



# THE ENFORCER

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## ETP - Marital Property Outside Michigan's Borders

*Upon the annulment of a marriage, a divorce from the bonds of matrimony or a judgment of separate maintenance, the court may make a further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall have come to either party by reason of the marriage, or for awarding to either party the value thereof, to be paid by either party in money. MCL 552.19*

The property settlement offer before you awards your client property located in Florida, and further provides for a lien on property located in Ohio. Your client's spouse is willing to sign a Consent Judgment of Divorce with these provisions. Can you record a certified copy of the Consent Judgment of Divorce in the counties in which the properties are located to effectuate the conveyance and perfect the lien? How would you respond?

In our mobile society, ownership of real property located outside of the State of Michigan is not an uncommon occurrence. The presence of extraterritorial marital property ("ETP") can present challenges which require special consideration during divorce proceedings. Such considerations must at the very least include an analysis of: (1) the jurisdictional limits of the court over the ETP, versus its personal jurisdiction over the title owner(s) of the ETP; (2) the ensuing effect of jurisdictional limits on property settlements and lien rights; and (3) your client's potential enforcement remedies and their respective costs.

### Jurisdictional considerations and extraterritorial marital property

Back to law school basics. In 1L, on Day 1, we learn that the courts of this state have general personal jurisdiction over persons domiciled within the state. In our matrimonial practices, those personal jurisdiction requirements are alleged in the divorce complaint, and affirmed during voir dire prior to entry of the judgment. However, divorce judgments do not just dissolve the bonds of matrimony, they divide the marital property, and thus we must consider the court's jurisdiction over that marital property. Balance that with the mandatory requirement that the court which grants

the divorce must also dispose of related matters of support and property.<sup>i</sup> Our Michigan Courts have jurisdiction over the land, chattles, and documents situated *within* the state "...whether or not the persons owning or claiming interests therein are subject to the jurisdiction of the courts of this state." MCL 600.751, 600.755, and 600.761.

In the scenario above, the property settlement proposal involves a conveyance of title to property in Florida and a lien on property in Ohio. The court clearly has jurisdiction of the parties, who hold title to the Florida and Ohio property. The court clearly has the mandate to divide the marital property. However, the divorce judgment standing alone will be ineffectual to convey title or to grant a lien to the ETP because the court does not have jurisdiction over the out-of-state property.

In *Emmons v Emmons*,<sup>ii</sup> the Court of Appeals considered if it was error for the trial court to order a lien on, and to appoint a receiver to sell, property located in Florida. In that case, the defendant agreed to pay plaintiff her equity interest in a Florida condominium via installment payments. Further, the parties agreed that plaintiff would retain a lien on the Florida condominium with full rights to foreclose and execute on a foreclosure until the defendant paid his debts. The defendant defaulted on his payments, and the plaintiff pursued enforcement. The trial court appointed a receiver to sell the Florida property. The receiver did not seek to transfer title, but did direct the marketing of the property. The bidder was the plaintiff wife, and the trial court ultimately entered an order compelling the defendant to convey title to plaintiff.

In its Opinion the Court of Appeals held that the lien provision in the *Emmons'* judgment was invalid and void because it affected property outside of Michigan. "Where the provisions of a property settlement exceed the jurisdiction of the court, those portions are 'void and of no effect for want of jurisdiction'\*\*\*." <sup>iii</sup> The court added that such provisions are void even though the parties include the provisions by consent.<sup>iv</sup>

The Opinion further provided that although the trial court could not order a lien on the Florida property, it could "compel defendant to do equity in relation to the property outside its jurisdiction by exercising its in personam jurisdiction over defendant."<sup>v</sup> It was found that the trial court did not err by appointing a receiver, but that the receiver was also without authority to transfer title to the Florida property: "... because



a Michigan court may not directly affect title to property outside the state by its orders, a receiver appointed by a Michigan court may not transfer out-of-state property.”<sup>vi</sup>

### Possible Solutions

When crafting the divorce judgment, keep in mind the lessons taught in *Emmons v Emmons*. While the court may not have in *rem* jurisdiction over the *res*, it does have *in personam* jurisdiction over the parties in control of the *res*. If necessary, the court can enter orders compelling a party to do what is necessary in conformance with the marital property division.

In our fact pattern the parties are cooperative, and willing to enter into an agreement affecting title and lien rights to property. If you encounter property located outside of Michigan, analyze if it is advantageous for your client to have a contractual property settlement agreement. Cooperative parties may be willing to execute documents that are legally binding and recordable in the state which has jurisdiction over the ETP (for which you may require the assistance of counsel licensed in those states).

But what if you have a non-cooperative spouse? That will be the subject of a forthcoming article.

- i. *McCormick v McCormick* (1997) 562 NW2d 504, 221 MichApp 672, appeal denied 581 NW2d 729, 457 Mich. 859, reconsideration denied, on subsequent appeal 2002 WL 1065641, vacated in part 657 NW2d 118, 468 Mich 858, reconsideration denied 664 NW2d 213, 468 Mich. 859, reconsideration denied 670 NW2d 219, 468 Mich 859, certiorari denied 124 S.Ct. 1177, 540 U.S. 1164, 157
- ii. *Emmons v Emmons*, 136 MichApp 157; 355 NW 2d 898 (1984)
- iii. *Id.*, citing *Flynn v Flynn*, 367 Mich 625, 631; 116 NW2d 907 (1962)
- iv. *Id.*, citing *Rex v Rex*, 331 Mich. 399, 409; 49 NW2d 348 (1951)
- v. *Id.*, citing *Niemetta v Teakle*, 210 Mich 590; 178 NW 37 (1920)
- vi. *Id.*, citing *Pontiac Trust Co. v Newell*, 266 Mich 490; 254 NW 178 (1934)

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