

**Attorneys
Partner**

• James S. O'Brien, Jr.

Pryor Cashman Wins Trial Upholding Inviolability of Offshore Trust Against Spouse's Claims

In an important ruling in the area of trust law, the Connecticut Superior Court, after a four-day trial, has upheld the inviolability of an irrevocable offshore intergenerational Trust against a wife's claim that its assets should be considered marital assets. The court ruled that the house in which the wife and her husband lived for eight years with their children was not marital property but property of the Trust set up by the husband during their marriage. Pryor Cashman partner James O'Brien was lead trial counsel representing the defendant Trust.

In 1996, while married with children, the Husband created an irrevocable Trust whose purpose was to buy or create Trust owned companies (TOCs) in order to accumulate and compound wealth free of all taxes, in perpetuity, for distribution to the Trust's beneficiaries for generations to come. The Trust's beneficiaries are the Husband's wife, his children and future descendants. The Husband has no beneficial interest in the Trust, retained no power to change its terms, and will receive no distributions from it.

The Trust and all TOCs are to be domiciled only in countries that require no corporate income tax and TOCs may not conduct any trade or business in the U.S., as that phrase is interpreted by U.S. tax law, in order to avoid any U.S. tax obligation. Thus, no U.S. or other corporate income tax will be required on monies earned by the Trust or the TOCs, allowing the Trust's profits to compound free of taxes, perpetually. The Trust was established in Nevis, where the corporate Trustee was based.

After its creation, the Trust created an offshore corporation, with the Trust as sole shareholder. As the offshore corporation's employee "Manager," the Husband developed a computerized trading program for the corporation. The Husband then marketed that trading program on behalf of the corporation to various money managers. The business plan called for the offshore corporation to receive a fee for the use of its trading program in the form of a percentage of the profits that the program generated. The offshore corporation subsequently sold 25% of its potential future income, as a block, to a group of purchasers for approximately \$1.1 million.

As Manager of the offshore corporation, the Husband then decided to invest that money in real estate, purchasing a house, in which he and his family lived for the next eight years. Title was recorded in the name of a Nevis special purpose entity that the offshore corporation created for the purpose of holding title. The Husband was the employee manager of that special purpose entity. The Husband and his family lived rent free in the house as a form of compensation for the Husband's services to the offshore corporation.

When the wife sued for divorce, she insisted that the house (which had appreciated greatly in value) was part of the marital estate, claiming that the Trust was voidable as against public policy; the offshore corporation and the special purpose entity were the Husband's alter ego, and that marital assets were used to purchase the house.

In its decision, the trial court agreed with all of the Trust's arguments and held that no marital assets were used to purchase the house and that the house is not now and never was a marital asset.