

Fox Rothschild Podcast

Legally EmpowHERed Podcast

Episode Two

Featuring Partner Sahara Pynes with Kimia Klein

Sahara Pynes: Welcome back to Legally EmpowHERed. I'm your host Sahara Pynes, and I'm really excited to bring this podcast to you. As an attorney and former business owner myself, I'm passionate about drawing on my own experience and insight to set my female clients up for success. I know my guest today feels the same.

Today I'm speaking with Kimia Klein, a family law partner in our Los Angeles Office. Kimia's practice focuses on a wide range of family law issues, including dissolution, parentage actions, custody disputes, support issues, property division, prenuptial agreements, domestic violence, business valuation, and other related topics.

Kimia and I are here today to talk about protecting business assets before and during a divorce, and I know she has tons of great tips. Thanks for being here, Kimia.

Kimia Klein: Thank you, Sahara. It's my pleasure to be here today.

Sahara Pynes: Just before COVID, we hosted an amazing panel discussion for our female founders and clients. You were like the star of the panel. Everyone wanted to know how to protect their assets in case of a separation, or a divorce. I can only imagine that with all of us being stuck home with our spouses during lockdown, your practice has gotten busier?

Kimia Klein: You know, it's a very interesting question. I always like to talk about divorce and how COVID, if you spell it backward, is two letters shy of divorce. I think there are a lot of interesting things that happened with divorces during COVID.

Actually, over the last one year, divorce rates have decreased across the country due to the pandemic. Most of this has to do with going from one household into two households, and all of the significant costs that come as a result of having to maintain two households. Most people in America lost substantial income during the pandemic and didn't know what to expect, and so, as a result, they stayed together. That really put the divorce process on hold.

Now, with that being said, we did see a surge of newly filed cases in the middle of the pandemic, and that occurred around July and August. People had been cooped up together for so long in their home after three/four months and were ready to just move forward with their divorce.

Sahara Pynes: Ahh so it finally hit.

Kimia Klein: Yeah, it finally hit, and people just had it. We also saw in the Family Law world, a lot of former clients coming in to modify child support and spousal support due to lack of income during the pandemic. So, there was a big surge of returning clients.

Sahara Pynes: Well, that makes sense certainly. Let's start at the beginning. What can an early stage founder do to begin protecting business assets--maybe just at concept of business, or at the start of operations?

Kimia Klein: That's a great question, Sahara. I would say there are four things for an early stage founder to begin thinking about and putting into action.

For one, make sure you have a great corporate attorney who can assist with preparing all of the paperwork necessary and everything is documented.

Number two, you should consult with a family law attorney, even if you aren't dating, engaged, or anything like that. A family law attorney is great because they will give you options on protecting your assets. One of those options is entering into a prenuptial agreement with your future spouse, which will help govern the disposition of assets and debts, and spousal support in the event of a divorce.

Number three, I strongly recommend that you also contact an estate planning attorney who can help draw up trusts, and some of those trusts can be separate property trusts that will govern also the character of your assets, so that is a great tool.

And, number four, this is something that a person should just do on their own, is keep really good records and books of account. Keep hard copy documents, and copies of all of your records of incorporation, formation records, how much money you used to put into the business and finance it, and all of the partners, copies of checks, copies of bank statements—all of that stuff is really, really important to keep. None of us think that we're actually going to need these documents eight, ten, fifteen years down the road, and it's really hard to go back in time and get those documents.

Sahara Pynes: So, we've heard about the term prenu. What exactly is a prenuptial agreement, and what are the benefits of having one?

Kimia Klein: Great question. A prenuptial agreement is a contract between two spouses, which will govern the disposition of assets, debt, property, and spousal support in the event of a divorce. A prenuptial agreement can also govern what happens in the event of death, but primarily it has to do with what happens in the event of divorce.

You asked what the benefits are of having your prenuptial agreement. One major benefit is, if you own your own business, then you want to make sure that your spouse, or the community if you're in a community property state, does not obtain an interest in the business. One of the big benefits of this is that you can have your spouse waive their right to any interest in the business. This is a critical point, especially if you're in a community property state.

Another big benefit of having a prenuptial agreement is you have the ability to determine what earnings or income will be separate vs. community property, instead of having all income that you've earned during the marriage be community property if you're in a community property state.

Another big benefit of doing a prenuptial agreement, and this goes with a point that I discussed earlier about maintaining good records, when you enter into a prenuptial agreement, prior to executing both parties are required to disclose all of their assets and debts. The idea is that you should know what the other person is worth and has before limiting and waiving certain rights that you would otherwise be entitled to. As a result of this, you are maintaining that record that I said you should do earlier. You're going to have a list of all of your separate property, assets and debts, which get stapled to the back of the prenuptial agreement, and you have it. So, in the event you divorce, we can go back in time and say: OK, well here is everything you had at the date of marriage, it was attached to your prenuptial agreement.

Sahara Pynes: Great, so there is not a spouse that can really hide assets at the pre-nup stage because that is going to be a requirement in order to enter the agreement?

Kimia Klein: Right. If a spouse is going to hide assets, then the other spouse will have a great argument that maybe the prenuptial agreement should be set aside because the other spouse did not provide full disclosure, which is a requirement.

Sahara Pynes: Makes sense. So, what if a founder hasn't taken any of these steps yet but is beginning to feel like their marriage or relationship is starting to unravel. What can they do?

Kimia Klein: Great question. I would say, consult with a family law attorney and understand your options. One of your options may be to enter into a postnuptial agreement with your spouse, which can define property rights in the event of a dissolution. A postnup is very similar to a prenuptial agreement except it's done during your marriage. The only catch is: is your spouse

going to sign off on that postnuptial agreement? Remember, it takes two to tango, and you can't force anyone to sign an agreement. In that respect, if your spouse doesn't sign, you may want to pull the trigger and file for divorce.

Something that would make that decision a lot easier, if you're going to file or not, is determining how long you've been married for and if you've hit that ten year length of marriage in California. A lot of people don't know, but in California, and this is Family Code Section 43-36A, says that where marriage is of long duration the court retains jurisdiction indefinitely after the divorce is completed, unless the spouse agrees otherwise. Retaining jurisdiction means that the court has the ability to continue making decisions about matters between the spouses and can re-evaluate its original order and modify them if it justifies a change. Any marriage that is longer than ten years is automatically considered to be of long duration, and sometimes shorter marriages can be considered lengthy as well. So, what does this mean? It means if you have a marriage that is longer than ten years, you can presumptively pay spousal support for the rest of your life to your spouse, unless one of you die, or your spouse remarries. And that is very, very scary. To my knowledge, California is the only state that has this rule, which is very advantageous to the recipient spouse. It's very scary. So, if you're running a very lucrative business and you're making a lot of income, you want to be mindful of this rule that is in California, so maybe it would behoove you to file somewhere else.

Sahara Pynes: Yeah, especially if things aren't going well, and a spouse is encouraging a westward move to California. Oh boy.

Well, thank you so much, Kimia for joining me on this episode of Legally EmpowHERed. I'm thrilled to have your expertise on protecting business assets in case of a divorce, and hope none of our listeners ever need the advice, but happy to have you here.

Kimia Klein: My pleasure. Thank you so much for having me today.