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JULY NEWSLETTER

UPCOMING EVENTS

[David Gresen](#) will be one of the panelists on Wednesday July 25, 2018 from 12:00 p.m. to 1:00 p.m. for the ABA Section of Litigation, Family Law Litigation Committee. The program is titled "The Basics on Business Tax Returns"

MATRIMONIAL CASES OF INTEREST

Tammy L. Sheehan v. Lawrence F. Sheehan (App Div., 2nd Dep't)

Plaintiff (hereafter "the wife") and the defendant (hereafter "the husband") were married in July 2000 and have two children.

The husband owned a business comprised of a gas station and an auto repair center. The wife worked part-time for the husband's business as a bookkeeper and was the primary caregiver for the children. Each party retained experts who provided an opinion as to the value of the husband's business and determined the appreciation of the business during the parties' marriage. After finding that the husband's expert relied on financial information that was not made available to the wife's expert, the Supreme Court granted a motion to partially preclude the husband's expert's testimony. As the husband did not comply with certain discovery obligations, the Supreme Court did not err in partially precluding the husband's expert.

The wife's expert, using income based and asset based valuation methods, determined the husband's business appreciated \$768,602.50 over the course of the parties' marriage. Based on the wife's direct contributions to the business, as well as her indirect contributions as a homemaker and primary caregiver for the parties' children in the long-term marriage, the Supreme Court awarded the wife 26% of the appreciation, or \$199,836.65.

The husband also had debt separate from the marriage. The wife requested a credit for an equitable share of funds used by the husband to pay his separate debt during the marriage. The Supreme Court found that the evidence was credible in establishing that the payments made by the husband toward his separate debt during the marriage were made with separate funds. Accordingly, the Supreme Court correctly did not award the wife any credit for these debt payments.

[LINK TO DECISION](#)

Vadim Anvaer v. Ludmila Anvaer (App Div., 2nd Dep't)

A special referee was referred to this divorce action to report on the following issues: (1) whether a corporate asset existed outside of the United States; (2) whether that

asset constituted marital property subject to equitable distribution; and (3) whether such asset was "disposed of or transferred by a party in contemplation of this marital action.

At the evidentiary hearing, the defendant (hereafter "the wife") sought to establish that the plaintiff (hereafter the "husband") was the director of System Corp. (hereafter the "corporation"), that the corporation was a marital asset subject to equitable distribution, and that the husband had been secreting the corporation's assets in order to deprive the wife of her equitable share of marital property. The wife introduced evidence found in the husband's possession such as the corporation's corporate stamp, certificate of incorporation, a letter from FBME Bank, Ltd. (hereafter the "bank") showing that the corporation's account had a balance of \$588,465.75 as of May 8, 2009, and bank statements showing that the corporation's account had decreased to \$46,705.46 as of August 31, 2009.

The husband testified that the bank's letter was sent to him at the request of a family friend in order to verify the ability of the corporation to complete a short sale of the marital residence. The Special Referee found that the record did not support the husband's testimony. The husband also admitted that he sent and received emails for the corporation as the corporation's "Senior Director". The Special Referee determined that the corporation was marital property subject to equitable distribution.

In determining the value of the corporation, the Court Attorney Referee relied upon the husband's failure to respond to a notice to admit regarding the authenticity of certain FBME Bank documents which reflected the corporation's value as of May 8, 2009 to be \$588,465.75. The Court Attorney Referee determined that the husband intentionally depleted the corporation's account to deprive the defendant of that money at a time when the marriage was breaking down in 2006 and divorce was imminent. Accordingly, the wife was awarded a judgment in the sum of \$294,232.88, or one-half of the value of the corporation's account as of May 8, 2009.

[LINK TO DECISION](#)

C.F. v. D.M.F. (Supreme Court, Monroe County)

In this matter, the husband (hereafter "defendant") requested that the court declare his Social Security Disability benefits and his Worker's Compensation benefits "separate property" under the Domestic Relations Law. The defendant argues that in calculating his income for purposes of maintenance, the Court should not consider the income from his separate property. The wife (hereafter "plaintiff") disagrees and claims that regardless of whether these benefits are separate property, the income paid to the defendant must be included in the calculation of spousal maintenance.

There is no dispute that the worker's compensation and disability payments are the defendant's separate property. As such, the Court did not equitably distribute the corpus of such funds, or a percentage of such funds, to the plaintiff. The appellate divisions in prior decisions have also held that the "proceeds" from these special forms of separate property were also separate property. However, the New York courts have also held that the fact that a source of the income is separate property does not

prohibit the Court from considering the annual income from these funds as "income" to be included in the calculation of maintenance. "Income" for purposes of the maintenance formula is defined in the Child Support Standards Act and specifies that disability benefits must be included in gross income.

The Court disagrees with the principal argument made by the defendant that any maintenance calculation should not include the income received for his disability. The fact that a portion of the defendant's income is derived from an asset determined to be separate property does not render that income immune from being included in his maintenance obligation.

[LINK TO DECISION](#)

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