

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE

<https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/>

**IN THE FAMILY COURT
AT WAITAKERE**

**I TE KŌTI WHĀNAU
KI WAITĀKERE**

**FAM -2021-090-000521
[2021] NZFC 10145**

IN THE MATTER OF	PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	AMANDA JEAN SMITH Applicant
AND	LEE STUART MOORE Joint Applicant

Hearing: In chambers

Appearances: L Aspin for Applicant
C McLean for Joint Applicant

Judgment: 8 October 2021

**RESERVED JUDGMENT OF JUDGE B R PIDWELL
(Section 31 order relating to superannuation rights)**

[1] The parties jointly apply for an order under s 31 of the Property (Relationships) Act 1976 (“the Act”) asking the Court to endorse the terms of a s 21A agreement entered into between them.

[2] The parties request that the Court direct that the AMP KiwiSaver Superannuation fund release the sum of \$309,000 from Lee Moore’s scheme in order

to pay an agreed adjustment sum to Amanda Smith in full and final settlement of relationship property issues.

[3] The parties were married on 22 January 2010. They separated on 15 December 2020. They have one child.

[4] They reached agreement on a just division of their relationship property after negotiation and disclosure with the assistance of counsel. On 16 September 2021 they signed a s 21A agreement. This provides for Mr Moore to retain the former family home, together with his two superannuation schemes, two cars, some shares, and bank accounts in his name. Ms Smith retains a car, her superannuation scheme, and an adjustment sum of \$309,000 to be paid from Mr Moore's AMP KiwiSaver to achieve an equal division of relationship property.

Does the Court have jurisdiction to make the order sought?

[5] The parties agree that this Court has the jurisdiction to provide a mechanism to enforce the s 21A agreement.

[7] Sections 8(1)(i) and 31 provide the Court with the jurisdiction to make orders in relation to superannuation rights which are binding on spouses and managers of superannuation schemes. A spouse who benefits under a scheme must enter an arrangement or deed of covenant designed to ensure the non-owner spouse receives their share of the property.

[8] The property issue clearly falls within section 8(1)(i), being a KiwiSaver superannuation scheme owned by Mr Moore. The parties have entered into a written agreement.

[9] Clearly Parliament intended the Court to have all of the jurisdiction necessary to ensure that the parties seeking to resolve relationship property matters in the Family Court jurisdiction are able to achieve a just result. This must be done in accordance

with the principles of the Act, which include the need for this to be swift and inexpensive.¹

[10] The KiwiSaver Act 2006 acknowledges the Court's jurisdiction to make an order releasing funds from a KiwiSaver scheme and specifically makes reference to s 31 of the Property (Relationships Act) 1976. s 127 of that Act provides

127 Member's interest in KiwiSaver scheme not assignable

- (1) Except as expressly provided in this Act, a member's interest or any future benefits that will or may become payable to a member under the KiwiSaver scheme must not be assigned or charged or passed to any other person whether by way of security, operation of law, or any other means.
- (2) However, subsection (1) does not prevent a member's interest or any future benefits that will or may become payable to a member under the KiwiSaver scheme from being released, assigned, or charged, or from passing to any other person if it is required by the provisions of any enactment, including a requirement by order of the court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

[11] Furthermore rule 7 of the KiwiSaver Scheme Rules envisage the release of funds from a KiwiSaver scheme pursuant under s 31 of the Act. It provides:

7 Release of funds required under other enactments

- (1) The manager must comply with the provisions of any enactment that requires the manager to release funds from the KiwiSaver scheme in accordance with that enactment.
- (2) A requirement to release funds from the KiwiSaver scheme under any enactment includes a requirement by order of any court under any enactment (including an order made under section 31 of the Property (Relationships) Act 1976).

[12] Parliament's explicit reference to s 31 of the Act and the KiwiSaver Act 2006 shows its specific endorsement of the Court's ability to direct the release of KiwiSaver funds in relationship property matters.

¹ Section 1N

Should the order be made?

[13] Counsel jointly submit that the parties agree to the Court to making an order to enable them to divide their property accordance with the provisions of the s 21A agreement they have signed.

[14] It is clear that the parties only entered into that agreement on the basis that the funds would be released and it would be unjust for the Court not to endorse that agreement.

[15] Parliament has clearly given the Court the jurisdiction under s 31 to override withdrawal restrictions when determining relationship property matters where the Court can ensure that the division adheres to the overall principles of the Act. These principles include the presumption of equal status between the parties to a marriage, the equality of division, the need to consider the interests of the children, and achieving an inexpensive, simple and speedy result.

[16] Because of those reasons, and with the consent of the parties, I am satisfied that an order should be made. I grant the application and make the following orders:

- (a) The trustees of the AMP KiwiSaver Scheme are to pay the sum of \$309,000.00 (“payment”) to Morgan Coakle Lawyers (“Morgan Coakle”) from LEE STUART MOORE AMP KiwiSaver Scheme Funds, member [number deleted].
- (b) Payment is to be made to Morgan Coakle in accordance with the agreement pursuant to s 21A of the Property (Relationships) Act 1976, between the parties dated 16 September 2021.
- (c) The payment is to be paid into Morgan Coakle’s solicitor’s trust account: [number deleted].

[6] There is no orders as to costs.

Judge B R Pidwell
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 08/10/2021