchase the home, John and Mandy used the proceeds from sale of the previous home of \$800,000 and drawings from Gorgeous Designs of \$400,000. The family occupied this house as their main residence until February 2011, when John moved out. Shortly after separation, John purchased an apartment with his girlfriend, while Mandy and the children continue to live in the former matrimonial home.

In addition to the \$400,000 drawn out by Mandy and John in 2010 when they purchased the family home, the parties have used the company money as their own over the past few years. The company is very successful, and the parties and the children have enjoyed a lavish lifestyle. Significant drawings to fund lifestyle spending have resulted in large loan accounts owing by the parties back to Gorgeous Designs.

A loan agreement for the \$400,000 was entered into between the parties and the company, for a term of 25 years (secured over the former matrimonial home) with interest charged at the minimum benchmark rate in accordance with Division 7A of Income Tax Assessment Act 1936. However, there is no loan agreement in respect of the other amounts drawn by Mandy and John from the company, which total \$350,000 at 30 June 2014.

In 2005 John and Mandy started a self-managed superannuation fund, the Gorgeous Superannuation Fund. The members of the fund are John and Mandy, and their accumulated member benefits are currently \$600,000 and \$200,000 respectively. The fund owns the commercial premises from which Gorgeous Designs operates (through a related unit trust) and has cash of \$250,000.

The current value, at June 2014, of the pool of assets available for distribution between John and Mandy is as follows:

Table 1 – Pool of assets	\$
Matrimonial home	1,500,000
Equity in John’s apartment	Nil
Shares in Gorgeous Designs Pty Limited	3,500,000
Boat	500,000
John’s superannuation benefits	600,000
Mandy’s superannuation benefits	200,000
Loan owing to Gorgeous Designs re house purchase	(400,000)
Loans owing to Gorgeous Designs re lifestyle drawings	(350,000)
Total	5,550,000

John and Mandy have reached agreement as to the settlement of their property proceedings, with draft consent orders, reflecting a division of assets as follows:

1. John's 50% interest in the former matrimonial home is to be transferred to Mandy.
2. Mandy's one ordinary share in the company is to be transferred to John;
3. Mandy's superannuation benefit in the Gorgeous Superannuation Fund is to be rolled into a complying superannuation fund;
4. Mandy's share of the \$400,000 loan owing to Gorgeous Designs in respect of the home purchase is to be assumed by John and the company ledgers adjusted accordingly;
5. Mandy's share of the lifestyle loan account, an amount of \$300,000 determined following a forensic investigation, is to be forgiven;
6. The commercial investment property owned by Gorgeous Designs and valued at \$1,000,000 is to be transferred to Mandy;
7. The Audi driven by Mandy, current value \$40,000 will be transferred to Mandy;
8. Cash of \$35,000 will be paid by John personally to Mandy;
9. John will retain the company, his new apartment, his superannuation interest, and the boat.

The orders are proposed to achieve a 50:50 split between the parties.

The parties have not made any allowance for the taxation consequences that may crystallise on either the implementation of the proposed orders or in the event of a future sale of the assets.