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# Family MATTERS

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September 2010

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## ***The Dodger Divorce***

When I first heard about the high profile divorce of Frank and Jamie McCourt and their dispute over ownership of the L.A. Dodgers, I thought that this would be a homerun for Frank. After all, in 2004, right after purchasing the Dodgers, they had signed a postnuptial agreement at Jamie's insistence in which the business assets were transferred to Frank as his separate property and the homes (7 in all!) and other non-business assets were transferred to Jamie as her separate property.

*Frank & Jamie McCourt in happier days.*



This is Asset Protection 101: Jamie wanted to shield their homes and other non-business assets from liabilities that Frank assumed to acquire the team, including \$330 million in new debt. Now, Jamie claims that the postnuptial agreement is invalid and that the team is community property. But her assertion that she did not understand the agreement's ramifications did not seem credible to me, especially because she was a former family law attorney with an MBA degree. Then the trial began.

During the first half of the trial, Jamie put on her witnesses and presented her case. Here are some juicy tidbits that have come to light:

1. There were two *conflicting* versions of the postnuptial agreement: one that had an attachment that included the Dodgers as Frank's separate property and one that had an attachment that excluded the Dodgers as Frank's separate property. Frank and Jamie signed *both* of these versions. Later, the lawyer in Boston who drafted the agreement unilaterally substituted one version for another without notifying either Frank or Jamie of the discrepancy or getting their permission.
2. The McCourts' estate planning attorney in Los Angeles testified that Frank told her in 2008 that the postnuptial agreement was not supposed to exclude Jamie from ownership of the Dodgers and that he wanted the attorney to change the team and the couple's other assets back to community property. (Frank declined to go through with those plans the following year.)
3. Two loan applications, including one for a \$30 million line of credit, from 2007 and 2008, list both Frank and Jamie McCourt as co-owners of the Dodgers.
4. Jamie and Frank were represented by the same Boston lawyer in the negotiation of the postnuptial agreement, in which they surrendered property rights to one another. According to Jamie, because she did not have separate legal representation and because the Boston lawyer protected Frank's interests over hers, she did not truly understand the consequences of changing the character of assets from community to separate property.
5. Jamie has testified that the notion that she would have surrendered her right to the Dodgers in any agreement was "preposterous." According to Jamie, this is because of the significant differences between Massachusetts and California law. Under Massachusetts equitable distribution law, regardless of who has title, assets are typically divided equally in a divorce. By contrast, under California's community property law, if an asset is a spouse's separate property, the other spouse has no right to it in a divorce. This lends credence to Jamie's claim that she did not understand the ramifications under California law of changing the Dodger asset into Frank's separate property.

## **What Next?**

The trial resumes today in what is expected to be its third and final week. Frank must now present his case and, in my view, fight an uphill battle to convince the judge that the 2004 postnuptial agreement is valid, despite conflicting signed versions of the agreement, despite credible testimony that neither Frank nor Jamie intended the Dodgers to be Frank's separate property, despite loan applications listing both Jamie and Frank as co-owners of the team, and despite the differences in Massachusetts and California law and the fact that Jamie was not represented by separate legal counsel. If Frank's defense falls short, then Frank and Jamie will be considered co-owners of the team, which could mean that the Dodgers will have to be sold so that the McCourts can split the proceeds.

In next month's newsletter, I will discuss what you can learn from the McCourt drama. Stay tuned . . .

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## ***About Tali Klapach***

Tali Klapach is a partner at Klapach & Klapach. She graduated from Princeton University and Yale Law School and clerked for the Chief Judge of the United States Second Circuit Court of Appeals. After practicing law for seven years at two prestigious law firms in San Francisco and Los Angeles, Tali started her own practice in trusts and estates. The goal of Klapach & Klapach is to combine the high quality service of a big law firm with the personal attention and affordability of a family lawyer. Tali is committed to building long-term relationships with clients and to serving as a source of ongoing assistance and advice. To schedule a free estate planning consultation or to subscribe to this free monthly e-Newsletter, please visit [www.KlapachLaw.com](http://www.KlapachLaw.com) or call (310) 424-3144. Estate Planning for a Lifetime.®

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