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The (Arguable) “Triple Dip”

BY CATHERINE E. SPANU • MAY 24, 2024

In *Trethewey v. Trethewey*, the Court considered a debatable “triple dip” in a divorce. In this case, the husband received a “transitional bonus” of \$5M as part of his compensation package after he moved to a new employer. The transitional bonus was not really a bonus in the usual sense but was effectively an advance payment of the husband’s anticipated income, which he “earned” at a rate of \$51,550.04 per month. The husband also executed a promissory note to his new employer in the amount of \$5M, and for each month that the husband remained in his position, the new employer issued a \$51,550.04 credit against the promissory note. At the end of an approximately nine-year period, the promissory note would be fully forgiven.

Following a trial on the parties’ divorce, the judge treated the \$3.2M of the transitional bonus that remained at the time of divorce as an asset and divided it between the spouses along with their other assets, awarding the wife approximately 53% of the parties’ total assets. At the same time, the judge treated the \$51,550.04 in monthly loan forgiveness as income to the husband for the purposes of computing alimony, creating a double dip because the transitional bonus, which was essentially prepayment of the husband’s anticipated employment income, was treated as a divisible asset while the loan forgiveness for the associated debt was treated as income. In other words, the wife received the benefit of approximately half of the remaining \$3.2M of the transitional bonus as an asset *and* received the benefit of additional portions of the transitional bonus paid to her as alimony on an ongoing basis. This resulted in a double dip.

The judge also separated the asset from the associated promissory note and assigned the entire liability under the note (which was approximately \$4M at the time of the divorce) to the husband. This resulted in an arguable *triple* dip because, in addition to the transitional bonus being treated as a divisible marital asset and as income to the husband for alimony purposes, the husband was also solely responsible for the debt associated with it even though the asset itself was divided between the spouses.

The Appeals Court reversed the trial judge’s treatment of the transitional bonus as an asset and awarded the remaining portion of the transitional bonus to the husband but left the award of alimony to the wife using the loan forgiveness as

the husband's income for alimony purposes in place. Although the Appeals Court appropriately reversed the trial judge's error in "double dipping," *Trethewey* underscores the importance of having competent counsel in any divorce, particularly where a spouse has a complicated or unusual compensation structure. Double dipping can be permissible in some circumstances, and it is essential for divorcing spouses and their counsel to carefully analyze compensation structures in order to consider and determine the interplay between funds treated as assets divisible in divorce and as income for support purposes, to avoid an unfair double dip.