

Ask an Expert

Divorce: Don't Cut the House in Half

In 2008, a Cambodian couple divorced, deciding to divide their marital home. Literally, the house was split in half. The wife kept the standing building; the husband took the sawed and chiseled pieces of his half of the house and re-built them in a neighboring field. Often, divorcing parties enter the process with an expectation that the division of marital assets is simple. Both parties get half of everything, right? Not necessarily, and this should not be presumed.

Equitable distribution of marital assets is a commonly misunderstood concept guided by pop culture and “war stories” from friends and family. New Jersey courts engage in a three step process regarding equitable distribution. First, the marital assets, including real and personal property, are identified. Second, the value of each asset is determined. And third, the court equitably divides the marital assets. The third step, especially for high net-worth clients and those parties owning businesses can become highly contentious.

New Jersey courts recognize the complexity of equitable distribution, analyzing a host of factors rather than taking a simple 50/50 approach. For instance, in *Harvey v. Harvey*, a recent decision, the trial judge gave less than fifty percent of a business to a husband when he found that the husband abandoned the business he operated previously with his wife. The unique circumstances of the parties’ business and personal relations led the trial court to divide the assets in an unequal, yet fair and equitable manner. In other cases, the court has ordered that a portion of the equitable distribution go to neither party. Such was the case in *Sauro v. Sauro*. The parties in *Sauro* engaged in an acrimonious and costly legal battle that drained them of significant funds. As a result, the trial court ordered that \$200,000 be removed from any equitable distribution award and held in trust to pay the children’s college expenses.

So how do you divide a business with your former spouse if you do not have the cash to buy them out of their share? The Appellate Division

in *Hughes v. Hughes* suggested that the party receiving an interest in the company be given economic rights, but no management (non-economic) rights. When one party receives a distribution, the other party receives a distribution. If the company is sold, that party receives a share of the corresponding proceeds. However, without a management interest, the party receiving the interest cannot interfere or meddle in

the business’s operations or decision-making. And this makes sense – if the personal relationship did not work, then making the parties equal business partners is likely to produce a poor business result, further damaging each.

In determining equitable distribution, the parties must keep in mind that the process is equitable, but not always equal. The *Harvey* case demonstrates that a judge has latitude in determining each

party’s share of a business. The *Sauro* case is an example of removal of a portion of an asset from equitable distribution. The *Hughes* decision shows the difficulty in valuing a business and the creativity needed to divide complicated assets.

Don’t cut the house or business in half. Employ a thoughtful and careful strategy when dividing assets.




Steven H. Doto, Esq.

If you want to learn more about equitable distribution and high net worth divorces, contact Steven H. Doto, Esq. at 856-210-5873 or sdoto@lauletta.com.

WHEN THE NATURE OF YOUR BUSINESS REQUIRES MORE THAN JUST A DIVORCE ATTORNEY

Divorce is delicate, especially when privately held businesses or non-liquid assets are marital property. Such matters require a unique combination of commercial litigators and corporate attorneys to navigate these unique and complicated situations and to avoid costly mistakes. That’s where we come in. Our experienced team understands the complexities of these divorces including matters involving shareholder disputes, business valuations and financial fraud. We work with business owners or spouses to safeguard the future.

Call Steven Doto today at 856-232-1600.

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