

Phillips | Family Law

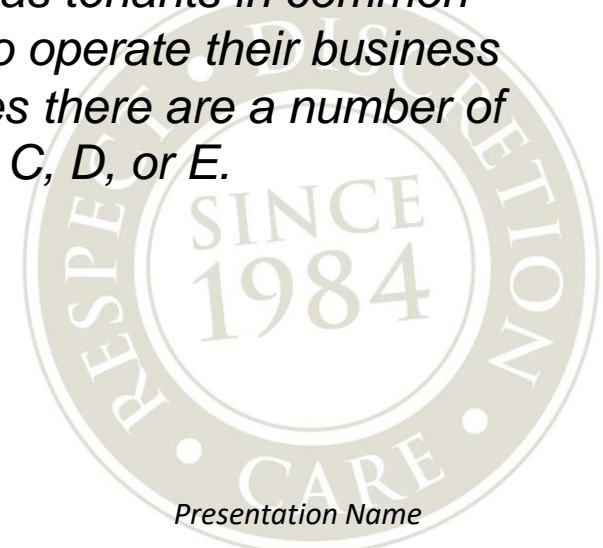
Third Parties: To join or not to join? That is the question

Presented by

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- *Our couple are Adam and Sally. Adam and Sally have been married for 20 years and they have three children who are still at home. Adam has four siblings Barry, Colin, Dennis and Edith. Together they are all directors of ABCDE Pty Ltd a company that operates a manufacturing business, ABCDE Designs. Each of the siblings has a family trust with their own corporate trustee that holds 20% of the issued shares in ABCDE Pty Ltd. The business is operated out of a number of premises and one of those premises in West End is jointly owned by Adam and his brother Barry. Adam and Barry own the property as tenants in common and the property is leased to ABCDE Pty Ltd who operate their business out of that premises. In addition to those premises there are a number of other properties that are also jointly owned by B, C, D, or E.*



- *The property at West End has equity of \$2,000,000 million dollars. Adam and Sally have a matrimonial home in which they have equity of \$300,000. Not long before to separation Adam came home and told Sally that there had been an approach from a third party to buy the manufacturing business and there was an offer on the table of \$20,000,000*
- *Sally was a primary school teacher but she has not been in the workplace for the entirety of the marriage. Adam's current earnings include a salary of \$100,000 per annum and dividends from the company of \$300,000 per annum.*

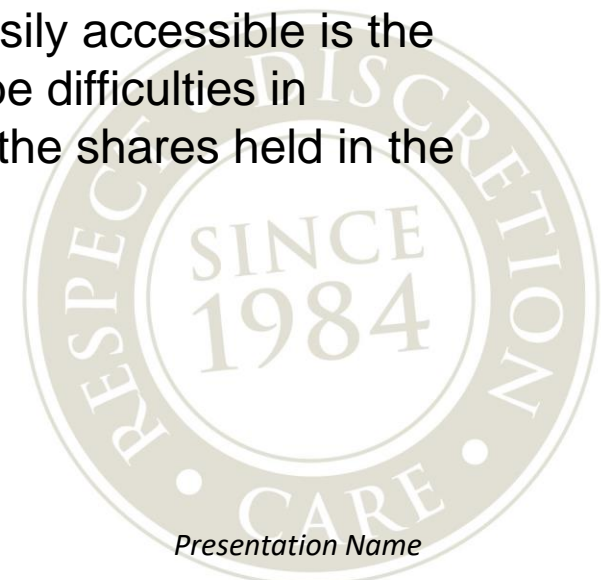


- After the separation Sally comes in to see you. You have assessed the situation and despite the fact that Adam brought his interest in business and the freehold property to the marriage it has been a marriage of 20 years and three children and given the disparity in earning capacities you have given Sally advice that she is entitled to between 35% to 45% of the matrimonial pool.



In simple terms the pool consists of the \$300,000 equity in their former matrimonial home, the half share in the factory premises Adam owns with Barry worth \$1,000,000 and his trust's 20% interest in a business ostensibly worth \$4,000,000. i.e. a pool of \$5,500,000 so 35% is \$1,925,000 and 45% is \$2,475,000

You have advised Sally that the only asset that is easily accessible is the equity in the former matrimonial home as there will be difficulties in accessing the equity in the factory and the equity in the shares held in the company.



1. Strategies to ensure the involvement of third parties at mediation;
 2. Whether or not to join third parties at the outset of proceedings;
 3. The types of orders that can be sought against third parties to assist in accessing interests in entities with third parties;
- Third parties applying to be released from the proceedings.



Strategies to ensure the involvement of third parties at mediation

- Early case appraisal after document review;
- Arriving at options where settlement can be recovered;
- Identifying the decision maker/banker and ensuring they are at the table;



The types of orders that can be sought against third parties to assist in accessing interests in entities with third parties

- Accrued jurisdiction
- Relief in equity;
- Corporations law;
- Trustee for sale



Third parties applying to be released from the proceedings.

- Subpoena issues;
- Have they brought in too early when really it is enforcement application



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