



KLG NEWS / UPCOMING EVENTS

We are pleased to announce that [Richard J. Byllott, CPA/CFF](#) has joined KLG as a senior associate.

[David Gresen, CPA/ABV/CFF, CFE](#) will be speaking with Elliott Scheinberg, Esq. on Thursday June 2, 2016 in New York City for the New York County Lawyers' Association. The topic is 'The New NY Maintenance Law Unplugged: A Honed Analysis of the Practical Implications'. [Click Here to Learn More](#)

MATRIMONIAL CASES OF INTEREST

PALYDOWYCZ v. PALYDOWYCZ (App Div. 2nd Dep't)

Defendant-husband moved to deny plaintiff-wife any distributive award based on the value of his medical practices. The wife's expert had used an income approach to value the business which considered the income generated by the businesses over a period of time and capitalizes that income. Husband contended that a distributive award would be impermissible double counting of his income because his stipulated support obligation was also based upon his full 2010 income of \$1.0 million. The Supreme Court thereafter denied the wife's motion citing husband's argument of impermissible double counting of the income stream.

The Appellate Court reversed for the wife, holding that "distributing a party's business and awarding maintenance based upon the income earned from that business does not constitute impermissible double counting because a business is a tangible, income-producing asset . . . rather than an intangible asset such as a professional license, [where] the value of which can only be determined based on projected earnings." Here, the husband's medical practices employed other doctors and are not "totally indistinguishable" from the income stream upon which his maintenance obligation is based.

[LINK TO DECISION](#)

KATZ v. KATZ (Supreme Court, Nassau County)

Husband sought summary judgment to validate and enforce the parties' prenuptial agreement dated September 1996. Wife opposed claiming that she was coerced into signing without independent counsel, that husband promised her prenupe would be invalid after seven years of marriage, and that the husband breached material provisions of the agreement. The court held for the husband and validated the

prenup, citing that the wife failed to provide sufficient evidence in support of her arguments. The court did invalidate the life insurance provision from the prenup because the court was unable to determine the parties' intention relating to said life insurance based on the prenup provided.

[LINK TO DECISION](#)

H.T. v. M.T. (Supreme Court, Queens County)

Defendant-wife sought equitable distribution on several of the properties titled solely in plaintiff-husband's name that were obtained by him prior to the parties' marriage. The wife claimed that the parties had a common law marriage prior to their marriage in 2006 because they were in romantic relationship at the time and intended to marry which created a constructive trust with regard to the properties. Furthermore because she was aware of all the real estate purchases that husband undertook prior to the marriage and because they were titled solely in his name, he was unjustly enriched.

The court found her arguments unpersuasive. New York state laws and statute "do not provide for a finding of common law marriage to determine equitable distribution." The wife did not carry her burden in proving a constructive trust because, although there was a romantic relationship in the years prior to the marriage and although the wife did know of the property transactions, the husband purchased all assets, except a time share, with his separate property and the wife did not participate or lose any of her income with relation to these investment properties. The court was convinced that the husband therefore understood his rights as to separate property as did the wife. Throughout the marriage, the parties had no joint ventures, did not file joint tax returns or have joint bank accounts. Each party's income was deposited into separate accounts and used for marital expenses separately.

[LINK TO DECISION](#)

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