

Spending matrimonial assets prior to a settlement – what is the law?

Family Law lawyers are frequently asked by clients, “what happens if the other spouse spends the money before we reach an agreement?” The scenario usually arises where there is some money in a bank account which is spent by one party or there is a sale of an asset and the money goes missing.

Often, the party who has missed out on the premature distribution will want to argue that the missing money (or asset) is added back into the asset pool. Traditionally, this has been an area of significant dispute between parties who end up in the Family Court. However, in reality it is usually very difficult to argue that the asset should be added back.

The High Court in the decision of Stanford [2012] had some things to say about a premature distribution of assets and some lawyers now argue that since this decision, the notion of “addbacks” no longer exist. While it could not be certainly said that addbacks are a thing of the past it remains the position, as it was before Stanford was decided,



that it is usually difficult to have an asset added back into an asset pool.

The Full court of the Family Court reiterated the position in a decision handed down in July 2015 (Talbot & Talbot). In that case the original trial judge found that the husband had sold a property in his name and had received proceeds totalling \$252,251. The judge found that the husband had not explained what he had done with the proceeds and added the sale proceeds back into the asset pool. The husband successfully appealed the decision of the trial judge. The Full Court said:

“...it was necessary for the trial judge to take account of a number of relevant

considerations, one of the most important of which was what the evidence revealed about expenditure from the account into which the funds were banked. That is because, among other things ‘... parties are entitled to reasonably conduct their affairs post-separation in a manner that is consistent with properly getting on with their lives’ (Cerini) and, if money is to be “added back” some three years after it was spent, account must be taken of what the evidence reveals about what was spent on “ordinary living expenses” and of the financial circumstances of the parties generally.”

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Partners message

It has been another busy year and there has been a lot of change occurring at Tonkin Drysdale Partners.

Isabella Favetta joined us in January 2015 as our Probate paralegal to replace Ellen Goodwin who retired. Brooke Gee also joined the team and is assisting Isabella.

Adrienne Drysdale retired in March and Fleur Lloyd went on maternity leave at the same time. Adrienne has had a long association with TDP and many of our clients know her very well. We wish her well in her retirement. Fleur and her partner, Dylan welcomed the newest addition to their family, Tilly, who was born in May. Congratulations to Fleur and Dylan. Fiona Stevenson is our new receptionist. Welcome aboard Fiona.

Shelly Bedford, who was Darrell’s assistant, moved to Diamond Head with her partner Norrie in March. Shelly was one of the more effervescent members of our team and her presence in the office will be missed. We welcome Jenni Lund who has replaced Shelly.

We have also welcomed to our team two new members, Gail Bozanic who has joined Paul Tonkin’s team and Sarah Nielsen as a junior secretary.

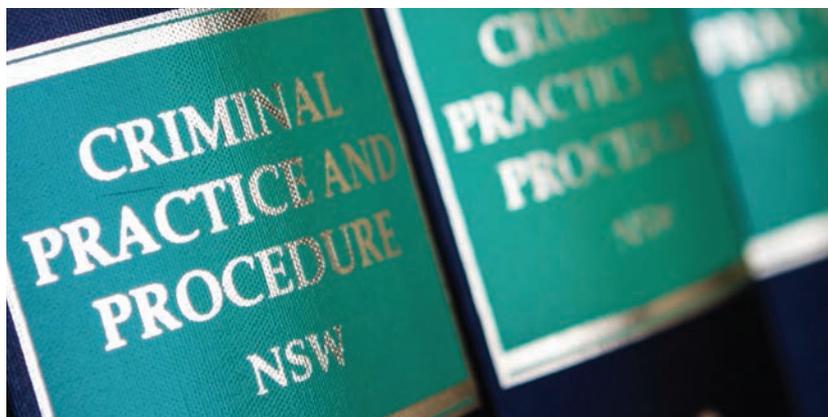
It is hard to believe that another year has passed and that Christmas is almost upon us. The partners and staff would like to extend to all our loyal clients the compliments of the season and a safe and happy holiday. We look forward to working with you again in 2016.



Davina Borrow-Jones



Have you had an insurance claim denied?



What is your role at Tonkin Drysdale Partners?

I am a Senior Associate Lawyer practising in the commercial space, with a special interest in intellectual property (trademarks and copyright) and estate law.

I am fortunate in being associated with many interesting local businesses and individual clients, all of whom bring diversity to our practice. This year marks my 10th anniversary as a lawyer.

When you are not working what do you do for enjoyment?

I read a lot; legal journals naturally... but also the paper, fiction, non-fiction and blogs. Of course I enjoy watching sport too; it's a job prerequisite for "Tonkins"!

Where is your ultimate holiday destination?

Anywhere warm where there is adventure; (climbing, surfing, diving, mountain biking) amazing food, wine, and company... I have been lucky enough to have lived overseas and travelled extensively but the Central Coast is ultimate.

What is your favourite food or restaurant?

I am addicted to coffee, so all the local coffee shops. I am also a certified chocoholic and get ridiculously excited when there is a new Lindt chocolate flavour, I have a stash of Lindt balls in my drawer at work.

If you were stuck on a desert island, what is the one thing you couldn't do without?

A boat...! No really; I was recently lucky enough to holiday in the Maldives (a country made up of desert islands), and spent many days on boats around the islands. The diving there was world class, with tropical fish galore, whale sharks and manta rays.

The one person in the world I would like to meet is?

Jerry Seinfeld – for the laughs.

What do you like most about your job?

Everyone is relaxed yet professional, and the partners are extremely knowledgeable and generous with their time. In the office we have at least one laugh a day, usually far more; that's got to be a great work environment.

If you have had a General Insurance Claim denied by your insurer, there are inexpensive ways to ask to have the decision reviewed.

General insurance matters include motor vehicle (comprehensive or third party), home building, home contents, travel, sickness and accident, consumer credit, personal property, pleasure craft and medical indemnity.

The first step following a denied claim is to ask the insurer to review the decision. The General In-

urance Code of Practice requires all General Insurance providers to have an Internal Dispute Resolution Process.

If, after the insurer had reviewed your claim, you are still dissatisfied, you can contact the Financial Ombudsman Service (FOS). The FOS will investigate and try to assist the parties to reach a resolution. If a resolution cannot be reached the FOS will make a determination. The determination of the FOS is binding on the insurer but is not

binding on the consumer. A consumer who is dissatisfied with the determination of the FOS can make a claim with the NSW Civil and Administrative Tribunal (NCAT). It is a good idea to obtain legal advice before making an application to NCAT.

The FOS can be contacted on 1300 780 808 or www.fos.org.au

Our website receives a facelift.



Our website has recently undergone a facelift with the aim of presenting our business to our clients at all levels.

The new site is now totally responsive, meaning it is just as easy to navigate through on your mobile as it is on your tablet or desktop device.

Visit: www.tdlegal.com.au



Tonkin Drysdale Partners

footy tipping



Tonkin Drysdale Partners – Central Coast Lawyers



At Tonkin Drysdale Partners, we believe in the values of honesty, service, care and understanding.

As Central Coast Lawyers we care about the community and the wellbeing of the region.

Our four partners, Darrell Pannowitz, Paul Tonkin, Paul Quinn and Lee Pawlak, head our team of legal and support staff who are committed to delivering friendly service and the very highest standard of legal advice and representation.

Our General Manager, Julie Downey, ensure's all our client's legal matters are handled as proficiently, quickly and affordably as possible.

Tonkin Drysdale Partners aims to service our clients so well that we build a life long relationship and recommend us to their children and friends.

We're proud to have served the local community for many generations and hope to do so for many more to come.

How did your team go?

We had another successful and enjoyable year with the **TDP Footy Tipping Competition** in 2015. A total of 182 punters competed for the most prestigious prize on the coast. The bragging rights for 2015 go to **Ken Akers** who took out the main prize. It was a close competition as only one point separated first and second.

The punters and their partners enjoyed a great presentation night at Everglades Country Club on 11 September.

Our competition will be on again next year so if you like to join (or if you have any friends who would like to join) send an email to Darrell dpannowitz@tdplegal.com.au and we will add your name to the list to send out invitations early next year.

2015 NRL Premiership Ladder													
PREMIERSHIP													
CLUB	P	W	D	L	B	F	A	+	-	HR W-L	AR W-L	PTS	
1. Roosters	24	18	0	6	2	591	300	291	10-2	8-4		40	
2. Broncos	24	17	0	7	2	574	379	195	9-3	8-4		38	
3. Cowboys	24	17	0	7	2	587	454	133	8-4	9-3		38	
4. Storm	24	14	0	10	2	467	348	119	8-4	6-6		32	
5. Bulldogs	24	14	0	10	2	522	480	42	7-5	7-5		32	
6. Sharks	24	14	0	10	2	469	476	-7	6-6	8-4		32	
7. Rabbitohs	24	13	0	11	2	465	467	-2	8-4	5-7		30	
8. Dragons	24	12	0	12	2	435	408	27	8-4	4-8		28	
9. Sea Eagles	24	11	0	13	2	458	492	-34	6-6	5-7		26	
10. Raiders	24	10	0	14	2	577	569	8	3-9	7-5		24	
11. Panthers	24	9	0	15	2	399	477	-78	7-5	2-10		22	
12. Eels	24	9	0	15	2	448	573	-125	4-8	5-7		22	
13. Warriors	24	9	0	15	2	445	588	-143	5-7	4-8		22	
14. Titans	24	9	0	15	2	439	636	-197	5-7	4-8		22	
15. Wests Tigers	24	8	0	16	2	487	562	-75	4-8	4-8		20	
16. Knights	24	8	0	16	2	458	612	-154	4-8	4-8		20	



Community engagement

Tonkin Drysdale Partners are proud to be associated and support the following community organisations:

- › Central Coast Mariners
- › United Way Australia
- › Woy Woy Amateur Swim Club
- › Bays Community Group Inc
- › Umina Beach Men's Shed
- › Terrigal Matcham Cricket Club
- › Woy Woy Women's Bowling Club
- › Woy Woy Hospital
- › Woy Woy Lion's Club
- › Woy Woy Football Club
- › Woy Woy Rugby Club
- › Southern Spirit Cricket Club
- › Woy Woy Bowling Club
- › Brisbane Water Secondary College – Sporting and Academic
- › Everglades Country Club
- › Ocean Beach Surf Life Saving Club
- › Umina Beach Surf Life Saving Club
- › Rotary Club of Woy Woy
- › Rotary Club of Umina Beach
- › Our Lady Star of the Sea Terrigal
- › Peninsula Village
- › Woy Woy Community Aged Care
- › Peninsula Chamber of Commerce
- › Erina Chamber of Commerce
- › Central Coast Small Business Networking Group
- › Central Coast Health
- › ET Australia

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