

THE AUTOMATIC ORDERS - PLUS!!

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Upon the service of the appropriate papers in connection with a lawsuit in which a party seeks the dissolution of his/her marriage by divorce, legal separation, or annulment through the Connecticut Court system, Section 25-5 of the Connecticut Rules of Court automatically imposes certain orders which take effect at the commencement of the action (hereinafter referred to as the "CT Automatic Orders"). Such orders include, but are not limited to:

"...(1) Neither party shall sell, transfer, exchange, assign, remove, or in any way dispose of, without the consent of the other party in writing, or an order of a judicial authority, any property, except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(2). Neither party shall conceal any property.

(3). Neither party shall encumber...any property except in the usual course of business or for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

(4). Neither party shall cause any asset, or portion thereof, co-owned or held in joint name, to become held in his or her name solely without the consent of the other party, in writing, or an order of the judicial authority..."

It is clear under the CT Automatic Orders that once the Plaintiff's attorney signs the lawsuit papers and once the Defendant is served with those papers, the Plaintiff and Defendant, starting at those points in time, as applicable, will be in violation of court orders if he or she takes actions such as:

(1). removing funds from a joint account and putting the funds into an account in only his or her name;

(2) or withdraws funds from a home equity line of credit (hereinafter referred to as a "HELOC") in both of the parties' names and then deposits the funds into his or her own name.

But what happens when the Plaintiff removes \$50,000.00 from a joint account and deposits the funds in his/her own account a week before his/her lawyer signs the complaint or the Defendant withdraws \$50,000.00 from the HELOC and puts it in his or her own name the day after he/she learns that he will be served with the divorce law suit but before the papers are served? This type of activity, unfortunately, happens. Despite the fact that the CT Automatic Orders have not yet taken effect because of the timing of the actions, Connecticut Courts have found a way to act equitably and "right the wrong", as exemplified in two cases, to wit: **Karen Parlato vs. Daniel Parlato** 134 Conn App. 848 (2012) and **Benoit Ansart vs. Christine Ansart** - 55 Conn L. Rptr #6, 225 (3/11/2013).

In the Superior decision in the **Ansart** case, the Plaintiff husband had removed \$350,000.00 from a joint account with his wife and deposited the money into his sole account **three** days prior to his lawyer signing the writ, summons and complaint to initiate the action. The Defendant, through her attorney filed a pendente lite motion (a motion seeking relief prior to the final divorce judgment being entered) in which she sought in part that the “...(a). Plaintiff restore the funds; (b). Plaintiff be enjoined from using the funds without court order; (c). Plaintiff provide an accounting of the funds....) - page #225.

The Superior Court judge in the **Ansart** case relied upon the **Parlato** Appellate Court decision in exerting its equitable powers to grant the relief sought by the Wife, by stating in part that:

“...the court finds that it has the authority pursuant to its equitable powers as articulated by the Court in Parlato to fashion both legal and equitable remedies in domestic relations cases ...and further finds that it has the requisite jurisdiction to issue orders requiring the Plaintiff to return the funds transferred from the joint bank account back into said account pendente lite...” page #226

Connecticut law follows equitable principles in its domestic cases and the Judge in **Ansart** implemented those principles by requiring that the parties be put into the status quo ante position, that had existed prior to the Husband’s actions three days before the start of the divorce case.

The Husband appealed from a pendente lite order in the **Parlato** case in which he had been found in contempt of court for failure to abide an order that he return to the marital estate approximately \$250,000.00 he had withdrawn from a HELOC - in a joint account - approximately four weeks before he had been served with divorce papers filed by his Wife. The Wife had filed a motion for contempt, pendente lite requesting that the Court order the Husband to return the money he had withdrawn, which relief was granted by the Court. The Husband refused to follow the court orders, and was incarcerated, but he did file an appeal.

The Husband claimed in his appeal that the court was without power to issue an order that he return the money and that he was in contempt of a order court order because the court did not have authority to make such a ruling since the withdrawal occurred before the divorce action was filed. The Wife’s attorney argued the issue was that the husband had depleted assets and that it was not a case concerning violation of the CT Automatic Orders; and the Husband’s attorney argued that the Court should handle the issue at the end of the divorce case.

The Appellate court upheld the Superior Court’s decision, and stated in part that:

“...Contrary to the assumption by both parties on appeal, the court did not find that the Husband had dissipated the funds...rather it found that he was attempting to conceal and protect this asset by placing it allegedly under the controlAlthough the Husband’s attempt at concealment and protection began before the automatic orders took effect, it **continued** after the orders were in place and therefore was a violation of those orders...” p. 855

An important lesson from the **Ansart** and **Parlato** cases is that even if the impropriety of the party occurs before the commencement of the dissolution of marriage action, a Judge has the power, if he chooses to exercise it, to find a way to protect the assets of the parties during the course of the case, through the CT Automatic Orders or its equitable powers.

A WORD TO THE WISE - to lawyers whose clients inform them of the desire to circumvent the CT Automatic Orders prior to the effective date of those orders, do you as legal counsel have any ethical duties in this regard?