

A Recent Decision from the Privy Council gives Guidance on the Treatment of Non-Matrimonial Property and the Consequences of Non-Disclosure of Assets

The recent Privy Council decision of Scatliffe v Scatliffe¹ provides assistance in analyzing two aspects of matrimonial law; the treatment of non-matrimonial property by the court upon divorce and also the effect of non-disclosure of assets on the chances of success of an appeal.

Non-Matrimonial Property

Matrimonial property is broadly defined as “*property acquired during marriage*”². This is in contrast to non-matrimonial property, which is “*property owned by one spouse before the marriage, and inherited property, whenever acquired*”³. The importance of the distinction lies in the manner in which a court will distribute types of assets upon divorce.

In the ordinary course of events, the proper approach of a court is to apply the sharing principle⁴ to matrimonial property, and thereafter make an assessment as to whether that represents an appropriate distribution. Scatliffe reminds us that at this point in its analysis a court should “*ask whether the principles of need and/or of compensation, best explained in the speech of Lady Hale in the Miller case at paras 137 to 144, require additional adjustment in the form of transfer to one party of further property, even of non-matrimonial property, held by the other*”. While non-matrimonial property is also subject to the sharing principle, the Privy Council does acknowledge that the cases where non-matrimonial property will be distributed, absent a need, are rare indeed.

In short, a court will firstly distribute matrimonial property. If, at that point, it is decided that one spouse’s needs are not met, then a court will consider whether to distribute non-matrimonial property to meet those needs.

¹ (British Virgin Islands) [2016] UKPC 36

² Miller v Miller and McFarlane v McFarlane (2006) 2 AC 618

³ White v White (2001) 1 AC 596

⁴ That property is shared equally.

Given the identical wording of the underpinning legislation in the Cayman Islands, it is clear this decision will have direct relevance in this jurisdiction.

Non-Disclosure of Assets

In *Scatliffe*, the husband had charted the unfortunate course of refusing to reveal the full extent of his assets. While the court made clear that it intended to dismiss the husband's appeal in any event, it took the opportunity to reiterate that if an appellant has been guilty of non-disclosure in a lower court, he is very unlikely to be successful on appeal, unless he can dislodge that finding of non-disclosure.

Those contemplating hiding their assets should take heed of this note of caution!

Conclusion

This decision is a useful re-statement and clarification of existing principles. The fact that it has emanated from high authority makes it useful guidance for parties contemplating divorce and division of assets.

The questions around marital breakdown are often complex, with significant consequences for the parties. It is advisable to seek the assistance of a professional who can give legal advice and assist in the decision making process. Broadhurst LLC has a wide range of experience in giving objective, practical legal advice in family law matters. By giving this support we hope to guide you through the process and bring about a successful resolution.

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