

Off-shore Trust, not beyond wife's grasp in big money matrimonial case

The Court of Appeal have now given Judgement in the case of Charman where a giant in the heady world of multi-national insurance has been thwarted in an Appeal against an Order that his wife should receive some forty-eight million pounds or 36.5% of the parties' assets.

This was a record for a divorce and led to England being dubbed the Divorce Capital of Europe and the Appeal Court suggesting legal change might be needed.

Unusually, the wife had accepted in the original case under Appeal that the husband should receive more than half the assets because of his truly exceptional business career and this was the main reason for the wife receiving less than the conventional 50% of the assets, despite a very long marriage.

The husband's Appeal to reduce the wife's percentage even further was primarily based on the argument that an Off-Shore Discretionary Trust that he had created containing some seventy-two million pounds should not be taken into account as part of the matrimonial assets.

The case is interesting because despite a ferocious fight by the husband, the wife was given access to relevant documents and was able to show that, even though there was no history of any distributions from the Trust (mainly because the husband was too wealthy to need the money), the likelihood was that the husband did have the ability to influence the Trustees and could have had access to the money had he wished.

After a careful analysis of the documents, the original Judge had decided that the Trust should be taken into account as part of the matrimonial assets and the Court of Appeal has now upheld this view.

It is not uncommon, for a number of reasons, for people to put money in settlements, both on-shore and off, and this case emphasises that such assets may be taken into account upon any division of the matrimonial assets following divorce.

If you need further information or advice, please contact Mike Spencer on 0115 9 100 200 or email enquiries@actons.co.uk.



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