

# Chicago Daily Law Bulletin®

Volume 156, No. 187

Friday, September 24, 2010

## Continuing legal education – with the stars

By Gemma B. Allen

Watching the famous stars fall in and out of love has become a favorite American pastime. Analyzing the legal ramifications of their choices can be entertainment for lawyers as well as providing a “continuing legal education” — albeit without the qualifying hours.

Ten years ago, Michael Douglas was involved in a headline divorce, resulting in one of the largest settlements ever reported: \$45 million.

Subsequently, he married the lovely actress Catherine Zeta Jones, they executed a prenuptial agreement and it would seem his first divorce was done and over.

His previous divorce settlement, however, contained a clause that entitled his former wife to 50 percent of all the residual income he would receive in the future for his projects done during the marriage, including spin-offs. At the time of that divorce, he had already starred in the hit movie “Wall Street.”

Now he is starring in “Wall Street: Money Never Sleeps,” which continues his character’s “greed is good” saga. Off-screen, his first wife is suing for her half of the proceeds, characterizing the current movie as a spin-off. Intellectual property lawyers must now weigh in on the differences and similarities between a spin-off and a sequel.

A “sequel” is how the second movie is being characterized by Michael Douglas’ counsel, but his ex-wife and her team disagree. It appears that “spin-off” is a television and merchandising term, which usually involves using the same characters or events in a different entertainment setting like a video game or new television show where the side-kick character is now the main character. For example, “Private Practice” would be a spin-off of “Grey’s Anatomy.”

*Gemma B. Allen is a partner in the Chicago family law firm of Ladden & Allen Chtd. She can be reached at gemmaallen@laddenallen.com.*

In contrast, a sequel is generally understood to have the same main character in the same or similar setting moving on with his or her or even its life — think “Harry Potter,” “Back to the Future” and “Transformers.” It would appear Michael Douglas is on the winning side of the war of words, but it is always legally challenging when the drafter uses a term that turns out not to have a

---

*Understanding the issues of these costly legal entanglements may not earn CLE hours but learning from the very public missteps of others is the easy way to wisdom.*

---

generally-accepted meaning and becomes the subject of litigation.

Particularly in the area of intellectual property rights, the lesson for any attorney is to consult with an expert when defining future interests in these rapidly evolving rights. In this tumultuous era of digital and downloadable delivery, where entertainment products are being recycled and repackaged repeatedly, the operational rule has to be: “Drafter beware.” If money never sleeps, neither do the greedy who seek it.

Sir Paul and love is not all you need

When Paul McCartney of The Beatles announced he would not seek a prenuptial agreement when he remarried, he proved the legal truism for high earners with great fortunes: a prenuptial agreement is a must.

During the real life “War of the Roses” between Lady Mills and Sir Paul, his fans wished there had been a prenuptial agreement so everyone could have been spared. It seems evident that the McCartneys, their assets, their reputations and their child all would have fared better with private negotiations before the fact instead of such public accusations later.

But prenuptial agreements present practical problems for lawyers. A lawyer

only represents one party ethically, but this can be to the exclusion and possible endangerment of the very relationship that client wants to protect. Since the adoption of the Uniform Prenuptial Act in more than half of the states — and the precedent it has set for others — it is possible to almost entirely disenfranchise the “have-not” spouse as long as that party either had counsel or the

opportunity for it, and was given or had the opportunity for full disclosure.

The answer to the confiscatory concerns of a prenuptial agreement can be found in the examples of some celebrities. Many seem to have negotiated so that both parties have dignity as well as

meaningful dollars when the deal is done. Reportedly Katie Holmes would receive a significant sum certain for each year she is married to Tom Cruise. Allegedly, Brad Pitt and Angelina Jolie are working out titles to their multiple properties and mutually adopting their children before they even contemplate marriage.

It is possible these stars have better approaches to prenuptial agreements because they are accustomed to negotiating their “value” in the marketplace and because they have other advisers to help them.

The lesson here for lawyers counseling the not-so-famous is to suggest that the parties themselves work with a psychologist, financial planner or a mediator to identify his or her value and to protect and preserve the relationship at the same time they retain attorneys to protect the assets.

The McCourts and foul balls

The hottest ticket in L.A. might be to the divorce trial of the owners of the Dodgers team, Frank and Jamie McCourt, who were married for 29 years — interspersed with many “time-outs.” The case has everything including savvy spouses, different signed versions of a post-nuptial agreement (one of which

**Continued...**

makes the team the separate property of Frank McCourt and one which failed to so do), valuation issues of the team, its earnings and significant real estate, and an expose of the lifestyles and questionable financial dealings of the rich and famous.

Their divorce will impact their future, the team's future and the future of post-nuptial agreements. Such contracts made, while parties are living together and allegedly are "happy," are a newish trend

and present issues of legal representation, full disclosure, and interposal fair dealing, all of which are magnified in a case with hundreds of millions at stake.

The real lesson of this litigation is the "law of unintended consequences," which every lawyer and litigant must always calculate. So much chicanery has been revealed during the discovery and pre-trial phase of the case that not only the couple but the entire franchise and even the sport may never be the same.

No matter who wins, the McCourts have "err-ored" badly at a time when baseball does not need another black eye.

Indeed, lawyers who concentrate in divorce, intellectual property and in fact many areas of the law, can pick up a thing or two from each one of these highly-publicized cases. Understanding the issues of these costly legal entanglements may not earn CLE hours but learning from the very public missteps of others is the easy way to wisdom.