Long Island Lawyer

Forget about the kids. Who gets the family business?

by HEATHER FLETCHER

Matrimonial lawyers say sometimes company breakups can be more hideous than divorces. But ironically, ending marriages between business partners can be quite, well, businesslike.

"Spouses who were also business partners approach the breakup of the business and the marriage as one unit," says Robert A. Carpentier of Albanese & Albanese in Garden City. "More times than not, they don't let their emotions overtake their business acumen."

But worries over how to split up these most commercial of relationships are becoming even greater concerns as more and more small- and home-based businesses sprout up. Most divorcing couples opt to buy out a spouse rather than sell the company or continue the working relationship after the personal relationship dies.

Remaining as a business partner after a divorce can create a "very difficult environment," especially since splitting a trade between exes makes asset division just that much more complicated, says Garden City lawyer Sari M. Friedman. Forget about the kids, the car, the family dog, "The question can become, 'Who gets the business?'"

But sometimes the former spouses remain working partners, "if the people realize that it's a viable business that requires both of them," in the experience of Stephen W. Schlissel, founding partner of Schlissel, Ostrow, Karabatos & Poepplein in Garden City. "It might well be an intelligent decision to stay together in the business, if they possibly can - even in light of a divorce. But they have to be able to work together and put the divorce behind them."

After one settlement last year, Schlissel arranged for the former couple to maintain separate offices in the same building. But they tried to have as little post-divorce contact as possible.

In another Friedman case, exes started separate medical practices in the same office where they had been partners so they wouldn't lose patients.

In a small business that required constant contact, one couple reached a settlement to work together for five years. As soon as that five-year review rolled around, one ex-spouse bought out the other's half of the business, Carpentier said.

Putting it all into perspective, each of these matrimonial lawyers says that of the thousands of divorce cases they've handled over the decades, these types of situations only reach into the double-digit category - for the moment. But they are memorable for many reasons.

"I think that spouses who are true business partners in small businesses have a much better understanding of the value of the business than an unaudited financial statement would indicate," says Carpentier.

That often doesn't happen in a regular divorce case, where one spouse sets "a low book value" on what's actually changing hands. At other times, a spouse not involved in the business may overvalue its worth.

One certified public accountant was surprised to see a fellow accountant at first overvalue his business by $300,000 during his recent divorce. (His ex-spouse's career was not involved with his business, but after three years they reached a divorce settlement entitling her to half of his future earnings, per the review by an accountant he hired.)

"Because I'm in the business, I had a sense of what it was worth," explained Woodbury accountant Bart Fooden, Friedman's client. In this case the house - which is worth more than his business - had to be put up for sale because he would otherwise have been forced to sell his practice. And getting close to 50, Fooden didn't want to change careers.

Of course, not all spouses will get half of the assets, Carpentier points out. Variables that enter the equation include the length of the marriage and the percentage of work a spouse puts into the business.

After a forensic accountant evaluates the business and a real estate evaluator looks at the rest, negotiations begin.

Most often, the spouse buying out the other in a divorce can get a three- to 10-year payment option from a former partner, Schlissel said.

Friedman says the one truth she's seen during her 20 years of practicing matrimonial law still stands, whether the divorce happens between business partners or not:

"Divorce is not economic betterment, divorce is economic hardship."