
Family MATTERS

October 2010

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Dodger Lessons

Last month, I discussed the divorce of Frank and Jamie McCourt and their dispute over ownership of the L.A. Dodgers. The case is now under submission, which means that the judge will take a few months to decide whether the baseball team is community property or Frank's separate property.



In the meantime, what can you take away from the salacious McCourt drama -- other than wishing the Dodgers could just get on with playing ball? Here are a few legal lessons:

McCourt Mistake #1: The McCourts Failed To Appreciate That A Postnuptial Agreement That Shields Assets From Creditors Is Fully Enforceable For All Legal Purposes. The McCourts changed the character of their property (also known as "transmuting" property) from community property to separate property in order to shield certain assets from potential creditors. That makes sense in California, where community property can be reached by creditors of either spouse. However, you must understand that transmuting property is fully enforceable for *all* legal purposes, not just for shielding assets from future creditors. It is also enforceable as to the spouses themselves in the event of divorce (meaning,

property that is transmuted from community to separate property remains separate property after divorce). Transmutation agreements also have tax consequences if one spouse dies. Therefore, before entering into a transmutation agreement, it is critical that you understand the legal ramifications of your decision.

McCourt Mistake #2: Only One Lawyer Negotiated The McCourt Postnuptial Agreement. One lawyer in Boston negotiated the postnuptial agreement for Frank and Jamie. Jamie now claims that she did not get adequate representation and that the lawyer was only looking out for Frank's interests. If you and your spouse live in California and plan to transmute your property - either from community property to separate property, or vice versa - it is important to get separate legal counsel for each of you, especially if the assets in question are worth millions of dollars! If you and your spouse prefer to be jointly represented (typically, because it is cheaper to pay one lawyer rather than two), make sure that you understand the consequences in the event of divorce.

McCourt Mistake #3: The McCourts (Inadvertently?) Waived Their Attorney-Client Privilege. Two of the key witnesses at the McCourt trial were their former lawyers. You might be wondering how that is possible. How could these lawyers testify and reveal confidential information about key discussions and documents? Aren't lawyers bound by the attorney-client privilege? The answer is simple: The McCourts had agreed to joint representation and had thereby waived the attorney-client privilege as between themselves. Their divorce set the stage for a "he said/she said" dispute in which all private and otherwise confidential discussions with their lawyer were subject to judicial (and public!) scrutiny. If you and your spouse agree to a joint representation, you must understand the rights that you are giving up, especially if you and your spouse should ever divorce.

McCourt Mistake #4: The McCourts Did Not fully Understand The Difference Between California and Massachusetts Law. The McCourt's lawyer in Boston drafted documents for them with consequences under California law that Jamie McCourt now claims she did not fully appreciate. If you sign legal documents to protect your assets, enter into a prenuptial or postnuptial agreement, or undertake other estate planning strategies, it is critical to understand the differences between the laws of different states, especially if you are planning to relocate. At a

minimum, you must consult a local attorney to review your legal documents after you move.

McCourt Mistake #5: The McCourts Failed To Review Their Legal Document Carefully Before Signing. Both Frank and Jamie McCourt signed two conflicting versions of the same postnuptial agreement. Had they reviewed those documents carefully, they might have noticed the critical discrepancy between the two versions (one version designated the Dodgers as Frank's separate property and the other version excluded the Dodgers from Frank's separate property). Before signing any legal documents, make sure to review the terms and provisions carefully so that you fully understand what you are signing. Don't forget to read the attachments, exhibits, and schedules because critical information about assets is often listed there.

Stay tuned for next month's newsletter . . .

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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 or call (310) 424-3144. Estate Planning for a Lifetime.®

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