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FEBRUARY NEWSLETTER

NEWS

Glenn Liebman, CPA/ABV is quoted in Forbes.com in an article titled "The Search for Hidden Assets in a Billionaire Divorce"

LINK TO ARTICLE

KLG is pleased to announce that Nicholas Backmann has joined KLG as an associate.

MATRIMONIAL CASE OF INTEREST

CERAVOLO v. DeSANTIS (Appellate Division, 3rd Dep't) - In 1994, prior to the parties' marriage, the husband bought a house, titled in his own name, using separate funds totaling $230,000. However, wife also contributed $30,000 of her own funds to help close on the property. The wife then paid the mortgage for two years prior to the parties' marriage as well as during the parties' marriage through 2003.

Here, the Appellate Court disagrees with the Supreme Court's decision that, due to the circumstances, the husband's separate property has been converted into marital property. An economic partnership created by marriage cannot exist until marriage has occurred. Non-marital cohabitants may form an economic partnership but such a partnership can only be created by agreement and not by operation of the law. Title is also a major identifier of the nature of real property prior to a marriage. Furthermore, the facts here are not demonstrative of comingling. Comingling generally occurs when separate funds are deposited in a marital account through a deliberate act of the separate property holder. Here, the husband did not comingle or take any acts to convey the property to the parties jointly.

However, wife is entitled to recoup her equitable share of marital funds used to pay the mortgage which represents the husband's separate indebtedness.

LINK TO DECISION

BUSINESS VALUATION CASE OF INTEREST

ZELOUF INTL CORP. v. NAHAL ZELOUF - This derivative shareholder action arises from the misappropriation of $14 million from the Company between 2004 through 2010 by one of the controlling family members, Danny. The defendant, Zelouf Corp argues on appeal that a Discount for Lack of Marketability is applicable to value Nahal's interest. The court affirms its decision not to apply a DLOM as there is no NY Appellate Court holding that such a discount must be applied in a fair value appraisal of a closely held company. Further, since Danny is not likely to give up control of the Company, Nahal should not recover less due to possible illiquidity costs in the event of a sale that is not likely to occur.

Furthermore, because Nahal has essentially been forced out of the company, applying a DLOM would be the economic equivalent of imposing a minority discount, something that is not permitted by New York law. The court rests much of its detailed reasoning upon fairness for the plaintiff-Nahal.

LINK TO DECISION

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