

UPCOMING EVENTS

[David Gresen, CPA/ABV/CFF, CFE](#) will be presenting on Friday March 18, 2016 in Uniondale for the NYS Bar Association. The topic is 'The Basics of Business Valuation in Matrimonial Matters'. [Click Here to Learn More](#)

[David Gresen, CPA/ABV/CFF, CFE](#) will be presenting on Friday April 8, 2016 in New York City for the NYS Bar Association. The topic is 'The Basics of Business Valuation in Matrimonial Matters'. [Click Here to Learn More](#)

MATRIMONIAL CASES OF INTEREST***BALAJ v. BALAJ (App Div. 2nd Dep't)***

Upon appeal, the Appellate Court found that the Supreme Court providently exercised its discretion in distributing plaintiff's Schwab stock account and in determining the proper imputed income to the plaintiff used for calculating maintenance and support obligations. Income may be imputed to a party based on factors including educational background, past earnings, and employment potential.

The Appellate Court affirmed the decision to award the defendant 50% of the shares in the plaintiff's Schwab stock account after plaintiff received a credit for separate property. The shares were marital property because they represented converted shares of bonuses which were part of plaintiff's income earned during the marriage. Additionally, the Supreme Court was correct in imputing income to the plaintiff of \$150,000 per year. Although this amount is lower than the plaintiff's historical earnings, plaintiff provided credible evidence of a downturn in his field of employment.

[LINK TO DECISION](#)***YERUSHALMI v. YERUSHALMI (App Div. 2nd Dep't)***

In dispute was the separate or marital status of a house held in trust for the benefit of the parties. The parties married in 1971 and purchased a marital residence in 1983. In 1995, the title to the residence was transferred into a qualified personal

residence trust ("QPRT"). After the commencement of the divorce action, defendant-husband listed the residence for sale. Thereafter, plaintiff-wife's motion to the Supreme Court to enjoin the sale was denied after the court held that the residence was not a marital asset because it was owned by a QPRT and not by the parties.

The Appellate Court reversed the lower court's holding and finds the residence a marital asset. Marital property is "all property acquired by either or both spouses during the marriage and before the commencement of a matrimonial action, *regardless of the form in which title is held.*" The residence in question was purchased by the parties during the marriage using marital funds and is presumed to be marital property. "The fact that title had been transferred to the QPRT, allegedly for estate planning purposes, while the parties continued to reside at the marital residence, was . . . insufficient to rebut the presumption."

[LINK TO DECISION](#)

FERMON v. FERMON (App Div. 3rd Dep't)

The parties divorced in 2012 and executed a written stipulation settlement which, among other things, resolved issues of equitable distribution by directing the husband to transfer a portion of his retirement account to the wife. Thereafter, wife successfully sought modification of the stipulation from Supreme Court after it held that the husband had fraudulently misrepresented the value of his retirement account and ordered the husband to pay an additional \$11,500 to the wife.

Per the stipulation, the parties agreed to distribute the husband's individual retirement account based upon the December 2011 value. However, by the time the stipulation agreement was signed in March 2012, the account had appreciated considerably. Although husband made no effort to learn the value of the account as the latter date and was not aware of the appreciation in value, the Appellate Court held that "nondisclosure is not the equivalent of fraud." Therefore, the Appellate Court reversed the holding in husband's favor and further supported its holding by noting that the wife had acknowledged in the stipulation that she did not require further information from the husband in order to proceed knowingly.

[LINK TO DECISION](#)

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