



**Supreme Court of New Zealand
Te Kōti Mana Nui**

13 March 2015

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**CHRISTINE HAMILTON THOMPSON V MICHAEL LEITH
THOMPSON**

(SC 50/2014) [2015] NZSC 26

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz

This decision concerns the division of assets under the Property (Relationships) Act 1976. Mr and Mrs Thompson married in 1971 and established Nutra-Life Health and Fitness Ltd (“Nutra-Life”) in 1984. Health Foods International Ltd (“HFI”) was formed in 1989 and held the shares of Nutra-Life. Shares in HFI were initially held by Mr and Mrs Thompson but were sold to a family trust they had established, the ML Thompson Family Trust (“MLT Trust”). The Thompsons separated in 2002. In late 2006 Nutra-Life was sold to Next Capital Health Ltd. \$72.3 million was paid to the MLT Trust for the business, and \$8 million to Mr Thompson in consideration for him agreeing to a restraint of trade covenant. The issue before the Supreme Court was how that \$8 million payment should be classified for the purposes of the Act; in particular, whether it should be treated as relationship property (with the consequence that each of the former spouses would be entitled to it equally).

In the Family Court Judge Rogers held that the payment was Mr Thompson’s separate property. The Judge also rejected an argument that it would be just for the Court to exercise its power under s 9(4) of the Act to treat the \$8 million as if it was relationship property. In the High Court Andrews J held that although the payment was not relationship property, it would be just to treat some portion of it as if it was.

85 Lambton Quay, Wellington
P O Box 61 DX SX 11224
Telephone 64 4 918 8222 Facsimile 64 4 471 6924

Mr Thompson challenged this decision in the Court of Appeal. That Court decided in his favour, concluding that the \$8 million was not relationship property and nor was it just to treat it as such. Mrs Thompson was granted leave to challenge both these conclusions in an appeal to the Supreme Court.

In a unanimous judgment the Supreme Court has held that it is just in the circumstances to treat the payment as if it were relationship property. The Supreme Court considers the sole purpose of the restraint which Mr Thompson accepted was to protect the goodwill of the business being acquired by the purchaser. In previous Court of Appeal and High Court judgments a policy decision was made that the giving of such covenants should be assumed when valuing a business for the purposes of the Act. The necessary corollary of this approach is that a payment which is referable to the giving of such covenants is relationship property.

The shares in HFI, being held by the MLT Trust rather than either of the Thompsons individually, were not relationship property. However Judge Rogers found that Mr and Mrs Thompson agreed that the assets of the MLT Trust were to be treated as, in effect, relationship property, and the Supreme Court has upheld this finding. If the HFI shares had remained relationship property, the \$8 million would too have remained relationship property. The Court has, therefore, held that it is appropriate under s 9(4) to treat the payment as if it was relationship property.

Contact person: Gordon Thatcher, Supreme Court Registrar (04) 471 6921