



# Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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Serving all of California

## Ron's Corner

*Bad behavior by a spouse does not change how a court must divide property. However, evidence of financial wrongdoing can lead to sanctions against the offending party.*

This is the third of four issues in the series *I Thought California is a No-Fault State*. In the two most recent editions of *Forensic Accounting Today*, I discussed cases in which sanctions were awarded on appeal for financial breach of fiduciary duty... *In re Marriage of Hofer* and *In re Marriage of Davenport*.

This and the following issue of *Forensic Accounting Today* involve cases concerning the breach of an agreement. The question involving each is whether either or both cases should result in sanctions for breach of fiduciary duty.

The case presented here is *Diosdado v. Diosdado*. In this appeal, the matter focused on whether the decision concerning an agreement violation committed prior to separation should overturn the trial court's decision.

In the final installment, I will consider the no-fault issue involving *In re Marriage of Mehren and Dargan*. This case encompassed both financial acts occurring prior to separation and an attempt by a party to claim penalties based on the other party's wrong doing.

I hope you are finding this series both interesting and thought provoking.

Ron

\* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.

## I Thought California is a No-Fault State

### Part 3

Presented by Ron J. Anfuso, CPA, ABV, CFF, CDF, FABFA

Yes, California is a no-fault state. However, *no fault* relates only to grounds for the termination of a marriage. Financial fault, on the other hand, has no limits. It can lie in the past, present or future. In fact, it seems that as time passes and cases grow, in law, the theories for asserting financial fault have increased. You might say that financial fault is trending.

In this issue, I focus on the Superior Court of Los Angeles County appeals case of *Diosdado v. Diosdado*.

### Diosdado v. Diosdado Background

Donna and Manuel Diosdado were married in November 1988. About four years later, Manuel had an affair. When Donna discovered this, the parties separated. Rather than divorce, they entered into a written *Marriage Settlement Agreement*, which was intended to *preserve, protect and assure the longevity and integrity of an amicable and beneficial marital relationship between them*.

There were three sections to their post-marital agreement. The first stated that if either party expressed a concern that the goals of the marriage were not being met, they would agree to seek counseling and make an effort to resolve their problems to preserve their marriage.

Section two further acknowledged that their marriage was intended as an exclusive relationship between Husband and Wife, and was based on the values of emotional and sexual fidelity and trust. The parties acknowledged their mutual understanding that any such breach by one party could cause serious emotional, physical and financial injury to the other.

Section three stated that if either party engaged in a breach of their obligation, either party could initiate an action to divorce and that the party committing the breach would be obligated to vacate the family home and would be responsible for all attorney fees and court costs incurred as the result of any litigation surrounding or related to said breach. In addition, the offending party would have to pay the



## How Well Does Your Forensic Accountant Know the Law?

Attaining a CPA license and completing additional training in business valuation and financial forensics are essential to excelling as a forensic accountant.

But what about keeping up to date with the law? This is one of several attributes that separates Ron from other forensic accountants.

Ron examines each *LA County Bar Association Daily eBrief* for family law cases involving forensic accounting. He probes these cases and reviews their decisions always being mindful of any changes in precedence. The result: Ron retains virtually the highest level of knowledge among forensic accountants in California.

Find out for yourself. Ask Ron about the cases he has recently reviewed in *Daily eBriefs* and what he learned.

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other spouse \$50,000 in damages over and above property settlement imposed by law as a result of the court proceeding. Manuel's attorney drafted the agreement and both parties signed it.

In 1998, Manuel again had an affair. After Donna was able to verify the breach, the parties again separated and then divorced.

Donna brought action for breach of contract in February 2002 to enforce the damages caused by the divorce. On the initial day of trial, the court granted a judgment on the proceedings in favor of Manuel. Donna appealed the judgment.

## The Superior Court's Considerations and Its Disposition

The question before the court was whether the agreement was enforceable.

Fault is not a relevant consideration in the legal process by which a marriage is dissolved. Recovery in no-fault dissolution proceedings *is basically limited to half the community property and appropriate support of attorney fee orders—no hefty premiums for emotional angst.* (Askew v. Askew (1994) 22 Cal. App. 4th 942, 960.)

The agreement between the parties attempted to impose a premium for the emotional angst caused by Manuel's breach of his promise of sexual fidelity. However, the family court may not look to fault in dissolving a marriage, dividing property or ordering support. The agreement attempted to penalize the party who was at fault for breaching the obligation of sexual fidelity. This breach provided the basis for terminating the marriage. The penalty, however, was in direct violation of the public policy underlying no-fault divorce.

A contract must have a *lawful object* to be enforceable. If a contract conflicts with a provision of the law, policy of the law or *good morals*, it is unlawful. In the case of *Diosdado v. Diosdado*, the agreement attempted to impose a penalty on one of the parties as a result of that party's *immoral* behavior during the marriage. Since this was in direct opposition to the underlying policy of no-fault provisions for dissolution of a marriage, the agreement could not be enforced.

## Why Did I Choose to Study this Case?

The explanation is simple. By having a thorough comprehension of no-fault divorce law and its financial implications, I am able to provide more thorough and effective litigation support to referring attorneys and their clients.

**Need a Financial Expert to Speak to Your Study Group or Bar Event?**

To discuss your group's needs, call Ron today!