KLG KLEIN LIEBMAN & GRESEN, LLC

BUSINESS VALUATION · FORENSIC ACCOUNTING · LITIGATION SUPPORT · CONSULTING

**SEPTEMBER NEWSLETTER**

## MATRIMONIAL CASES OF INTEREST

### *TERASAKA v. TERASAKA (Appellate Division, 4th Department)*

The Appellate Court rejects defendant-husband's claim that his wife's trust account was marital property subject to distribution. An issue of comingled funds arose because the plaintiff-wife would transfer her separate funds into a marital checking account for some time prior to transferring her separate funds into its final location-her separate property trust account. Here, the wife had traced the comingled funds, which was acquired by gift or inheritance, with enough sufficiency to rebut the marital presumption. The wife's expert witness was able to distinguish the portions of the marital checking account which were comprised of the separate property and marital property even after it was comingled for approximately 3 months. Furthermore, the marital checking account was only held in wife's name.

**LINK TO DECISION**

### *KRAUS v. KRAUS (Appellate Division, 2nd Department)*

The parties were married in 1973. During the marriage, the defendant-husband started working for FDNY in 1977 where he was entitled to pension benefits upon retirement. Subsequent to the divorce in 1993, the husband took out an $8,503 loan from the pension account which was credited against the payable pension balance upon retirement. Furthermore, the husband remarried and upon retirement in 2008, elected to have survivorship pension benefits payable to his second wife upon his death. Both the loan repayment and the survivorship election reduced the total annual pension income by approximately $4,000.

The plaintiff-wife argues that any pension benefits payable to her should be calculated based upon the husband's total pension before any reductions caused by the loan repayment and the survivorship election. The Appellate Court concluded the wife's portion of the pension should be calculated based only upon what the value of the pension would have been without a reduction for the loan repayment. However, unlike the loan which was obtained after the parties' divorce and benefited the husband individually, the survivorship election was a reduction in value which was no different than if the defendant retired early, worked additional years, or was subject to an employer's amendment of the pension plan. Both the husband and wife shared the detriment arising from the reduction in payout due to the survivorship election for his 2nd wife and such an election was not precluded by the terms of the stipulation.

**LINK TO DECISION**

## Visit Our Website >> www.goKLG.com

**Klein Liebman & Gresen, LLC -** 6800 Jericho Turnpike, Suite 206E - Syosset, NY 11791

**Phone** (516) 364-3232 || **Fax** (516) 364-3186
**New York City** (212) 505-5770 || **White Plains** (914) 831-1555

Visit Klein Liebman & Gresen, LLC at www.goKLG.com