

How the courts tackle devious disposing of assets in divorce

- Describe some of the issues around the disposal of assets by divorcing couples
- Explain steps that will help keep the assets in the marriage
- Describe Angelina Jolie's actions regarding the couple's vineyard



By Judith Murray and Sophie Connors

On separation not everyone has the difficult task of secretly disposing of half a French chateau and vineyard, as alleged by Brad Pitt against Angelina Jolie, however, disposing of assets to defeat an ex-spouse's financial claim is an all-too-common concern.

It is in some ways the oldest trick in the book. If you are worried about having to give your soon-to-be ex-spouse half of your assets, reduce how many assets you have to give.

This can be a simple act of spite or, in many cases, a disposal of the assets with a plan afoot for the 'gifts' to be returned to the giver after the ink is dry on the court order.

Simply giving away assets is of no benefit. The nefarious art is to transfer or dispose of the asset in such a way as to be able to have it returned once the divorce proceedings have been concluded.

Be it a vineyard, a house, a shareholding, a work of art or good old-fashioned cash, anything with a value may well be removed from the matrimonial pot if a cautious eye is not trained on the family assets.



Given that such behaviour has been going on for years, there are laws in place to protect against such deviousness.

While many spouses will have this concern, those with the greatest worry are spouses who have reconciled following the commencement of previous divorce proceedings, only to find that they have been the victim of a cold and calculated plan for a delayed divorce with the benefit of financial planning, usually by the financially stronger party.

In an area of the law in which emotions already run high, little can compare to the family implosion that occurs in cases where the left behind spouse realises that their husband or wife was slyly planning their exit for years.

This is particularly true in cases where the 'leaving' spouse has feigned happy families to increase the chances of their misconduct slipping under the radar.

Powers of the court

However, given that human nature is little altered over time and such behaviour has been going on for years, there are laws in place to protect against such deviousness.

The court will do all it can to preserve the matrimonial pot and to censure those who try to deprive a spouse of their rightful entitlement to a share of the matrimonial assets. Freezing injunctions can prevent an asset from being disposed of or dealt with in a prescribed manner that might reduce its value.

If an asset has already been transferred within three years preceding a divorce petition and the transfer defeats the other spouse's financial claims, it is presumed to have been transferred for that purpose and the transfer may be set aside.

This presumption can be rebutted, but it is very helpful that the starting point is that skulduggery has occurred. The onus is then on the disposer to satisfy the court that they effected the transaction without the intention of defeating or reducing the financial claim of their soon-to-be ex-spouse.



Stopping an asset being disposed of is much more effective than setting aside a disposition.

If seeking to set aside a disposition to secure the return of a matrimonial asset, the presumption alone is not enough to get you over the line if you want the asset back.

As with almost anything, prevention is better than cure and stopping an asset being disposed of is much more effective than setting aside a disposition, however, it can be done in the right circumstances.

The first step is usually to make the receiver of the disposed asset a party to the proceedings. This is most commonly a family member who the exiting spouse can suggest they 'gifted' an asset or shareholding to. Or in cases, usually more motivated by spite, they might be purchasers of an asset at well below market value.

If they are joined to the proceedings then the court has fairly extensive powers to set aside the disposition, which in the main will mean ordering that the asset is returned to the family pot for appropriate consideration and division.

However, the disposition can only be set aside (or put back in the pot) if the court is satisfied that doing so will affect the orders made when considering how to split the assets.

In short, if the asset is *de minimis* – that is, too small to be meaningful or taken into consideration – or if one party might be very likely to keep the asset out of the matrimonial pot on other grounds, then there is little point in setting aside the disposition.

You have to satisfy the court that putting the money back in will actually make a difference to the outcome of the overall case. This discourages disproportionate applications being made.

Protection for third parties

There are also protections in place for honest third parties who might find themselves at risk of losing an asset they bought fair and square.

The court cannot take the asset from the third party and put it back in the pot if the asset was received by them for valuable consideration, usually cold hard cash, and when they bought it in good faith without any knowledge of what the exiting spouse was up to.

This protects the honest buyers losing their asset when there was no conspiracy and they had no knowledge of what skulduggery was afoot.

In practice, sizeable gifts to friends and family in the three years prior to the divorce petition raise far more eyebrows than purchases. The idea that being given a valuable house or shareholding by a family member just as their marriage hits the skids makes it very hard to believe that the receiver did not know something was off.

The other common species of set aside application relates to shareholding mischief. Dilution of the shareholding or transferring the shareholding into a trust both being common methods of trying to artificially reduce the matrimonial funds available for distribution.



Shareholding skulduggery is most problematic when both parties are shareholders in the company.

Inexplicable dubious changes to the ownership of the company prior to a divorce can be especially problematic. The obvious consequences will be the apparent reduction in the parties' assets, but it can also affect how easy it is to sell the remaining shareholding or take money out of the company.

Shareholding disputes

This appears to be at the heart of the Brangelina saga. Ever ethical Jolie decided that co-owning an alcohol brand while complaining of her ex-husband having issues with alcohol was no longer for her.

So, allegedly, behind Pitt's back and in apparent breach of an automatic temporary restraining order that was in force in relation to the business, Jolie sold her 50 per cent share to reclusive Russian billionaire Yuri Shefler.



Angelina Jolie is in ongoing divorce proceedings with Brad Pitt. (Tim P. Whitby/Getty Images)

This has caused no end of consternation for Pitt who has accused Jolie of inflicting gratuitous harm on him. No doubt this is a transaction that Pitt would do anything to reverse and perhaps he has good reason to be worried.

Shefler's ascent to billionaire status came off the back of another highly contentious purchase. He purchased Stolichnaya Vodka, which was recently rebranded to Stoli, from a state-owned Russian business in 1997 for \$285,000 (£233,440), but the Russian courts ruled in 2001 that it was an unlawful purchase and he was banned from selling Stoli in Russia itself. He left for Latvia to move his production there and later moved to the UK.

Although the full story is not clear, it is hard to see how Shefler would be able to argue that he acted in good faith and without knowledge of Jolie's intentions to get at Pitt.

With such a high-profile couple and so much press about Jolie wishing to get out of the business, the idea of Shefler having no knowledge of her intention would be almost impossible to say with a straight face.

If the transaction happened in this jurisdiction within ongoing proceedings following a divorce then one has to think Pitt would have a reasonably runnable case for setting it aside.

However, further complications may lie ahead. Although he fell out with the Kremlin some time ago and Stoli is now made in Latvia, Shefler is still a Russian billionaire and sanctions could potentially be on the table. This would make Pitt's desire for the reversal of the transaction even stronger, but could cause no end of practical difficulties in achieving that aim.

These are not the worries of the average case going through the court in this jurisdiction. The lessons, however, are the same.

Know your family finances, keep a close eye on them and, if in doubt, act fast. It is always better to retain than to seek the return.

Judith Murray and Sophie Connors are barristers at 4PB Family Law Barristers