

The Legal Intelligencer

FAMILY LAW

SPECIAL SECTION | JULY 2023



What in the Andy Cohen: Family (and Business) Law Lessons From Bravolebrities

BY MELANIE J. WENDER AND
LISA A. BOTHWELL

Special to the Legal

It is no secret that “Bravolebrities,” individuals who have become famous for appearing on a Bravo reality television show, have had legal troubles over the years, specifically with their relationships and business endeavors. These public disputes provide us with more than just one-liners and memes; there are valuable family and business law lessons in almost every headline.

WEDDINGS SHOULD BE FUN. PRENUPS—NOT FUN!

Kyle Cooke, an entrepreneur, and Amanda Batula are the main couple of the hit Bravo show *Summer House*. Cooke capitalized off the reality show platform and founded a company with products perfectly tailored to his audience: a canned cocktail drink company named *Loverboy*. One of the storylines in Season 6 of *Summer House* is Cooke and Batula arguing over whether to get a prenuptial agreement shortly before their wedding. In a talking head, Cooke states that his investors brought up a prenuptial agreement to him because of the impact a potential divorce could have on the company. Batula stated she was naïve about prenuptial agreements and was filmed Googling “prenups” two weeks before their wedding. Two weeks before a wedding is definitely too close to throw together a prenuptial agreement, so it is of no surprise that the couple did not sign one.

It is not uncommon for investors and business partners to be concerned about the impact of an owner’s divorce on a company. You chose to go into business with a person, not necessarily their spouse. This concern can be addressed through the company’s governing documents, such as an operating agreement. One approach is to include a spousal waiver in the operating agreement, which each non-owner spouse signs to acknowledge the company’s restrictions on transfer and to waive any rights he or she may have in the owner spouse’s interest in the company (the waiver could specify whether the waiver include rights for equitable distribution purposes). Clients may not want to approach their spouse with this type of waiver for obvious reasons. A less offensive option is to include a divorce provision in which the owners agree that the company does not have to transfer an owner spouse’s interest to a nonowner spouse (other than what rights the nonowner spouse may have in the value of such interest for equitable distribution calculations). This type of provision is not binding on the court but is usually respected. If one of the spouses owns an interest in a private company, you should ask whether the governing documents address divorce or have restrictions on transfer.



WENDER



BOTHWELL

MELANIE J. WENDER represents clients in all areas of family law, including complex equitable distribution issues, custody matters, high net worth support matters, and Protection from Abuse actions at *Antheil Maslow & MacMinn*. Though Wender is an experienced litigator, she tries to negotiate amicable resolutions outside of court for all of her clients.

LISA A. BOTHWELL advises corporate clients on a broad range of matters, including mergers and acquisitions, joint ventures, capital raising events, business separations, and corporate governance. She regularly negotiates and prepares operating agreements, shareholder agreements, and partnership agreements. Learn more about their work at ammlaw.com.

Equitable distribution becomes more difficult if one spouse owns numerous closely held companies but is largely illiquid. One option is to establish a voting trust. The nonowner spouse could own shares of stock or interests but transfer the right to vote thereon to the owner spouse as trustee of a voting trust. The voting trust would be governed by an agreement, which would specify the duration of the trust and whether the trust is revocable. You should ensure that the voting interests can be transferred to the trustee under the various governing documents. The nonowner spouse is likely to have to sign a joinder to the companies’ governing documents agreeing to be bound by its terms, including any restrictions on transfer, before a company transfers the stock or interest on its books. Additionally, the parties should agree in writing that the non-owner spouse will not sell or otherwise transfer the shares or interests without first offering them to the owner-spouse.

Another option is to set up an entity, such as a manager managed limited liability company (LLC), to own any private investments and real estate holdings (business interests). Both spouses would own the LLC, but the owner spouse would be the LLC’s manager. The LLC’s operating agreement would allow the owner spouse to make the decisions regarding the Business Interests with very limited minority controls. You should ensure that the Business Interests can be transferred to the LLC under their various agreements and consult with an accountant to determine any potential tax ramifications. Both a voting trust and an LLC would allow the non-owner

“A nonmarried couple who buys a home without an agreement is gambling on being able to agree during a separation. They also risk that one or both parties would be in a financial position to be a sole owner.”

spouse to continue to enjoy any potential upside from the business interests while eliminating their ability to control a company.

MENTION IT ALL! DEALING WITH UNDERHANDED TACTICS IN DIVORCE AND CUSTODY MATTERS

Divorce

Bethenny Frankel, an entrepreneur and former *Real Housewife* of New York, went through a horrific public divorce and custody battle from and with Jason Hoppy that lasted almost four times the length of their marriage. A lot of the divorce coverage surrounded a \$5 million Tribeca apartment, Hoppy’s refusal to leave said apartment, and Frankel’s testimony about Hoppy’s tactics to drive her out of the apartment. Frankel testified that after she asked for a divorce, Hoppy would leave trash and dishes piled up, leave human excrement in the toilet, and turn the volume on the television up, put the remote in his backpack, and leave the apartment.

Underhanded tactics are not unheard of in divorce, especially when there are large amounts of money at stake. In a perfect world, both spouses would be involved with the finances and have open financial discussions. However, we do not live in a perfect world. As such, when involved in a high asset divorce, conducting a title search is incredibly useful. If your client suspects that their spouse is hiding assets during a divorce, you could conduct extensive discovery, including depositions, review all bank statements in detail, and, if the records are complex, hire a forensic accountant. It is important to set your client’s expectations that you may never find the suspected hidden assets, no matter how much discovery is conducted.

Custody

Tamra Judge, newly returned *Real Housewife* of Orange County, has discussed her estrangement from her daughter, Sidney, on the show, in interviews, and on social media. Judge and her daughter became estranged after

Judge’s tumultuous divorce from her daughter’s father. Judge posted on social media about one of their reunions, which appeared to temporarily halt progress as Judge’s daughter criticized Judge for making their reunion public, even though she asked her mother not to.

Clients should be advised not to post anything about their custody matter on social media, as posts can cause estrangement and provide fuel for litigation. Clients need to be reminded that anything that they post on social media or on any internet forum can be used against them in court. It is, therefore, better to simply stop posting entirely. However, a child over 14 years old does have the right to post about the matter on social media. The goal in estrangement or parental alienation is increased contact and more custodial time for the estranged or alienated parent. Reunification therapy for the child and the estranged parent is recommended, as well as individual counseling for both parties.

CO-OWNERSHIP WITH A MUSTACHED WORM

What happens when two people who are not married buy a home together and then one of them cheats? Ariana Madix and Tom Sandoval, stars of *Vanderpump Rules*, built a brand around their nine-year relationship with their various business ventures. The couple never married but purchased a home together in 2019. In March 2023, news broke that Sandoval cheated with “Rachel” Leviss, Madix’s good friend and their fellow castmate, for over 8 months.

Non-married couples who buy a home together are still entering into a relationship that requires legal action to untangle but can chose to govern their co-ownership through a cohabitation agreement. At a minimum, this agreement should provide what happens in the event of a separation or one of their deaths. If one party is forced to buy the other out, the agreement should detail the terms and timeline of such buyout, including how any equity or loss would be allocated. The parties can agree to sell but should decide how the property will be put on the market. Parties should consider including when a non-remaining party would have to vacate.

A nonmarried couple who buys a home without an agreement is gambling on being able to agree during a separation. They also risk that one or both parties would be in a financial position to be a sole owner. Regardless, that is often the position people find themselves in. No matter if the unmarried couple plan for a potential separation or not, it is often expensive to terminate co-ownership.

Our favorite Bravolebrities are certain to provide us with entertainment and family and business law lessons for years to come. We will not be “tardy for the party” when the headlines hit. ●