Darshan - The International Journal of Commerce and Management ISSN: 2583-1682 (online) Volume - 4, Issue – I, June-2024
Bi-Annual double-blind peer-reviewed International Journal
Paper Submission Date: 6th Feb 2024 Paper sent back for Revision: 7th Feb 2024 Paper Acceptance Date: 1st Mar 2024

"Fraud In Divorce – From Forensic Accounting View"

Dr. CA. Parvati T. Soneji,

Head – Department of Accountancy, Chetana College, Mumbai, Maharashtra, India

Email: parvatisoneji@gmail.com

Abstract:

Fraud can never be unintentional. A mistake is an unintended act resulting in loss whether monetary or non-monetary. An act of concealing any information from either party to the marriage, which will decide the course of further action i.e., to accept the marriage proposal or reject it, is known as defrauding and coercing the party into the marriage. Not only romantic and personal relationship between a couple is assumed to be ending but even financial relationships are severed in divorce. When divorce matters end up in litigation with ugly scenes created by either party through 'Divorce Planning' forensic accounting plays an important role in settling Matrimonial Litigation. Nunn el. at (2006) says Forensic Accounting obtains the truth of the probable fraudulent activity and assists in developing an expert opinion. Forensic Accountant first understands the subtleties related to the matrimonial case and then accordingly conducts fraud examination as part of Forensic Accounting Examination.

Key Words: Divorce Planning, Fraud, Forensic Accounting, Matrimonial Litigation, Financial Red Zone.

INTRODUCTION

Hyder (2009) states 'Divorce Planning' is intentionally arranging one's monetary concerns before a judicial separation by manipulation of monetary information to delude the professional depiction, another spouse, and/or the Court. When any of the parties to the marriage realize that the marriage is troubled and decides to end the marriage, the duration between the realization till the steps taken is considered a 'Financial Red Zone.' There are possibilities of any of the two parties engaging in 'Divorce Planning' which the other party may refer to as 'Fraud' in the future during the course of litigation. Fraud concerning divorce may occur before applying or as a consequence of separation. In any circumstance, the motive may be as simple as the desire to humiliate, hurt, and possibly financially and/or emotionally devastate the other party and at the same time secure a favorable economic outcome with windfall gains to the fraudster. Venkatesh & and Manjushree (2019) opine that Forensic Accountants can play a vital role in tracing undisclosed assets and achieving financial disclosure when either or both parties believe that assets may have been hidden by the other.

LITERATURE REVIEW:

Brinig & Alexeev's (1995) comparative analysis of annulment and divorce showed that there existed a socially optimal amount of fraud in marriage. The analysis also demonstrated how changes in the locale's divorce regime resulted in changing demand.

Cawi (2017) identifying the necessities for the acceptability of forensic accountants' expert opinion, states a lot has to be left to be reasoned in court. The role of a Forensic Accountant is to elucidate the mystification of financial transactions that may not be correctly interpreted by the trier(s) of fact, demonstrating the authenticity of expert opinion and withstanding cross-examination by opposing counsel. Forensic Account experts should be well prepared to expect environments beyond their control in court and must commit to arrangements that are suitable to their expanse of proficiency.

Galea (2018) finds that due to a lack of awareness of forensic accounting and the operations of the current legal system, the probable value that a forensic accountant can bring in any marital dispute case is not being achieved. Even though general accounting practitioners have an idea of how to tackle an engagement, the omission of numerous techniques reflects the lack of expertise

Venkatesh & Manjushree (2019) opine a forensic accountant can become a valuable consultant providing technical assistance, judgment, as well as guidance on financial matters at every phase of the divorce case to determine the equitable distribution of marital assets as well as alimony needs.

BASIC CONCEPTS:

A. Fraud

Fraud can be demarcated as an '*Intentional Deception resulting in inquiry to another embracing all the multifarious means which the human ingenuity can devise to get an advantage over the another'*. The intent is a fine line to point out the real difference between 'fraud' and 'negligence'. This fine line may blur when the accused's intentions are unclear.

B. Badges Of Fraud

Badges of Fraud are circumstances or facts revolving around a transaction pointing out that the said/under-considered deal might seem fraudulent. The badges of fraud comprise of transactions incurred differently from the usual method/practices of business, false statements as to consideration, fictitious consideration, insolvency, transfer of all the property of debtors, transfers in anticipation of suit or execution, confidential relationships of the parties, etc. Fraud is normally tried to be proven by reasonable inferences and circumstantial evidence as direct proof of fraudulent intent is rarely available.

Darshan - The International Journal of Commerce and Management ISSN: 2583-1682 (online) Volume - 4, Issue – I, June-2024
Bi-Annual double-blind peer-reviewed International Journal
Paper Submission Date: 6th Feb 2024 Paper sent back for Revision: 7th Feb 2024 Paper Acceptance Date: 1st Mar 2024

This concept of 'Badges of Fraud' can be extended and applied to marital litigation. In the context of marriages facing litigations or on the verge of / being broken, the existence of fraud can be indicated with the help of a closer examination of some of the following facts:

1. A decline in assets, sale/transfer of assets shortly before the divorce proceedings.
2. Reductions in earnings, incurring huge losses before the divorce or separation.
3. Transfer of marital assets to any other (trusted or known person) for an unreasonable consideration.
4. Increase in existing debts / create new debts approximately the date of separation.
5. Sharp decline in revenues.
6. Cash dealings.

There can be instances where the concerned parties may be a part of closely held business and any of either party may have secretly started 'Divorce Planning'. In such instances, the following situations may warrant specific in-depth scrutiny:

1. Change in the business model causing the decline in profitability or value.
2. An erratic and sharp unexplained decline in revenues.
3. Increase in expenses and compensation without proper justifications.
4. Increase in business debts without correspondence inflow of funds and/or assets.
5. Decrease in distribution to owners i.e., unexplained retainment of profits in business.

C. Other Considerations

It is very crucial to recognize the potential fraud manifested as a by-product of the divorce. Any fraud whether incurred during the past or being ongoing, unrelated to the divorce, when uncovered during the forensic audit will possibly influence the financial statement. The fraud may involve none of the spouses, any one of the spouses, or both spouses.

FINANCIAL FRAUD – IN A DIVORCE:

The following are the three major forms of financial fraud:

1. Financial Reporting
2. Embezzlement Of Marital Assets
3. Crimes Of Influence (Not applicable in marital litigation)

1. Financial Reporting

Manipulated and fraudulent financial reports are intentional misstatements, and/or amounts omitted, or disclosed in the financial statements so designed to deceive the users of such information presented in these financial statements. In the case of matrimonial cases, such fraudulent reporting may manifest.

Darshan - The International Journal of Commerce and Management ISSN: 2583-1682 (online) Volume - 4, Issue – I, June-2024
Bi-Annual double-blind peer-reviewed International Journal
Paper Submission Date: 6th Feb 2024 Paper sent back for Revision: 7th Feb 2024 Paper Acceptance Date: 1st Mar 2024

a) ***Failing to provide accurate and complete information about the individual or business.*** This includes cunningly falsifying the statements and impeding the discovery process.
b) ***Intentionally providing misleading or false information*** i.e., the divorcing spouse may affirmatively state something which he/she believes to be untrue.

2. Embezzlement Of Marital Assets

This includes diverted proceeds, which may / or may not be conveyed by misleading or false documents or records being supported as evidence designed to conceal the deception. Misappropriation of martial financial assets can become more complex where closely held business interest is involved. The various ways in which the misappropriation can be accomplished can include the following:

a) Diversion of Income to another person or business

Where any of the spouses can influence the business, he/she can divert the income or receipt to the third party by directing the payments and/or endorsing the cheques. In such cases, the potential interest of the influencing spouse is to be determined i.e., whether such spouse has any interest in such third party, diversion is reported as nominee payments by both the entities i.e., assignor and assignee or it is a genuine transaction.

b) Siphoning funds from marital accounts

Any of the spouses siphons off the investment income and/or even the principal amount of investment from marital accounts and such proceeds are deposited into new accounts situated anywhere outside the state or the country.

c) Manipulation of the timing of receipt of funds

Any spouse can manipulate the timing of incomes, and bonuses earned before separation and time the receipt in such a manner that once the divorce is concluded, the funds are received. Alternatively, the manipulated spouse can receive the bonuses, income, funds, etc. in a new bank account (opened after the disclosure of all marital financial assets). This is mostly done to artificially depress the recipient’s income to gain financial benefits in the divorce settlement.

d) Shifting marital assets to other individuals

Any of the spouses to shield the distribution of any / some / few/selected assets shift the marital assets in the name of other individuals and/or relatives under the pretext of sale or any settlement of loan by pre-closure. Such an asset can be rebought by the spouse after the settlement of the divorce.

e) Miscellaneous – Common Activities

i) The sale of an asset like a home, jewelry, etc. to a relative or any trusted associate or friend at an agreed price that is lower than the fair market value.
ii) Incurring debt to minimize equity. The proceeds received are not accounted and the moneyed spouse may create its asset to offset the diminished equity.

iii) In the case of joint business, deferring new contracts until the business is valued, incurring individual expenses through the business, and showing '*ghost*' employees to the business's payroll.

FRAUD EXAMINATION:

An examination of fraud is performed with the only objective of preventing and detecting fraud. The proclivity for fraud to occur in a divorce cannot be ignored with the kind of marriage taking place keeping in mind the professional competency for mutual growth by both parties. A forensic inquiry may be directed for a specific circumstance but is not always conveyed by a fraud investigation. The fraud inspection is normally commenced when prediction i.e., a bonafide motive exists. The fraud examination should not be explored as a tool to expand detection or to embarrass or punish any of the spouses. Fraud investigations include audits for evidence of fraud, i.e., a methodology and a proactive approach to discern fraud. Forensic Accountants are called in after a suspicion or evidence of deception has surfaced through a complaint, discovery, or allegation. Fraud detection arrangements are commenced once predication is recognized. If a fraud examination created upon a predicate yields evidence of fraud, the financial investigators start working meticulously with the appropriate parties including corporations, attorneys, or any other party with a bonafide right and interest. The financial investigators enumerate frauds, recognize the perpetrators, and assist in evolving indications for a suitable legal proceeding. In case of divorce, the appointment may be restricted to providing counsel with evidence of debauchery. Such engagement may result in a supplementary award from unprejudiced dispersal or a calculation of accurate net income available for sustenance. The expert may also enumerate the sums involved so that the assessment of the business takes into contemplation the misappropriated assets, discretionary expenses, and/or diverted revenue. A single occasion of underrated assets or income will neither suffice to establish a pattern of fraudulent activity nor offer any definite evidence that deception has been committed. It can be understood that the person engaging in underreporting of the income for divorce and/or income tax may also over-report her or his income when an application for disability insurance or loans. Such isolated incidents or events may be tagged as *errors* and such clarification becomes progressively tougher to admit as the number of events revealed rises. Any inconsistency amidst the third-party information and the data provided throughout detection, no matter how slight ought to be examined.

NUANCES TO THE MATRIMONIAL FORENSIC ACCOUNTING ASSIGNMENTS:

Fraud as a part of a marital forensic accounting assignment can be efficiently investigated once the following subtleties are understood.

1. Income & Assets Are in The Eyes of The Beholder

The rules that classify the liabilities and assets assess the income available for consumption, and the determination of the taxability of such income is established by the Income Tax Act. What may be considered an income or an asset for separation may not be actually an income or an asset in a different situation, i.e., the Income Tax Act. E.g., any income received for the purpose of determining sustenance can be money received from any source and hitherto not be assessable income.

2. Balanced Relationship Between Income & Assets – Expenses & Liabilities

An entry might look in as an income, yet under other circumstances, it actually may be shown as a return of capital contributed. In such cases, all the cash flows are required to be examined and analyzed carefully and their nature is properly demarcated and documented. There can be possibilities of debauchery in creating a benefit that otherwise would not be apparent without a wary analysis of the records.

3. Income Earned Before Being Received

There are possibilities that the earning spouse may dispense his/her earnings to a friend, family member, and/or any trusted third party, or the receipts may be planned to be received until a later date in the future. The ability to manipulate the timings and the receipts by the earning spouse needs to be considered.

4. Income Received Before Being Earned

The advance receipts by the spouse should be revealed as a debt on the personal balance sheet, in case of bona fide expenses involved such receipts. The early payment and/or outgoings must normally be unveiled as a liability on an individual balance sheet, and characteristically occur in the form of advances against forthcoming earnings/inflows or expenses (if there is a bonafide disbursement account involved). It is imperative to determine from the financier, the security for the tenure of repayment (if any), the duration covered by the advance and reporting requirements, and written details describing the terms and duration of the concerned arrangement. One apprehension to unveil is whether the said 'advance' is in realism a camouflaged current income and/or bonus.

5. Income Disguised as A Loan

An employer may depict a recompense to an employee as an advance and/or loan, which is repaid shortly after the divorce is concluded – not by adjusting against salary, but relatively by altering the nature of the outgoings as a reward/reimbursement and includes it in income as of the date the character vicissitudes. An aberration of the scam comes into the picture where the employer reduces monetary compensation and pays on behalf of the employee, accounts for the variance for the employee's benefit (and records the transaction as a loan from the employee to the company), or trails the amounts as an off-the-books finance to be repaid to the employee once the divorce is final. Such situations are incurred to create an illusory picture of reducing the compensation when in fact loans are involved.

6. Income Omitted From The Reporting Process

Income may be received or earned and, yet simply be omitted from the reporting process either intentionally or erroneously. Family courts usually depend on a voluntary reporting system, and so any party with an intention of skewing her or his financial statistics enjoys the opportunity to either inflate expenses, omit income, or misreport liabilities or assets. An individual who wishes to believe s/he can accomplish the fraud before s/he will commit the fraud – otherwise, the actions will not transpire since fraud by description is intended to be concealed.

CONDUCTING THE FRAUD EXAMINATION AS PART OF THE FORENSIC ACCOUNTING ASSIGNMENT:

1. **Predication Is Required Before The Examination Begins**

   A forensic investigation should not be used to punish the opposing spouse. In fact, it should be used as a tool to extract the requisite information to assist the Court in ascertaining the assets available for distribution, income available for supporting the family, and so on.

2. **Developing A Profile Of The Marital Unit**

   The income sources and the marital liabilities and assets earlier reported for reasons unrelated to the divorce reveal the unswerving picture of the couple and their lifestyle.

   The forensic investigator must seek out these reports and compare them with the reports submitted at the court describing the couple's lifestyle inspecting personal expenses, tax returns, business financial statements, and other available information or evidence necessitating financial revelations by the parties.

3. **Document Review**

   The Forensic investigator's emphasis should be to identify and detect assets or incomes understated as there may be a probability of financial understatement for the advantage of the reporting party. An examination of the documents, inquiry, and publicly available information may divulge the ownership of assets, and investments otherwise not revealed. The information gleaned from the personal and business records is examined and corroborated for consistency with what the forensics team obtains from the advocate and its client.

4. **Interviews**

   Timing is everything in an interview. The investigator interviewing must not only be wary of the parties but also committed to remaining independent and objective, despite the allegations being made, which must be proven but not putative at face value. A forensic assessor is proficient enough to categorize shams through non-verbal and verbal cues, latent irregularities in written or oral statements, and also unveiling the truth and reading between the lines from the interview.

5. **Investigating For Un-Reported Or Under-Reported Personal Income**

   The income that is either understated or not reported or concealed whether willingly or unintentionally is referred to as "under-reported income". Not only the direct and apparent sources of income but even the indirect sources of income – where a positive impact on liquidity or cash flow may not be visible but financial gains and advantages can be derived, can be attributed to under-reported income.

6. **Closely Held Businesses**

A relationship between the owners and the business income creates various opportunities and possibilities to manipulate one's personal balance sheet by manipulating personal income. During the divorce procedure and tenure, the financial position of an organisation can be pretentiously deflated advancing several objectives to present lesser earnings intuitively, showing the company has lesser profits to be received by the party involved in the divorce. This creative accounting method can be used for deferring or diverting revenues, payment of inappropriate and/or non-business expenditures, excessive expenses, etc. The business income is deceptively and deliberately diminished for diminution of the ostensible proceeds available for dispersal.

7. **Concluding The Fraud Examination**

Examining the assets and incomes by a forensic accountant may result in unveiling additional incomes and/or assets. The uncovering of concealed and/or secret income or assets significantly alters the parties' negotiation positions. If the disclosures are considerable enough, the conclusion of the case can be conspicuously different than primarily projected.

CONCLUSION:

Galea (2018) studied that the several probable augmentations derived are a strong pointer that there is abundant scope for improvement in the forensic accounting niche. It is apparent that forensic accounting universally needs more awareness, education, and training dedicated to it. Forensic Accounting is still in its inception stages, particularly when specialization in this forte is concerned. The eventual consequence is felt by the market not being capacious enough for it to be self-sustaining for a professional to specialise in forensic accounting for matrimonial disputes.

REFERENCES:

Anfuso,R,J. (2009). On The Fringe: Analyzing Perquisites. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 83-86. ISSN 1524-5586

Brinig, M.F., Alexeev, M.V. (1995). Fraud in courtship: Annulment and divorce. *Eur J Law Econ*, 2, pp: 45–62. https://doi.org/10.1007/BF01540823 (Accessed on Feb 10, 2022)

Cawi, I. (2017). Expert Report Under Scrutiny: A Discursive Construction Of The Role Of A Forensic Accountant Expert. Retrieved from *https://ro.uow.edu.au/theses1/19* (Accessed on Dec 23, 2022)

DiGabriele,J,A., Simoes,G,V., & Zaku,L. (2009). The Separation Anxiety Of Marital Assets: Preparation Of The Marital Balance Sheet. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 57-68. ISSN 1524-5586

Filler,M,G. & DiGabriele,J,A. (2009). Considering The Market Approach In Matrimonial Valuations: The Application Of Regression Analysis To The Direct Market Data Method. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 153-194. ISSN 1524-5586

Garcia,K. (2009). Analysis Of The Active And Passive Appreciation Of Closely Held Businesses. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 119-134. ISSN 1524-5586

Galea,S. (2018). Forensic Accounting For Matrimonial Disputes In Malta. Retrieved from *https://www.um.edu.mt/library/oar//handle/123456789/42921* (Accessed on December 22, 2022)

Greenstein,B,R. & Johnson,L,M. (2009). Prenuptial Agreements: An Effective Tax & Financial Planning Tool. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 27-42. ISSN 1524-5586

Huber,E., & Glenn,D,A. (2009). Forensic Accounting For Divorce Engagements: A Practical Guide. *Guides, Handbooks and Manuals*, pp. 462. Retrieved from *https://egrove.olemiss.edu/aicpa_ guides/462*. (Accessed on December 20, 2022)

Hyder,C,B. (2009). Fraud in Divorce. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 1-26. ISSN 1524-5586

Kohn,M. Strengths and Weaknesses of the Excess Earnings Business Valuation Method. (2009). *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 69-82. ISSN 1524-5586

McNulty,J,F. (2009). Retirement Planning for Divorce. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 107-118. ISSN 1524-5586

Metrejean,C,T., & Metrejean,E. (2009). Tax Issues Surrounding Children in Divorce. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 43-56. ISSN 1524-5586

Metrejean,C.T., & Tatum,C,L. (2009). Divorce-Related Payments – The Alimony Recapture Trap. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 135-144. ISSN 1524-5586

Muthupandian,K,S. (2009). Judicial Decisions on Qualification and Entitlement to Relief from 'Joint and Several Liability'. *Journal of Forensic Accounting - Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 87-106. ISSN 1524-5586

Nunn,L., McGuire,B.L., Whitcomb, C., & Jost, E. (2006). Forensic Accountants: Financial Investigators. *Journal of Business & Economics Research, 4(2).* Retrieved from https://doi.org/10.19030/ jber.v4i2.2631 (Accessed on June 23, 2022)

Rosenfarb,N,B. (2009). Financial Planning and Divorce. *Journal of Forensic Accounting- Special Supplement- Forensic Accounting in Matrimonial Divorce Engagements*, 1(1), pp. 145-152. ISSN 1524-5586

Venkatesh,A., & Manjushree,G,S. (2019). A Study on the Service Performed by a Forensic Accountant in Matrimonial Divorces Using Lifestyle Analysis. *Think India Journal*, 22(43), pp. 92-97. ISSN: 0971-1260

WEBSITES:

https://www.peskindlaw.com/financial-fraud-in-divorce-how-you-can-protect-your-interests/ (Accessed on December 15, 2022)

https://accounting.fau.edu/blog/forensic-accounting-blog/matrimonial-forensic-accounting-practice/ (Accessed on December 10, 2022)

https://inquesta.co.uk/blog/matrimonial-disputes-how-forensic-accounting-helps/ (Accessed on Dec 13, 2022)

https://www.mondaq.com/divorce/441312/untying-the-knot-a-forensic-accountant39s-view-of-divorce-proceedings (Accessed on December 18, 2022)

https://www.mdd.com/forensic-accounting-articles/role-of-a-forensic-accountant-in-divorce/ (Accessed on December 15, 2022)

https://www.marcumllp.com/insights/attorney-expert-relationship-in-matrimonial-matters (Accessed on December 15, 2022)

https://www.bvresources.com/blogs/bvwire-news/2021/08/13/five-areas-to-explore-if-you-suspect-a-spouse-is-hiding-crypto-assets-in-a-marital-dispute (Accessed on December 15, 2022)