

NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B TO 11D OF THE FAMILY COURTS ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE [HTTP://WWW.JUSTICE.GOV.T.NZ/COURTS/FAMILY-COURT/LEGISLATION/RESTRICTIONS-ON-PUBLICATIONS](http://www.justice.govt.nz/courts/family-court/legislation/restrictions-on-publications).

IN THE SUPREME COURT OF NEW ZEALAND

**SC 11/2014
[2014] NZSC 32**

BETWEEN GFM
Applicant

AND JAM
Respondent

Court: Elias CJ, McGrath and Glazebrook JJ

Counsel: M J McCartney QC for Applicant
M W Vickerman and Z L Wackeniier for Respondent

Judgment: 2 April 2014

JUDGMENT OF THE COURT

A The application for leave to appeal is dismissed.

B The applicant is to pay the respondent costs of \$2,500.

REASONS

[1] The applicant wife seeks leave to appeal a judgment of the Court of Appeal¹ holding that the parties' relationship property be valued at the date of hearing rather than the date of separation and rejecting the applicant's contentions for various post-separation adjustments. In its determination, the Court of Appeal upheld a decision of the High Court² allowing the husband's appeal from a decision of the Family

¹ *GFM v JAM* [2013] NZCA 660 (17 December 2013, Randerson, Stevens and Wild JJ).

² *JAM v GFM* [2012] NZHC 290 (3 May 2012).

Court³ which had accepted a date of separation valuation, and dismissing the wife's cross-appeal. The Family Court decision valuing the property at the date of separation had made it unnecessary for the Judge to deal with alternative contentions about post-separation adjustment of value. These were resolved by the High Court and upheld by the Court of Appeal. A cross-appeal by the wife was dismissed by Woodhouse J.

[2] In the Family Court, the family home had been vested in the wife and shares in private companies were vested in the husband. As a consequence of the High Court judgment, the family home (in which the wife had been living post-separation) was shared equally between the parties, with the wife given an option to purchase at an agreed price, with consequential orders made in case agreement should not be reached or the wife did not exercise the option. From the proceeds of sale or in exercising the right to purchase, the wife was to be given credit for an adjusting sum in respect of the property to achieve equality in terms of the other property vested in the husband.

[3] Although Woodhouse J differed from the Family Court judge, he acknowledged that the presentation of the case in the Family Court had not been straightforward. The evidence had been voluminous and had included oral evidence given over 5 days, as well as documents totalling nearly 2,000 pages. The submissions received by the Family Court from both parties were also extensive.

[4] The High Court judgment was itself substantial. It was carefully reviewed in a full judgment of the Court of Appeal. The applicant seeks a third appeal. Her counsel suggests that the approach adopted in the appellate courts reflects a "commercial, not a relationship property, mindset," thus failing to comply with the 2001 reforms to the Property (Relations) Act 1976. Although the Court of Appeal differed from the High Court in the view that any diminution of value taken into account under s 18C of the Act must be deliberate, no point of importance arises because that interpretation of s 18C is clearly right.

³ *JAM v GFM* FC Auckland FAM-2006-004-002610, 4 November 2010, Judge D A Burns.

[5] We are not persuaded that any error of approach by the Court of Appeal is shown. The principles in issue in considering the discretion under s 2G(2) to depart from date of hearing valuation were considered recently by this Court in *Burgess v Beaven*⁴ and were applied by the High Court and Court of Appeal. There is no occasion to re-visit the points of principle. The application to the particular case turned on findings of fact on which concurrent reasons in the High Court and Court of Appeal convincingly explain their departure from the approach adopted in the Family Court.

[6] Other matters of complaint relating to post-separation conduct and the adjustments between the parties for post-separation losses and other factors are sought to be raised. They, too, turn on assessments of fact in respect of which there are concurrent findings in the High Court and Court of Appeal.

[7] In a careful consideration of all arguments, the Court of Appeal reached the conclusion, in agreement with the High Court, that the Family Court separation date resulted in an unjust division of the parties' relationship property. The Court of Appeal disagreed with the High Court Judge's endorsement of *Hutt v Hodge*⁵ and *PGO v MAB*⁶ "if those two cases held that s 18C(2) did not require that the relevant party acted with the deliberate intention of diminishing the value of the relationship property, and did materially diminish its value".⁷ As the contingent way this is expressed makes clear, the Court of Appeal was not convinced that was the right interpretation to be placed on the cases. More importantly, in the present case it is clear that there was no basis on the facts for application of s 18C.

[8] The proposed appeal raises no question of general or public importance such as would justify third appeal to this Court. The application is therefore dismissed with costs of \$2,500 to the respondent.

Solicitors:
Davies Law, Auckland, for Applicant
Cairns Slane, Auckland, for Respondent

⁴ *Burgess v Beaven* [2012] NZSC 71; [2013] 1 NZLR 129.

⁵ *Hutt v Hodge* [2007] NZFLR 437 (HC).

⁶ *PGO v MAB* [2011] NZFLR 232 (HC).

⁷ *GFM v JAM*, above n 1 at [37].