

## *The Marriage of Georgiou v. Leslie: A Review of the Applicability of Family Code § 1101 to post-Judgment Dissolution Proceedings*

In the recent case of *The Marriage of Georgiou v. Leslie*, Leslie appealed the Family Court's granting of summary judgment in favor of Georgiou and determination that, once a judgment in a dissolution of marriage has already been entered, **a party could not later bring an action against the other party under Family Code § 1101 for breach of a fiduciary duty** when the parties litigated the particular issue in question and the judgment fully adjudicated the asset.

On appeal the Court of Appeal, Fourth Appellate District, found that Family Code § 1101 for breach of a fiduciary duty did not authorize Leslie's action because the issue which she was litigating had already been fully litigated and adjudicated. The Court further found that Leslie could have sought relief under a different statute, but *that* statute of limitations passed and thus any such action would be untimely. Accordingly, the Court of Appeal affirmed the Family Court's Order.

In that case, Byron Georgiou and Maria Leslie married in 1985 and separated in 2003 and Byron filed for dissolution that same year.

Byron is an attorney and in 2000, prior to the parties' separation, he became "of counsel" at a law firm. In that position, in 2002, Byron secured a client for the firm and became entitled to a 10 percent referral fee in a class action litigation lawsuit. In a contingency fee agreement between the firm and the lead plaintiff, the agreement provided that attorneys fees would be between 8-10 percent of the recovery.

In 2005, the marital status was terminated in a bifurcated Judgment.

In 2007, two years after the marital status was terminated, Byron and Maria entered a marital settlement agreement ("MSA"). Maria knew about Byron's contingency fee agreement with his firm and the lead plaintiff. Maria also knew that the firm recovered approximately \$7.2 billion in settlement and she had received a copy of the fee agreement from Byron.

Maria had deposed a partner at Byron's firm regarding the contingency fee agreement. She also learned through Byron's settlement conference brief that Byron's referral fee could be between \$9 million and \$33 million. She was also aware that the firm intended to seek fees in excess of \$330 million and that Byron intended to "vigorously argue" that he was entitled to a 10 percent fee.

The MSA divided the referral fee unevenly, with Maria receiving 10% of the fee, in exchange for \$7 million in other assets including the family home, among other assets, which was Byron's separate property. Byron received 90% of the fee, life insurance policies, loan receivables, business interests and significant debt.

The MSA was incorporated in a judgment of dissolution which was entered on December 12, 2007.

In 2008, the federal district court granted Byron's firm's fee request, awarding the firm \$688 million in fees. That same month, Byron negotiated a 9 percent referral fee with his firm and paid

Marie \$4 million for her 10 percent share of the fee. Maria realized that Byron was entitled to a fee larger than she originally anticipated, i.e. over \$33 million dollars. She also later learned that she was entitled to an additional \$1.56 million dollars based on her award of 10 percent of Byron's actual recover, which was approximately \$62 million.

Three years following the MSA, on December 13, 2010, Maria filed an action under Family Code § 1101 for Byron's breach of his fiduciary duty of disclosure. She alleged that Byron led her to believe he would receive between \$9 million and \$33 million, that he did not provide her with a copy of the fee agreement with the firm's client and that he fabricated or exaggerated a dispute he had with the firm regarding the fee. She argued that if she knew the terms of the fee arrangement, she would have been able to calculate the fee. Maria sought either one-half or 100 percent of Byron's referral fee based on his alleged breach.

In response, Byron moved for summary adjudication, arguing that Maria's action was not timely.

On its own accord, the Court found that Maria could not seek relief for breach of a fiduciary duty under Family Code § 1101 because such relief "is not legally available in a post-marital dissolution judgment action." Instead, the Court found that relief could be sought under Family Code § 1101 either, "(1) during an intact marriage; (2) in conjunction with a dissolution proceeding; or (3) after the death of a spouse."

The Court reasoned that spouses have a fiduciary duty to each other *during the marriage*. As stated in Family Code § 721, "in transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other." Additionally, Family Code § 1100 provides, "Each spouse shall act with respect to the other spouse in the management and control of the community assets and liabilities in accordance with the general rules governing fiduciary relationships . . ." This duty extends throughout the dissolution of marriage up to and including the distribution of the community and quasi-community property. Each Party's duty extends through preparing and serving of a Final Declaration of Disclosure which contains "all material facts and information regarding the valuation of all assets that are contended to be community property." (Family Code § 2105, subd. (b)(2).) Each spouse's fiduciary duty includes updating and supplementing that disclosure if there have been any material changes.

In the instant case, since Maria filed a post-Judgment action, there was no longer (1) an intact marriage, (2) a current dissolution proceeding between the Parties, and (3) no spouse passed away. Accordingly, Maria could not file for relief under Family Code § 1101.

Maria could have sought relief under CCP § 473 to set aside the Judgment based on mistake, inadvertence, surprise, or excusable neglect. Additionally, Family Code § 2122 provides relief under limited circumstances, including actual fraud, perjury, duress, mental incapacity, mistake (in stipulated or uncontested judgments), and failure to comply with the disclosure requirements. In the instant case, although Maria may sought relief based on a failure to comply with disclosure requirements, she did not timely bring her action. The statute of limitations is for one year from

the Party's date of actual or implied discovery of the failure to comply. In September of 2008, Maria discovered the amount of Byron's referral fee, yet she did not file her action until December of 2010.

The reasoning for the Statute of Limitations is to promote California's strong public policy of assuring finality of Judgments within a reasonable time.

The Court of Appeal found that in the instant case, Byron disclosed the asset, it was a substantial issue in the negotiations for the MSA and the Judgment fully adjudicated the issue. The Court further found that it was not required to determine whether section 1101 *never* authorizes a postjudgment action for breach of fiduciary duty. Instead, it found that it did not apply in *this* case where the issue was fully litigated and determined. The Court further states, that Maria, "cannot take the benefits of the judgment and also obtain 50 percent or 100 percent of the referral fee." To do so would ignore the policy in favor of protecting the finality of Judgments.

Since Maria's only remedy was under Family Code § 2122 and she did not timely file an action, the Court lacked jurisdiction over the matter and summary adjudication was proper.

The Founding Partners of Cooper-Gordon LLP have over sixty years of combined experience in family law matters including dissolutions as well as post-Judgment issues and routinely encounter issues such as that in *The Marriage of Georgiou v. Leslie*. If you have questions regarding your matter, fiduciary duties or the Statute of Limitations for your claims, contact them today to receive a discounted initial consultation.