

LITIGATION SUPPORT UPDATE

1/16/2015

The Importance of Disclosing Community Property, No Matter What It's Worth

What did the court rule?

In a divorce trial, the wife asked for sanctions against the husband, because he did not disclose a retiree medical benefit among other community property. The trial court declined to consider this sanction, because it was the husband's position that the "asset had no value." The wife appealed this, among other issues, and the appellate court ruled that the trial court erred in not considering the sanction for nondisclosure.

What's the main takeaway?

Disclosure of community assets is important, even if they are considered to be of no value. Parties need to be in full compliance with Family Code §2104 (preliminary declaration of disclosure) and Family Code §2105 (final declaration of disclosure), and are subject to sanctions if they fail to provide proper disclosure.

If you have any questions about this or any other litigation support matter, call our Litigation Support and Forensic Accounting team – Fred Rey, Stuart Nakanishi, or Richard Wilkolaski – at 650.365.4646.

Summary of the Case, Marriage of Moore (2014), 226 Cal.App.4th 92

Appellant Leslie Moore and respondent Terry Moore were married for over 27 years. They married on October 17, 1980. Ms. Moore was a homemaker and Mr. Moore was an officer with the Chico Police Department since 1984. On March 18, 2008, Ms. Moore filed a petition for dissolution. The court awarded temporary spousal support and entered judgment terminating the marriage in September 2009. Trial continued on the issues of support, division of Mr. Moore's retirement and employment benefits, property division, and attorney fees.

One of the fringe benefits of Mr. Moore's employment was participation in a retiree medical reimbursement plan referred to as "the retiree medical expense and health insurance trust (medical trust)." The trial court reserved jurisdiction to award any interest in the medical trust, finding that its current value was unknown and speculative. It ordered the medical trust's value to be determined upon Mr. Moore's retirement. The trial court did not consider Ms. Moore's request for sanctions for Mr. Moore's failure to disclose the medical trust. It said that Mr. Moore was not obligated to disclose the medical trust if his position was that it had no value.

Ms. Moore appealed, contending the court erred in reserving jurisdiction on the medical trust. She claimed it was a community asset that could be divided based on an actuarial valuation of its present value. Ms. Moore also claimed Mr. Moore should be sanctioned for not disclosing the

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medical trust in his required disclosures. The Appellate Court found the medical trust was a community asset, but there was no abuse of discretion in reserving jurisdiction. The Appellate Court further found that the trial court must consider on remand Ms. Moore's request for sanctions for Mr. Moore's non disclosure of the medical trust in either of his preliminary or final declarations of disclosure. It stated that the trial court erred in finding that Mr. Moore was not obligated to disclose it if it was his position that the asset had no value.

Rules Governing Full and Accurate Disclosure

In order to provide full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest, each party to a proceeding for dissolution of the marriage or legal separation of the parties shall serve on the other party a preliminary declaration of disclosure under Family Code §2104 and a final declaration of disclosure under Family Code §2105, unless service of the final declaration is waived.

A party's preliminary declaration of disclosure must identify all assets and liabilities in which the declarant may have an interest, regardless of the characterization of the asset as community or separate property. (Family Code §2104(c)(1)) For purposes of this requirement, the term "[a]sset" includes, but is not limited to "any real or personal property of any nature, whether tangible or intangible, and whether currently existing or contingent." (Family Code §2101(a)) This is requirement is not dependent upon the declarant's opinion of value. In this case, the medical trust qualified as an asset that Mr. Moore was required to disclose.

If a party fails to comply with the disclosure requirements, the trial court "shall...impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Family Code §2107(c))

[Click here](#) to read the California Court of Appeal's full published opinion.

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