

Marmer Penner Inc. Newsletter

Written by Steve Z. Ranot, CPA, CA, CBV
Edited by Anna M. Barrett, BSc, CPA, CA, CBV, CFF

Lease Payments in Net Family Property

Russell Alexander recently wrote in the January 2020 issue of *Money & Family Law* about a husband who put a bow on a leased vehicle for his wife before they separated. After separation, that obligated him to keep paying for her car lease. That is not the only automobile lease-related net family property (“NFP”) issue.

Have you ever seen a party include future car lease payments as a liability in an NFP statement or Form 13.1? The rationale appears to be that the spouse still has a legal obligation to pay, say, 30 monthly payments at \$600/month at the valuation date. If a spouse still had 30 monthly payments at \$600/month on a car loan, we would all likely agree that it is an appropriate liability for NFP purposes. So, should there be a distinction? The answer is “Yes”. In the case of a car loan, the spouse must also indicate the value of the car as a personal asset. In the case of a lease, if the present value of the lease payments is indicated as a liability, are we not missing the related asset? While the car is not owned, the lessee has use of a car for 30 months and that value is likely close to the present value of the future lease payments. So, in general, a lease obligation does not create an NFP liability.

However, it is not always the case that a car lease cannot impact NFP. Some car purchases are structured as a lease requiring the “owner” to pre-pay, say, 24 months of the lease up front. In that case, the owner has an asset in the form of a prepaid expense, no different than prepaid rent on the balance sheet of many companies. In many cases, a car lease of, say, \$650/month for 36 months can be reduced to \$350/month if the lessee pays a \$10,000 down payment. If parties separate shortly after one spouse has just paid such a \$10,000 down payment, there is an economic asset at the valuation date calculated at about \$300/month for the remaining term of the lease because the \$10,000 down payment entitled the lessee to reduced monthly payments.

Given the high cost of residential rent in Toronto nowadays, one should also expect that the value of most tenants' prepaid "last month rent" is now a significant amount, and a lease payment that qualifies as property in the calculation of NFP.

This newsletter is not intended to substitute for proper professional planning. It is intended to highlight areas where professional assistance may be required or enough to discuss at the next hoedown. The professionals at Marmer Penner Inc. will be pleased to assist you with any matters that arise. Please feel free to visit our website at www.marmerpenner.com.