

Copyright & Relationship Property. Landmark Case in NZ

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It has been described as a landmark case in new Zealand for issues of this type, and that it is a collision of highly specialised areas of the law – relationship property and copyright.

The Facts

The couple in this case were married for 20 years. The wife was an artist, the husband a photographer. The wife is from Finland, and had studied at the Tisch School of the Arts in

New York under a Fulbright Scholarship. She had many high level exhibitions in Finland, and has paintings exhibited in the Finnish National Gallery. The wife was much more successful than the husband, he said this was because he sacrificed his career to support his wife in hers.

Upon separation their property fell to be divided in accordance with the Property (Relationships) Act 1976 ("PRA"). This is the legislation that deals with all aspects of community property of parties in de facto, civil union or marriage relationships.

The issues in this case concerned original artworks created by the wife during the relationship.

Initially, the husband wanted to retain some of the artworks with their copyright, admitting he intended to set up a business to exploit the copyrights by reproducing and selling copies on his own account. No doubt this did not go down well with the wife, with her fearing that her artwork would be devalued by use on fridge magnets and tea towels. Battlelines were well and truly drawn in this highly contentious litigation.

The case started in the Family Court, and the issue of the classification of the artworks wound their way through two other appeals, before reaching the Supreme Court ("Court") in 2024. As an aside, the actual artworks have been stored in the Blenheim District Court since the beginning of the dispute following concerns.

The Positions

It was not disputed by the wife that the artworks themselves – the physical paintings – were relationship property. What she claimed was that the copyright that subsisted in the artworks was not 'property' for the purposes of the PRA, as it is not tangible and is a result of her personal skill. Alternatively, if the copyright was capable of being classified as 'property', she says it was her separate property, as the skills she used to create it, predated the relationship. Ms Alalääkkölä did not wish to share the copyright with Mr Palmer.

The husband argued the artworks and the copyrights in the artworks were relationship property.

The Issues for the Court to determine

The Court had to grapple with the relationship property and copyright legislation to decide if the copyrights in the artworks fell within the definition of property, and if so whether it would be classified as 'separate property' or 'relationship property' under the PRA.

The PRA defines 'property' as including; real property, personal property, any estate or interest in any real property or personal property, any debt or any thing in action and any other right or interest.

The Copyright Act 1994 is legislation that protects the owner of original artistic works, and the artworks in this case fell within the ambit of that Act. Separately, the wife argued that while copyright is 'property right' under the Copyright Act, it was a special kind of property which the PRA should not consider as 'property'.

The wife argued that the reference to "*any other right or interest*" in the PRA excluded personal attributes such as artistic talent. The Court disagreed. The Court found that personal attributes and skill are not property, but their use to create the artefact is, and this is what copyright recognises. The Court found there was no reason to exclude intangible personal property from the PRA regime, and copyright fitted within that definition. The Court was satisfied that copyright encapsulated both moral ownership in the artworks, but also economic rights to commercialise the artworks as the owner of the copyright may wish. The Court recognised the value of the bundle of economic rights that copyright embodies. The Court found that copyright fitted the wide definition of property in the PRA, and it would be recognised as such.

The consideration then turns to whether the property is 'separate property' or 'relationship property'. Central to this issue the PRA's section that "… all property acquired… after the marriage … began" is relationship property.

The wife argued the copyright was not acquired during the marriage, as it was attributable to skills acquired before the relationship began. She contended that the copyright should be classified as her separate property, and not be shared with the husband. The Court soundly rejected that argument too. The Court said "*acquired*" means ""*to get or obtain by any means*", so the definition was wide enough to capture artworks created during the relationship, even if the skills to create them were obtained before the marriage.

The wife argued that treating copyright as relationship property might deter creative activity. This was also rejected by the Court. The Court said that she as the author of

copyright entered the relationship willingly and hoped it would endure. In fact, the relationship may have fostered creativity, which further supports its classification as relationship property.

The Outcome

The Court found the copyright in the artworks is relationship property, and fell to be divided by *value* between the parties and distributed in a manner which protects Ms Alalääkkölä's control over her works.

The Court made directions for the case to go back to the Family Court to deal with valuing the artworks under four categories (based on whether they were incomplete/unsuitable/damaged, personal/including nudes and culturally insensitive pieces, one off unique pieces to be sold or works which are saleable and it is intended copies of will be made) and how they should be treated and valued.

So, the case is still not finished. It is to be hoped that with the guidance of this erudite judgment, the parties will now be able to finally deal with each of the artworks in the Family Court. The directions made by the Court will enable the copyright to be valued, and then there will be a financial adjustment to the husband, quantum depending on the valuations to come and which artworks and copyrights are to be kept by which partner.

The Fallout

Unsurprisingly, the husband thanked the Judges for their unanimous decision in which "*logic and commonsense prevailed".* As reported in the NZ Herald, the wife is very displeased with the result, and now says as a result of this outcome she is leaving New Zealand and returning to Finland. She is concerned about potential injustice to other artists, and her lawyer described the PRA as a "*blunt instrument".*