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**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

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<p>BYOONG SEOB CHOI,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>JUNG JA KIM,</p> <p style="text-align: center;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>FCD-DI CIVIL ACTION NOS. 08-0254 & 05-0186</p> <p style="text-align: center;">ORDER REGARDING PLAINTIFF'S OMNIBUS MOTION</p>
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I. INTRODUCTION

THIS MATTER was heard on July 2, 2012 in Courtroom 217A on Plaintiff Byoong Seob Choi's ("Choi") Omnibus Motion for: (1) Partial Interim Distribution of Marital Income and Corpus; (2) Order Prohibiting Respondent from Conveying or otherwise Hypothecating Marital Assets; and (3) Mutual or Neutral Management of Marital Estate. Choi was represented by Timothy H. Bellas, Esq. Defendant Jung Ja Kim ("Kim") was represented by Robert Tenorio Torres, Esq. Having read the pleadings and heard oral argument, the court now issues this Order.

II. FACTUAL AND PROCEDURAL BACKGROUND

The parties were married in 1988 and divorced on June 20, 2005.¹ (Motion ¶ 3.) The Decree of Divorce did not distribute the marital assets but the Court retained jurisdiction for the

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¹ The divorce became final thirty days thereafter. 8 CMC § 1103(a), NMI Sup. Ct. R. 4(a)(1)(A).

By Order of the Court, Judge PERRY B. INOS

1 purpose of making such further orders and judgments relative to the distribution of the marital
2 assets and obligations, child custody and visitation, child and spousal support, and other issues
3 necessary to finalize the divorce proceeding. In the summer of 2005, the parties attempted to
4 reconcile and began cohabitating.² They instructed their attorneys to cease litigation and stipulated
5 to the dismissal of all actions on December 15, 2005.³

6 The reconciliation failed at some point in 2007, but the parties disagree when exactly their
7 relationship ended and whether a distribution of marital assets occurred. Choi claims that he left for
8 South Korea on business on August 24, 2007 and that the parties were still in a relationship when
9 he left. (Declaration of Choi ¶¶ 10-14, 24.) During his absence, and after he had transferred various
10 marital assets to Kim in order to avoid government forfeiture⁴, Kim cut off all communication with
11 him, precipitating his return to Saipan in April of 2008. *Id.* ¶¶ 19-26.

12 Kim, on the other hand, claims that the relationship was over before Choi left for South
13 Korea and that his interest in the shares of two corporations were transferred to her before he left
14 and, hence, before the raid on the Saipan Victoria Hotel. According to Kim, the parties distributed
15 their marital assets themselves without lawyers and without court oversight. Kim retained Soi-In
16 Corporation and Pacific Saipan, LLC, and to that effect, Choi transferred all of his shares in those
17 companies to her. (Declaration of Kim ¶¶ 5-6.) For his portion of the marital assets, Choi retained
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21 ² Choi claims in his motion that they began cohabitating in June, but his Declaration says August. Kim's Declaration
22 says it was in July.

23 ³ All orders filed under FCD FP Civil Action Nos. 05-0181 and 05-0186 were vacated, and the actions in those matters
24 were dismissed. Stipulation and Order for Dismissal ¶¶ 1-2.

⁴ A few hours after departing for South Korea, there was a government raid on the Saipan Victoria Hotel, where Choi
was involved with an illegal gambling operation. Choi claims that because of this raid, Kim advised him that his
attorney at that time stated that the government could seize the marital assets. He further claims that it was on this
belief that he began transferring marital assets into Kim's name alone and also gave her Power of Attorney. See
Declaration of Choi, ¶ 16-23.

1 sole interest in the business ventures that he pursued separately in the CNMI, Dubai, Vietnam, and
2 Mongolia,⁵ including his interests in a casino operated at the Saipan Victoria Hotel. *Id.*

3 According to Choi, however, it was not until after his return to Saipan that the relationship
4 ended. It was at this time that he discovered that Kim was having an intimate relationship with his
5 then attorney. (Declaration of Choi, ¶ 26.) Believing that the December 15, 2005 Order dismissed
6 the Decree of Divorce issued in the prior divorce action and that they were still a married couple,
7 Choi filed for divorce on May 12, 2008. *Id.* ¶ 27.

8 In June 2008, the court granted Kim a Temporary Restraining Order against Choi, and as
9 part of that Order, Judge Govendo denied Choi all access to the assets in question. *Id.* ¶ 28. After
10 that Order was issued, Kim had sole control of Soi-In Corporation and Pacific Saipan, LLC. *Id.* ¶
11 29. While Soi-In and Pacific Saipan bring in large annual revenue⁶, Choi received only \$3,000 per
12 month in temporary support from Kim. *Id.* ¶ 37. Subsequently, during a motion hearing on
13 December 17, 2010, the court terminated these support payments in an oral ruling⁷. *Id.* ¶ 43. The
14 decision to terminate *pendente lite* support was then memorialized in a written order dated January
15 11, 2011.

16 Choi claims in his present motion that because he is not receiving his share of the marital
17 assets, he has been unable to meet his financial obligations (*Id.* ¶ 44), and he has been forced to
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20 ⁵ Kim claims that Choi had separate business ventures in Dubai, Vietnam, and Mongolia. However, no evidence was
21 presented to corroborate this assertion, and Choi denies any interests in these locations.

22 ⁶ According to Choi, the gross revenue for Soi-In in 2011 was estimated to be \$500,000. Declaration of Choi, ¶ 33.

23 ⁷ The court found during this hearing that Choi's business, Saipan Dream, had earned \$85,420 in 2009 and \$71,271
24 through the third quarter of 2010, despite his earlier statements of having no income apart from the support payments he
was receiving from Kim and that his business was losing money. *See* Transcript of December 17, 2010 hearing at 60-
63. A witness also stated that Soi-In used to collect 25% of the winnings from Lucky Seven Poker. However, after
April 25, 2008, the owners refused to turn over this money to Soi-In. The witness testified that one of the owners told
him that they were giving the money directly to Choi. *Id.* at 71-76. The court notes that the person about whom this
witness spoke has filed an affidavit, which directly contradicts this testimony. The money previously provided to Soi-
In varied in range from \$100 to \$1,000 every two days. *Id.* at 74.

1 borrow money (*Id.* ¶ 38, 47, 49) and discontinue the payment of his attorney’s fees (*Id.* ¶ 38), loans
2 (*Id.* ¶ 46), and rental dues owed on his business premises (*Id.* ¶ 45).

3 In response, Kim claims that Choi has no right to the support he seeks or to the transferred
4 assets because they were part of a mutually agreed upon settlement. Moreover, she claims that
5 Choi has income. First, he has been diverting monies owed to Soi-In and collecting that money
6 himself. (Declaration of Kim, ¶ 47-49 and Kim’s Exhibits 22-24; *see also* Transcript of December
7 17, 2010 hearing at 71-76.) He has also received over \$1,000,000 from Kim in an effort to settle
8 his claims to the marital assets and \$93,000 in temporary support. *Id.* ¶ 49. Lastly, Kim alleges that
9 Choi has substantial assets and more than enough income to support himself. (Opposition to
10 Omnibus Motion ¶¶ 22-23; *see also* Transcript of December 17, 2010 hearing at 60-63.)

11 Without asking the court to make any factual findings in this matter, Choi requests the
12 following relief:

- 13 (1) A partial distribution of the marital income derived from the marital estate in the sum of
14 \$15,000 per month and a one-time payment as an advance of his share of the marital estate
15 in the amount of \$50,000 in order to support himself and pay necessary litigation costs;
- 16 (2) That either he or a designee has access to and mutual management of the marital estate with
17 Kim pending final adjudication of the property issues; and
- 18 (3) That the court restrain Kim from further conveying or hypothecating the marital estate
19 assets to any third parties or entities.

20 **III. DISCUSSION**

21 “In granting or denying an annulment or a divorce, the court may make such
22 orders for custody of minor children, for their support, for support of either
23 party, and for the disposition of either or both parties interest in any property in
24 which both have interests, as it deems justice and the best interests of all
concerned may require. While an action for annulment or divorce is pending,
the court may make temporary orders covering any of these matters pending
final decree...”

1 8 CMC § 1311. While the parties in this case are already divorced, the Decree of Divorce did not
2 dispose of the issues surrounding the distribution of marital assets, and this Court expressly retained
3 jurisdiction on those pending matters. Decree of Divorce at 2.

4 **A. The court cannot grant a partial distribution of assets before such assets have been**
5 **classified as either marital or individual property.**

6 Generally, all property acquired over the course of a marriage is presumed to be marital
7 property with both the husband and wife having an equal ownership interest in said property. 8
8 CMC § 1820(a)-(c); *Ada v. Sablan*, 1 NMI 415, 428 (1990). However, this is a rebuttable
9 presumption which may be overcome. The person seeking to exclude said property from equitable
10 distribution has the burden of proving that it is not marital property. *Ada*, 1 NMI at 428.

11 For purposes of Choi's motion, at issue is the current status of two properties: Soi-In
12 Corporation and Pacific Saipan, LLC. While the parties do not dispute that these businesses were
13 originally marital properties, they disagree on whether they still remain part of the marital estate.
14 Choi contends that the transfers to Kim were made in an attempt to protect those assets from
15 possible government forfeiture. He urges the court to find as a matter of law that the transfers did
16 not change the original character of the properties. Kim, on the other hand, claims that these assets
17 were transferred to her as part of a settlement when the parties' relationship ended, and therefore,
18 are her individual properties. A hearing is currently scheduled for September 17, 2012 to determine
19 whether Soi-In Corporation and Pacific Saipan, LLC are marital or individual property.

20 Choi asks this court to maintain the "status quo" by finding that these properties are marital
21 properties until their statuses have been determined and to make a partial distribution of those assets
22 to him now. However, upon review of the prior orders issued in this case⁸ and Kim's claim that

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24 ⁸ See orders dated June 24, 2008, December 17, 2010, and January 11, 2011.

1 these properties were distributed in settlement of the marital estate, the court is reticent to issue
2 such an order without a full evidentiary hearing. Issuing such an order would deprive Kim of her
3 property should the court later find that the assets in question are no longer marital assets. Further,
4 Choi's income and expense declaration shows he has virtually no income or assets. Thus, it is
5 highly unlikely that he would be able to reimburse Kim for any pre-distribution of assets if, after
6 viewing all of the evidence, the court finds that said assets belong solely to Kim.

7 **1. Pre-distribution of assets for litigation expenses is improper at this time.**

8 The court is unable to distribute assets until the property in question has been classified as
9 either marital or separate property. However, the court recognizes the argument advanced by
10 Choi's counsel that his client representation is severely affected and continues to be affected
11 because Choi has unpaid attorney fees and he is unable to pay additional attorney's fees and
12 possibly for an expert to evaluate the businesses. At the same time, the court also recognizes Kim's
13 position that Choi previously misled the court in respect to his financial assets and income. Finally,
14 the court knows that many courts throughout the United States award counsel fees in matrimonial
15 actions in order to assure the overall fairness of the process.⁹ See, for example, *Heustess v. Kelley-*
16 *Heustess*, 158 P.3d 827 (2007) (the purpose of awarding attorney's fees "is to allow the parties to
17 litigate on an equal plane"); (*Grimm v. Grimm*, 276 Conn. 377 (2005) (counsel fees can be awarded
18 so that a party may not be deprived of his rights because of lack of funds); *Jackson v. Jackson*, 282
19 Ga. 459 (2007); *Gates v. Gates*, 933, A.2d 1002 (2007) (the parties must be "on par" with one
20 another). At this point, however, the court is unable to award such fees because it still has doubts
21 about the accuracy and truthfulness of the income and expense reports provided by both parties,

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23 ⁹ The court acknowledges that Choi is not asking Kim to pay his attorney fees but rather that a pre-distribution of assets
24 be ordered so that he has the ability to make these payments. Under this theory, the pre-distribution amount granted to
him would then be deducted from his portion of the assets at final distribution. The court has already addressed why
pre-distribution is unavailable to Choi at this time and takes this opportunity to discuss the crux of the request, which
essentially states that funds are required to litigate this matter.

1 particularly in light of what came out during the December 17, 2010, hearing before another judge
2 in this case.

3 **B. Choi's request for mutual management of the marital estate is inappropriate.**

4 Allowing Choi access and mutual management of Soi-In and Pacific Saipan would
5 essentially be making a predetermination that those assets are marital property. Given the
6 allegation that Choi has a gambling problem, Choi's own admission to gambling in an earlier
7 hearing, and Choi's alleged dire financial constraints, the court is hesitant to give him access to
8 disputed property. Since a hearing has been scheduled in September to determine the status of
9 these assets, the court will refrain from providing Choi access as requested at this time. Denying
10 Choi co-management of the businesses does not put him at a significant disadvantage if the court
11 later finds these properties to be marital assets given the short period of time between the issuance
12 of this order and the upcoming hearing.

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14 **C. Kim is restrained from further conveying or hypothecating the disputed assets to any third parties or entities.**

15 "Each spouse shall act in good faith with respect to the other spouse in matters involving
16 marital property or other property of the other spouse. This obligation may not be lessened by a
17 marital property agreement." 8 CMC § 1814(a). An injured spouse has a claim against the other
18 spouse when damage to his portion of the marital property occurs as a result of a breach of the duty
19 of good faith. 8 CMC § 1831(a). Thus, each spouse is required to act in good faith and to refrain
20 from devaluing, dissipating, or transferring assets that may belong to the other spouse or are marital
21 property.

22 A court may, in its discretion, grant injunctive relief *pendente lite*. See, for example, *In re*
23 *Marriage of De Rosa*, 115 Ill. App. 3d, 774, 778 (1983); *Carter v. Carter*, 393, So. 2d 214 (La. App.
24 1980); *See also* 1-11 Valuation and Distribution of Marital Property § 11.02 (Matthew Bender

1 2012). The purpose of staying the transfer of property in a matrimonial action is to maintain the
2 status quo until final distribution of the assets is ordered. See, for example, *Balkin v. Balkin*, 778
3 N.Y.S.2d. 537, 538 (A.D. 2 Dept. 2004), (where the court granted injunctive relief in order to
4 preserve the parties’ financial status quo); *Wells v. Wells*, 539 S.W.2d 220, 221 (Tex. Civ. App.
5 1976) (where the court said that an injunction granted for the “equitable preservation of the parties’
6 rights” was authorized by statute giving the court the power to grant temporary relief as it may
7 deem necessary and equitable with respect to the parties and their property). See also 1-11
8 Valuation and Distribution of Marital Property § 11.02. The Marital Property Act provides: “In
9 granting or denying an annulment or a divorce, the court may make such orders...**as it deems**
10 **justice and the best interests of all concerned may require.**” 8 CMC § 1311 (emphasis added).
11 Hence, the court has the authority to grant injunctive relief in the interests of justice in matrimonial
12 cases.

13 There are four factors courts must examine when deciding whether to grant a preliminary
14 injunction: (1) whether the claimant has a strong likelihood of success on the merits, (2) the level of
15 the threat of irreparable harm, (3) the balance between the harm faced by the claimant without such
16 relief and any harm to the respondent if relief is granted, and (4) any effect the injunction may have
17 on the public interest. *Friends of Marpi v. Commonwealth*, 2012 MP 9 ¶ 11 n.5, citing *Villanueva*
18 *v. Tinian Shipping & Transp., Inc.*, 2005 12 ¶ 20. In divorce and equitable distribution cases, courts
19 will specifically look at the possibility that a party’s transfers of property may render the ultimate
20 judgment ineffective, whether any transfers have occurred or are imminent, whether a party will be
21 adequately compensated despite the transfers, and various other considerations, depending on the
22 particular circumstances of the case. 1-11 Valuation and Distribution of Marital Property § 11.02.
23 See, for example, *Cardenas v. Solis*, 570 So. 2d 996, 997 (1991).

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1 While courts will generally need to determine if the party seeking such relief is actually
2 entitled to it and therefore has a high likelihood of success on the merits, the presumption that
3 property obtained during the course of a marriage is marital property may make this showing
4 unnecessary in an equitable distribution action. *Bergman v. Bergman*, N.Y.L.J., Aug. 15, 1983, p.
5 18, col. 5, (Sup. Ct. Nassau Co.); see also *Leibowits v. Leibowits*, 93 A.D. 2d 535, 462 N.Y.S.2d
6 469 (2d Dept 1983) (where it would be unnecessary for moving party to establish probability of
7 success). This presumption, that property acquired during the course of a marriage is marital
8 property, cannot be taken lightly. In this case, because the classification of certain property is in
9 dispute, it is essential that said property remain intact until the court is able to properly classify the
10 status of the disputed property.

11 The second and third factors deal with the threat of irreparable harm and the balance of any
12 harm to each party. In that respect, “[a] court is authorized to issue pendente lite injunctive relief in
13 a matrimonial action upon a showing by the movant that the party to be restrained is ‘attempting or
14 threatening to dispose of marital assets so as to adversely affect the movant's ultimate rights in
15 equitable distribution.’” *Balkin*, 778 N.Y.S.2d. 537, 538 (2004), (where the court granted
16 injunctive relief in order to preserve the parties’ financial status quo given the wife’s previous
17 withdrawals of funds from the parties’ accounts), citing *Loderhose v. Loderhose*, 216 A.D.2d 275,
18 276, N.Y.S.2d 453 (1995). Even without such a showing, however, the court can restrain parties
19 from dissipating disputed assets in order to preserve the integrity of the property. Here, the parties
20 are accusing each other of transferring and/or hiding assets, the bulk of those assets remaining in
21 Kim’s sole possession. Given that Choi has provided some evidence that Kim did, in fact, sell off
22 poker machines to keep him from having access to those assets, the court believes that there is a
23 credible threat of harm without such an order. Further if the businesses in question are determined
24 to be marital property, any additional transfers of business assets would likely substantially reduce

