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The Indirect Contribution of a 'Restrained Lifestyle'

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One of the fundamental elements of the Domestic Relations Law ("DRL") a matrimonial attorney learns out of the gates is that equitable distribution does not necessarily mean an equal distribution of marital assets and liabilities. The character of the asset or liability and each spouse's role, both directly and indirectly, in the accumulation of that asset or liability will play an integral part in the percentage of equitable distribution a court will ultimately award the parties. This is especially so when dealing with the distribution of business interests.

As a general rule, the trial court in an action for divorce and ancillary relief, considering the 14 factors set forth in DRL §236 that the trial court "shall" consider, has broad discretion in deciding what is equitable under all of the circumstances in determining a distribution of the parties' assets and liabilities. *See* McKinney's DRL § 236(B)(5)(d)(13); *Mahoney–Buntzman v. Buntzman*, 12 N.Y.3d 415, 420, 881 N.Y.S.2d 369, 909 N.E.2d 62 [2009]. In reviewing a trial court's equitable distribution determination, the appellate courts will provide great deference to the trial court's assessment of the credibility of the witnesses when the trial court's determination relies upon same. *See Peritore v. Peritore*, 66 A.D.3d 750 (2nd Dept. 2009) and *Varga v. Varga*, 288 A.D.2d 210 (2nd Dept. 2001).

Furthermore, the Court of Appeals, in *Mahoney-Buntzman*, supra, has also directed that it is not the trial courts role to review every credit and debit of the marriage. The trial courts are not to re-invent the parties' financial relationship. Specifically, in *Mahoney-Buntzman*, the Court of Appeals stated as follows:

> The parties' choice of how to spend funds during the course of the marriage should ordinarily be respected. Courts should not second-guess the economic decisions made during the course of a marriage, but rather should equitably distribute the assets and obligations remaining once the relationship is at an end. With this holding in mind, we review the four issues raised on this appeal. *Mahoney-Buntzman* at 421.

The trial court in *Cotton v. Roedelbronn*, 170 A.D.3d. 595, 97 N.Y.S.3d 28 (1st Dept. 2019) applied this well-established principal of equitable, not equal, distribution when it determined that the non-titled wife failed to make any indirect contributions towards the business the husband was actively managing during the marriage and, thereby, awarded the wife only a 10 percent distribution of that business. In fact, the First Department, in unanimously affirming the trial court's decision, found that not only did the wife fail to make any indirect contributions to the growth of the business; to the contrary, "the evidence at trial indicated that defendant [wife] at times acted as a hindrance to plaintiff's [husband's] business dealings. Accordingly, the court was not required to divide these marital assets equally" (*see Arvantides v. Arvantides*, 64 N.Y.2d 1033, 1034, 489 N.Y.S.2d 58, 478 N.E.2d 199 [1985]).

However, with those findings of fact as the backdrop, the trial court then went on to award the non-titled wife 40 percent of two other business entities formed by the husband during the marriage based upon the non-enumerated factor of sharing in a "restrained lifestyle." In affirming the trial court's determination, the First Department held as follows:

> Furthermore, there is no reason to disturb the distributive award of 40 percent of the marital value of two other business entities, which plaintiff formed during the marriage using mostly marital funds. Despite evidence that defendant made no direct contribution to these business entities, the referee awarded her a 40 percent distributive share based on a finding that she shared in the parties' restrained lifestyle that allowed these particular investments to grow. Under the circumstances, this was a provident exercise of discretion (see *Mahoney–Buntzman v. Buntzman*, 12 N.Y.3d 415, 420, 881 N.Y.S.2d 369, 909 N.E.2d 62 [2009]; *Arvantides* at 1034, 489 N.Y.S.2d 58, 478 N.E.2d 199). *Id* at 596.

Ironically, in affirming the wife's 40 percent equitable distribution of the two other business entities, the First Department cites to the Court of Appeals' decision in *Arvantides, supra*, which it also relied upon in awarding only 10 percent of marital value of the business the husband was actively involved in. It appears that the distinction in the distribution percentages stems from the "restrained lifestyle" allowing the two other business investments to grow as opposed to the direct contributions of the husband. Clearly, the *Cotton* decision reaffirms the broad discretion the Appellate Division provides the trial court to craft equitable distribution awards tailored to the specific fact pattern before it.

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