

Managing Money Post-Separation: An Analysis of Marriage of Margulis

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Oftentimes, the decision to get a divorce is a slow and painful process for couples. Even more arduous and painstaking is the procedure of separating once-intertwined lives. This process involves time-consuming but necessary tasks such as getting separate bank accounts, separate credit cards, moving into separate homes, etc. While these chores may seem inane and pointless at a very emotionally difficult time, taking care of them expeditiously can save time, money, and emotional headaches for divorcing couples. Failing to heed this warning will result in a financial catastrophe similar to that found in the recent case, Marriage of Margulis (August 11, 2011) which can be found by clicking the link:

<http://www.courtinfo.ca.gov/opinions/documents/G041948.PDF>

In Margulis, the Parties failed to properly separate and account for their finances after their separation, which turned out to be a big mistake. Leading up to and during trial, the two disagreed over the extent of their shared community assets. Although the Court of Appeal ultimately ruled in favor of the wife, both Parties had to pay for this mistake by needlessly spending time and amassing extensive attorney's fees arguing over the issue.

Elaine and Alan Margulis separated in 1996 after a marriage of over thirty-three years. Following their separation, Alan moved out of the family residence. However, Alan continued to manage the family's money in the same manner that he did during the Parties' marriage. He continued to pay all of the Parties' bills, receive bank statements and managed the Parties' stock investments among other things. In 2002, six years after the Parties separated, Elaine filed for divorce. After another five years, Alan filed his response. Despite separating twelve years before, Alan continued during this entire period to manage the Parties' assets in the same manner he always had.

When it came time for the Parties to try their case, it became apparent that they had very different understandings of the extent of the community assets. Elaine valued assets higher than Alan did and included certain investment accounts which Alan never mentioned. Alan said that the depletion of some of the assets were due to the fact that he had to pay all the community expenses, as well as pay Elaine's expenses. Also, there were losses in the stock market which negatively affected their assets.

Alan produced no documentation regarding the investment accounts. Nor did he provide an accounting of how the community funds were spent. Furthermore, he made no attempt to trace the community's income and expenses. He simply claimed that the losses were due to the downturn in the stock market and his payment of community expenses. He also denied having access to the investment account statements, once he moved out of the family residence. Elaine alleged otherwise: that Alan had complete control of the investment accounts as well as all of the family assets and that he ignored all requests to provide a record of the accounting history.

At trial, Elaine introduced a financial statement of the Parties' assets prepared by Alan in 1999. Elaine requested that Alan be charged with the depletion of the assets since that date unless Alan

could prove that he did not misappropriate the money. Although the Judge admitted the 1999 financial statement into evidence, the judge said that it was not enough to prove that the accounts listed on the financial statement actually existed or that the values on the list were accurate.

Ultimately, among other decisions made by the judge (which are neither discussed herein, nor relevant to the topic of this article), Alan was not charged with the missing funds. Instead, the judge ordered Elaine to reimburse Alan for paying her separate property expenses following the date of separation. The judge found that, although the financial statement was insufficient to substantiate the Parties' assets and Elaine's claims regarding what happened to them, Alan had breached his fiduciary duty to maintain records for the community assets he controlled and ordered him to pay \$20,000 in sanctions and a portion of Elaine's attorney fees. Both Parties appealed these orders.

The Court of Appeal ruled in Elaine's favor, stating that, "once a nonmanaging spouse makes a *prima facie* showing concerning the existence and value of community assets in the control of the other spouse post separation, the burden of proof shifts to the managing spouse to rebut the showing or prove the proper disposition or lesser value of these assets. If the managing spouse fails to meet this burden, the court should charge the managing spouse with the assets according to the *prima facie* showing."

The Appellate Court explained that "the rationale for shifting the evidentiary burden concerning missing assets to the managing spouse arises from the simple fact that an accounting of all community property is required so the Court may divide it equally." Alan argued that the burden-shifting approach improperly presumed the managing spouse breached a fiduciary duty. He claimed that "a managing spouse should not be charged with missing assets unless there is evidence of mismanagement or misappropriation." The Appellate Court disagreed. It found that Alan's approach "increases the risk of an unfair property division because a nonmanaging spouse who lacks personal knowledge and records of the disposition of missing community assets would find it extremely difficult to make the initial showing of mismanagement or fraud to shift the burden of proof. No sound policy reason supports the adoption of Alan's proposed rule; indeed, the rule would contradict a managing spouse's obligation to provide the full disclosure and accounting owed to a managing spouse." The Court thus ordered a retrial regarding the community property issues.

This case is a strong reminder that the best practice regarding finances for separating couples is to separate finances as soon as possible following separation. Doing so will save time and money once the parties are ready to divide their assets (and debts). At the very least, following separation, the managing spouse should maintain records of the Parties' accounts and provide the nonmanaging spouse regular accountings. The managing spouse has a fiduciary duty to account for the management of community assets under his or her control. A managing spouse can be charged with the misappropriation or mismanagement of community assets and can be liable for attorney's fees if they neither separate assets between the spouses nor account for the comingling and dissipation of same. Conversely, without taking responsibility for separating certain assets and liabilities at the beginning of the divorce process, the non-managing spouse will spend large

amounts of time and money to determine and prove the existence and value of the assets at the time of separation in order to shift the burden to the managing spouse.

Making the decision to separate or divorce is a difficult one, as is navigating the entire process. Failure to understand the nature and extent of one=s assets and liabilities can have significant financial and emotional consequences. Upon consideration of a divorce or separation, consulting an experienced family law attorney right away is essential to protect a party=s rights (and peace of mind) during the course of separation and dissolution of marriage.