I spy a rare white leopard – sharing non-matrimonial assets on divorce

Inspired by a recent Halloween costume party where my colleague Emma Nash and I dressed as that rarest of things, a white leopard, I present here a short guide to how English law treats what is known as “non-matrimonial property” on divorce.

First, an explanation for the photograph: Mostyn J said in JL v SL [2015] EWHC 360 (Fam) that the sharing of non-matrimonial property, as opposed to having a sum awarded from non-matrimonial property for needs, is as rare as a white leopard. His analogy inspired our Halloween costume (which itself inspired a lot of groans) and this article (which hopefully will inspire far fewer groans).

(At this point I must again apologise for our costume. I appreciate that dressing up as a legal concept is not entirely novel. Anyone who has ever ironically carried ginger beer and a snail or a carbolic smoke ball should be avoided at all costs. They are generally not the fun ones at parties.)

What is non-matrimonial property?

In essence, non-matrimonial property is any asset from outside of the marriage. This can be real property, cash, investments, shares in a business, personal belongings, and heirlooms: any type of asset. So long as the assets originated otherwise than from the joint efforts and endeavours of the spouses during the course of the relationship and marriage, then the property may be considered to be “non-matrimonial.” Assets purchased with income generated during the marriage will not generally count and will likely be considered “matrimonial.”

The non-matrimonial assets in question tend to be assets owned before the marriage, inherited assets and assets acquired after separation (so long as they were purchased using funds which were not generated during the marriage).

Will non-matrimonial assets remain non-matrimonial?

That all said, non-matrimonial assets can become “matrimonialised” if they are “mixed and mingled” into the marital pot.

Mixing and mingling can happen when, for example, non-matrimonial funds are combined with matrimonial funds for a joint enterprise, or when a non-matrimonial inherited property is lived in or developed by the family and becomes a matrimonial home. There are a number of
ways in which this can happen and care should be taken when identifying what has happened to a non-matrimonial asset.

To protect the “non-matrimonial” status of assets the owner must ensure that there is no mixing or mingling. Alternatively, or in addition, consideration can always be given to a pre or post marital agreement to seek to protect these assets.

**Why is it important?**

On divorce, the English court will generally begin from the starting point of dividing equally those marital assets held by the parties. Section 25 of the Matrimonial Causes Act 1973 contains a list of factors which the court must take into account as well.

Marital assets will be divided equally unless required for the needs of either spouse. Non-matrimonial assets can be divided if one of the spouses has financial needs which cannot be satisfied by matrimonial assets (and their own assets) alone. The Court can and will dip into non-matrimonial assets to provide the less well-off spouse with additional capital to meet their needs, for example to re-house after the divorce. What will not happen is that non-matrimonial property will be shared unless required for needs. Such an occurrence is as rare as a white leopard!

**Conclusion**

Thought should always be given to what assets were generated during the course of the marriage, what assets came from outside the marriage and whether there has been any mixing and mingling of the two types of assets. Once the non-matrimonial assets have been identified, the question to ask is what impact will this have on the division of assets.

Unless the financial needs of one spouse demands it, those assets cannot generally be divided. That is, of course, unless you have found the rare white leopard when sharing should occur!

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