

Episode #21: What Do I Do When My Spouse Is Hiding Assets?

Jake: All right. So this week we are going to talk about a pretty common question, which is what to do if you think that your spouse is hiding assets. I think it's not an uncommon thing for that to be a suspicion. I was actually having this conversation with a family lawyer who's a friend of mine a couple of weeks ago about how different couples have their finances set up differently.

Sometimes somebody comes into the consult and everything's joint bank accounts. They have access to each other's retirement accounts, brokerage accounts, etc.. Everybody has each other's passwords, everything is open, even though that doesn't preclude somebody hiding assets, and we'll talk about that in a second. Then other times you have where spouses have their own financial accounts and they all have each other's passwords or, more extreme, and we see this quite a bit, where one spouse is controlling of all the finances and where he or she doesn't let the other spouse know what the finances are, what money there is, where it's kept, what's been moved around.

I think it's a scale, as far as what red flags there are, as far as whether or not there's hidden assets or not. That's one that I think a lot of times raises questions it has to be looked at. So Brian, when there's questions about hidden assets what do you tell people? What's the first step you take? What can somebody do if they've got suspicions about a spouse hiding assets?

Brian: Yeah. I typically start with a cost benefit analysis because it is a very common concern. I think that if spouses felt that they could get away with it, we'd see it a lot more frequently than we do as a practical matter.

You don't see it as often as you would think and that's largely because it is for most people who have a kind of 9-5 job and have a salary, have some 401k and some equity in the house, and some assets here and there, for most people hiding assets. In these situations it is difficult to do because there would be a clear financial paper trail or it would just be not worth the effort or not worth the chance of getting caught.

So it's expensive, and it can be expensive and difficult to really look into things carefully. So, before we go down that path, I really want to understand what type of assets might be hidden, or possibly could be hidden, and talk about what the pluses and minuses and the cost would be of really going after those.

So that's where I start the conversation.

Jake: Yeah, I think that's right. I think it's important to remember too, you don't have to start a full-on huge forensic investigation and audit. You can always start smaller, for instance with standard discovery or asking for a couple of years worth of bank statements, which is pretty standard in any divorce, even if you don't have concerns about hidden assets. It's

pretty standard to exchange a couple of years worth of bank statements, credit card statements, financial statements, stuff like that.

It's pretty standard to run a credit report, and look at that and see if everything seems right or out of whack. If it seems out of whack, then you have the ability to dig more and ask for more statements. You can start smaller and then dig into it.

Then on the other extreme, if you just know there's hidden assets, we can kick off cases on the extreme of saying you really expect expansive discovery requests and subpoenas.

I'm going to tell a war story. When I was a two or three year associate, the wife was cut off from all the finances. The husband clearly had all the indications that he was hiding things and not disclosing things to her. So he was out of town for a hunting trip and so we decided to take a little field trip to the house, with the locksmith and opened all the safes and including a floor safe, and pulled out half a million dollars of gold coins from the floor safe, which I promise you if we hadn't done that as soon as the divorce would have been filed that safe would have been empty and he would have said "What are you talking about? There's no gold coins."

Likewise, Brian, how many contested divorces do you see a safety deposit box and a quick visit to the safe deposit box when the divorce is filed?

Brian: In certain cultures it's very common to have gold jewelry or gold bullion or those types of things in possession or as part of a marriage or wedding ceremony, and for those things then to be stored in a safe deposit box.

You're right, inevitably, it seems that those are empty suddenly when a divorce is filed. Usually there's good record keeping about who is the last person in the safe deposit box so we can at least establish who had the motive or the opportunity to remove items, but sometimes proving what was actually in there is more difficult. So it's common.

Jake: Yeah, I think that's right.

Of course the common story is, say the wife visited second to last and he visited last. So you go, okay, the money's missing, so it must've been him because he went there and he's the last one there.

Then the husband goes, no. I went there to go check to see if it was still there. That's why I'm the last one there. I checked and oh my goodness it's empty.

Those are hard. I think people forget, but at the end of the day it just comes down to a judge, or a jury in some instances, but a judge has to make a decision about who's telling the truth. It's like you were saying what's in the safe deposit box. I cleared it out and there was a gold trinket and a thousand dollars in cash and a passport and the spouse was going, what are you talking about? We kept a million dollars in cash in that safe deposit box.

It's a hard one that comes down to what the court believes. If you can show some records and cash withdrawals and that it's not going anywhere, logically, except for the safe deposit

box you might be in good shape. There's ways of piecing it together, but it's a common problem. So what do you do, Brian?

Do you ever hire a forensic accountant really if there is a legitimate concern that there's missing money?

Brian: Sure. And, again, that's a relatively offensive undertaking. I think you should only do that if there's the possibility or likelihood that's out there. To me, the big risk factors are cash businesses rather than just everything being as I said, that paycheck or a drawer or something like that.

For example, the \$500,000 in gold coins in the floor safe you mentioned. If they had been just your salary he would have had to have taken \$500,000 out of the bank account at some point all at once or over time to purchase those coins. That would have been pretty easy to trace if they ran a cash business. Not if you just pocket \$10,000 a month in cash. After 50 months you've got yourself your money and there's no record of it. So that's number one risk.

I think number two is overseas transactions. Whether that's transfers to family members or purchases overseas, those things can be very difficult to track and follow.

I think another one is business deals with family members or close friends, those types of things, which could be somebody kind of holding things or taking a look at what seems to be an unfavorable deal and then they're going to pay them back after the divorce. Those are the ones that would get my attention and would probably trigger some type of further investigation, whether that's a forensic accountant or something else.

Jake: Yeah. I think I would add to that list if they had a construction business or any type of restoration business, or really any type of business you could do this. When we see this sometimes let's say a customer owes \$5,000 and the spouse says, okay, I'm going to write that off and you pay me \$3,000 cash. which a lot of times is maybe originally done to screw the IRS, but then you keep it and you don't tell your spouse about it.

Then that takes a lot of effort to work backwards on that. It can be done if there's books for it, but there's a lot of things to work backwards on it. I think back to how you handle these. We have situations like these safe deposit boxes, concerns about cash business, stuff like that.

Never underestimate the value of a good deposition early on in the case. It doesn't even have to be a long one. Remember in depositions your lawyer gets to sit down with your spouse under oath with the other lawyer there and ask questions. It's different from a discovery request.

If you sit in interrogatories somebody's got 30 days to respond to interrogatories or questions that you send, 25 questions that you can send. And if you send an interrogatory that says "Hey, tell me about how you deal with cash in your business." Somebody has 30 days to think about it and probably figure out why you're asking that question and come up with a good answer or what they perceive to be a good answer to explain themselves, as

opposed to if you just take that quick deposition, which Brian I think you're the one that taught me to just take a quick deposition at the beginning of a case, so somebody doesn't have time to prepare.

They also probably don't think that you're prepared. You have the ability to, I don't want to say spring it on them, but get them on the spot with a lot of time to think about and come up with a story. I think you can get a lot.

I know when we were dealing with the cash business for the construction business, for example, where what they were doing is writing off the final AR but taking cash, and then of course that cash would disappear. We didn't send any discovery requests. We just deposed the CFO and an hour into the deposition we just say "Oh by the way, tell me about this." And he wasn't expecting it. He hadn't been prepped by the husband for the case, so he told us the truth, which was awful for the husband, but he told us the truth and said "Yeah, we do that. We pocket the cash and now I don't know where the cash goes."

That made a big difference in that case. But going back to the point of view, you need to ask for you to have a lawyer that knows what to ask, knows what to look for. Back to your point Brian, you don't want to start every single case off spending \$20,000 on a fishing expedition and they come up with nothing. That's not good advocacy. On the flip side, you need to know whether there's smoke and then to go look for the fire.

So Brian, what is, as far as back to the point of forensic accounting, what have you had forensic accountants do as far as trying to track down whether or not there's hidden money assets out there?

Brian: Yeah. So I think you would start with the bank records, both personal and business if there is a business, and making sure there's no unusual or suspicious or odd transactions. To some extent you if you don't see some of those, you don't need a forensic accountant.

If you see a \$300,000 cash withdrawal shortly before the divorce and there's no explanation for where that went. I think you can be pretty sure that's a hidden asset and it doesn't take in a forensic accountant to tell that. That's an extreme example, but there may be patterns or behaviors that they would be looking for.

Additionally, businesses can be very complex. As you mentioned about how accounts receivable are handled or accounts payable or vendors or write-offs, those are things that you'd want them to look at and to try to figure out if there's something unusual or odd that's within those. Then again, another red flag would be odd business transactions and interactions between business partners, as well as overseas transactions.

So those are the places where I'd have him start, but it'd be specific to what we suspected was out there. I don't want him to go on a fishing expedition. I want him to be pretty, at least initially be pretty focused on, on what they look at. how about you?

Jake: Yeah, I'm the same way. Step one, make sure you have all the statements. Make sure you're not missing gaps or anything like that. I usually get the on a phone call or a zoom call with the expert and the client to talk about what we're looking for. We have people that we

work with routinely, and we tell them what the suspicions are and what we want to track down. The people I work with, they do a good job following that scope, but then just like us let us know if there's anything fishy out there, if they want to look into something more.

Sometimes they come back and go "Yeah, there's a lot of transactions guys, but we can track them all down. It's all there." And sometimes they say there's a lot of missing money or sometimes they say there's missing money but I want you to ask these questions at the deposition. Maybe there's a reason why. Maybe there's some follow-up documentation we need. Having a professional look at when appropriate is really helpful.

Then just to wrap up, one thing, and I preach this a lot I think people forget to do this in their practice, what do you do when you find the hidden asset?

I see a lot of lawyers who when they find the hidden asset, then they go on the spreadsheet and say "Okay we found the \$50,000 in cash that you weren't telling anybody about. We found the bank account that the transfers to your brother were \$100,000 of community money" and they say we caught you and they put it back on the spreadsheet and we all go about our way.

I think what lawyers forget is the court at the end of the day has the ability to make adjustments and they also have the ability to take into consideration this type of behavior when they make that division and also take into account the attorney's fees spent in a case.

So it's important to not just track down the assets, but when you do and somebody really is hiding assets, I think it's really important as an advocate to take it to the next step. That's first of all explaining to the judge that we had to spend \$5,000 on a forensic accountant and an extra \$15,000 in attorney's fees because the husband was hiding money and we found it, so judge, you should make him pay for the attorney's fees. You should make him pay for the forensic accountant.

I think that's a really powerful argument. The other thing they forget to do is make a pitch that says "judge, not only should you do attorney's fees, but you should take this into consideration with the estate." Essentially what this person tried to do is steal \$50,000 or something for my client. If somebody goes and knocks over a liquor store for \$50,000, you don't get to just say, here's the money back. Sorry, but there's a punishment for it and I think the way you make that argument to court is it's a fraudulent move to try to hide money.

If I was going to sue Brian, if I were suing you for fraud, I'd be getting punitive damages. The civil practice and remedies code says that I can get punitive damages for that. That being damages, not just the damages to myself and the punishment on top of that, now you can't do punitive damages in a divorce. The courts are really clear on that. But you can make the argument to the judge to say that because of the fraudulent activity knowledge, I want attorney's fees, but I also want you to take that consideration and give my client 5% more of the community estate or 10% more.

And I think I see a lot of people forget to make that extra move and they sit there and ask for the attorney's fees. I think that's really important. and I think you need to remember to make the argument to the court, that there is money out there that we don't know about.

And so judge, you should take that in consideration when you divide the estate, give my clients more than you would have otherwise been inclined to give the client.

But no, it's a broad topic. It comes up in various different ways. I'm always fascinated with the different ways that hidden assets come up in cases and how people either intentionally or unintentionally hide stuff from their spouses.

It's just something as practitioners we have to be aware of and look into it for every single case. So with that, do you have anything to add to our topic, Brian?

Brian: No. I think that covers it very well. I hope this is helpful. We could certainly dig into this some more and probably will in the future, but that's a good initial overview of this important topic.

Jake: Absolutely. All right. We'll wrap up and see everybody next time.