MATRIMONIAL CASES OF INTEREST

Sandra Foley (Respondent) v. Denis Foley (Appellant) (App Div., 3rd Dep't)

Plaintiff (hereafter "the wife") and the defendant (hereafter "the husband") were married in 1987. Prior to the parties' marriage, they executed a pre-marital agreement, which was intended to "fix and delineate certain of their respective rights, claims and obligations." The wife commenced the action for divorce in June 2014.

The Court states that a prenuptial agreement, like any contract, "will be construed in accord with the parties' intent, which is generally gleaned from what is expressed in its writing. Consequently a written agreement that is complete, clear, and unambiguous on its face must be enforced according to the plain meaning of its terms." The primary argument between the parties' was as to whether or not the Husband's pension and deferred compensation accounts were his separate property. The prenuptial agreement specifically listed categories of assets that the parties' intended to be separate property; the categories were cash, securities, brokers margin accounts, accounts receivable, business interests, cash surrender value of life insurance, vehicles and vested interests in trusts.

The Court determined that the prenuptial agreement did not specifically disclose pension and/or retirement accounts as part of a very specific list of assets that the parties' chose to disclose as separate property in their prenuptial agreement. As such, the Court ruled that the Husband's pension and deferred compensation plans were not his separate property as he did not disclose them under the parties' prenuptial agreement. The key takeaway is that in drafting the prenuptial agreement, the husband failed to fully disclose all of his assets that he wanted to deem as his separate property.

LINK TO DECISION

Mandwelle v. Mandwelle (App Div., 3rd Dep't)

Pursuant to an oral stipulation entered into in June 2012 as a result of the Plaintiff's (hereafter "the wife") commencement of a divorce action provided that the wife's military pension would be distributed pursuant to the Majauskas formula. In January 2013, the separation agreement was incorporated, but not merged, into the parties' judgment of divorce. Thereafter the Supreme Court awarded the defendant (hereafter "the husband") a percentage of the wife's military pension pursuant to a military retired pay division order (hereafter "military pension order").

In October 2015, the wife moved to reopen the judgment of divorce in order to vacate the military pension order with respect to the Majauskas formula. According to the wife, the Majauskas formula was improperly applied as it took post-commencement promotional pay increases into account in the calculation. The Supreme Court denied this request and the wife then appealed.

The root of the wife's appeal is that the Majauskas formula does not apply to her military pension. As the June 2012 stipulation clearly reflected the parties' agreement to divide the wife's military pension and the military pension order clearly sets forth the Majauskas formula.
[LINK TO DECISION](#)

CORPORATE CASE OF INTEREST

Robert M. Levine v. Seven Pines Associates Limited Partnership (App Div., 1st Dep't)
Robert Levine (hereafter "the petitioner") has an interest in the Marion Levin Revocable Trust (hereafter "the Trust"), which in turn had an interest in Seven Pines Associates Limited Partnership (hereafter "the LP" or the "respondent"). The litigation was a result of the LP's special proceeding to determine the dissenting limited partner's (i.e. the Trust) interest in the LP. The LP's sole asset was a building and thus, both Robert Levine, on behalf of the Trust, and the LP engaged real estate appraisers to set forth the fair value of the building.

The real estate appraisers for both the petitioner and the respondent disagreed as to certain key points. The petitioner's expert did not discount the value of the Trust's interest for lack of marketability, while the respondent's expert did include a discount for lack of marketability, in addition to a discount for lack of control.

The Supreme Court, Appellate Division 1st Dep't (hereafter "the Court") ruled that in this matter, it was appropriate to apply discounts for lack of marketability when valuing a real estate holding company, however, the Court ruled that the application of a minority interest discount, as applied by the Respondent's business valuation expert, was impermissible. The Court's ruling is in line with the "fair value" standard of business valuation methodology, which, rejects the use of a discount for lack of control in a shareholder/partnership dispute.
[LINK TO DECISION](#)

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KLEIN LIEBMAN & GRESEN, LLC

Long Island	6800 Jericho Turnpike, Suite 206E, Syosset, NY 11791 | **Tel** (516) 364-3232
New York City	60 East 42nd Street, Suite 1600, New York, NY 10165 | **Tel** (212) 505-5770

Westchester	120 Bloomingdale Road, Suite 100, White Plains, NY 10605 | **Tel** (914) 831-1555
Connecticut	2777 Summer Street, Suite 401, Stamford, CT 06905 | **Tel** (203) 344-3200

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