

Challenges to the Validity of Prenuptial, Postnuptial and Marital Settlement Agreements

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In Pennsylvania, couples are free to enter into agreements to spell out and protect their rights and resolve problems regarding property division, debt division, spousal support and other relevant issues before their marriage has taken place (prenuptial agreement), during their marriage (postnuptial agreement), and after the married couple has decided to divorce (marital settlement agreement). Although, once signed, these agreements are typically valid and enforceable in Pennsylvania, an unhappy spouse may later attempt to challenge the validity of the agreement. Pennsylvania case law offers some guidance as to how courts will treat challenges to prenuptial, postnuptial and marital settlement agreements so that parties can understand what factors will make an agreement more or less likely to be deemed enforceable.

The starting point for assessing the merit of any challenge to the validity of a marital settlement agreement in Pennsylvania is the decision in *Simeone v. Simeone*¹, wherein the Pennsylvania Supreme Court analyzed the enforceability of a prenuptial agreement and set forth the standards for determining the validity of marital settlement agreements generally. In that case, the wife challenged the validity of a prenuptial agreement she and her husband entered, in which she waived her claim to alimony pendente lite from husband in the future. She claimed that the agreement was unreasonable and that she was not informed of the nature of alimony pendente lite when she relinquished it. The Superior Court rejected her challenge and affirmed that contracting parties are bound by their agreements without regard to whether the terms were read and fully understood and irrespective of whether the agreements embodied reasonable or good bargains.

However, the Superior Court went one step further and stated that these agreements will only be enforced where the parties make a full and fair disclosure of their financial positions at the time of contracting.² Even if the agreement does not contain the financial disclosure, the presumption of full disclosure arises as long as the agreement states that full and fair disclosure has been made. A spouse can only attempt to rebut this presumption through proof of duress, fraud or misrepresentation by clear and convincing evidence.³

¹ 581 A.2d 162 (Pa. 1990).

² Id. See also *In re Estate of Hartman*, 582 A.2d 648 (Pa. Super. 1990) (although marital settlement agreement did not contain parties' financial disclosures, it was not invalid because it stated that disclosure was made and fact that such disclosure was made was affirmed by testimony).

³ Id. at 167. See also *Crispo v. Crispo*, 909 A.2d 308 (Pa. Super. 2006) (a valid contract existed because the contract was entered into freely, and there was no evidence of fraud, misrepresentation, or duress in the creation of the agreement); *Sabad v. Fessenden*, 825 A.2d 682 (Pa. Super. 2003) (husband was bound by disclosure language and he had failed to rebut the presumption of full disclosure by clear and convincing evidence).

If a party attempts to rebut the presumption that there was full and fair disclosure, he or she will have to prove instances of duress, fraud or misrepresentation by clear and convincing evidence.⁴ All of the elements must be present to warrant the extreme sanction of voiding the agreement. In many cases, parties cannot meet their burden to rebut this presumption. This is because even if one party did misrepresent his or her financial position to the other, the injured spouse still has to prove that he or she was justified in relying on the misrepresentation.

In many cases, a spouse cannot prove that he or she was justified in relying on the other spouse's disclosures because the Pennsylvania courts have held that the parties also have the duties of investigation and due care for their bargain. In one recent Pennsylvania Supreme Court case, the court denied a wife's challenge to an agreement because wife's reliance on husband's misrepresentation of the value of a ring was not justifiable in that she had possession of ring and was not prevented from obtaining an appraisal.⁵ Therefore, if a spouse had the opportunity and access to investigate such disclosures and failed to do so, the spouse cannot claim later that he or she was justified in relying on that disclosure. Many spouses have sufficient opportunity to inform themselves fully of the nature and extent of the parties' assets. They may have access to joint bank accounts, joint tax returns, or other financial documents. If the party fails to investigate, he or she will not be successful in a challenge to the validity of the agreement.

Further, the court's determination as to whether there was adequate disclosure is determined based on the factual circumstances surrounding the disclosure. In one Pennsylvania Superior Court case, *Paroly v. Paroly*,⁶ a husband and wife entered into a divorce settlement agreement and the wife sought to invalidate the agreement, asserting that it did not contain full and fair disclosure of the value of the husband's business. The wife asserted that the husband informed her that his business was valued at \$145,000 and that six months after execution of the agreement, husband sold his business for \$560,000. The parties' agreement provided that they were fully and completely informed as to the value of the assets. The appellate court refused to set aside the agreement. Because the agreement provided that full disclosure was made, a rebuttable presumption of full disclosure arose. The court found it significant that the wife was at one time the office manager for the husband's business, and therefore had knowledge of the general value of the business.⁷ Therefore, even a general knowledge is enough to ensure that the agreement is valid.

⁴ *Hess v. Hess*, 580 A.2d 357 (Pa. Super. 1990). The elements of the fraud, or intentional misrepresentation, are: (1) a representation; (2) which is material; (3) made falsely, with knowledge of its falsity or recklessness as to whether it is true or false; (4) with intent of misleading another into relying on it; (5) justifiable reliance on the misrepresentation; and (6) the resulting injury was proximately caused by the reliance. *Id.*

⁵ *Porreco v. Porreco*, 571 Pa. 61, 70-71 (Pa. 2002).

⁶ 876 A.2d 1061 (Pa. Super. 2005).

⁷ *Id.*; See also *Adams v. Adams*, 607 A.2d 1116 (Pa. Super 1992) (when spouse was fully engaged in the couple's financial affairs and is familiar with a business owned by the other spouse, court will uphold an agreement even when it contains neither disclosure nor an affirmation that disclosure was made).

You and your spouse (or future spouse) are always free to contract with one another and come to an agreement on your own, however, it is always best for both parties to be represented by an attorney through negotiations and for one of the attorneys to draft the agreement. Your attorney will be able to explain to you what you are entitled to and what rights you may be waiving, help you to determine whether your agreement is fair and reasonable for you, and help you to properly investigate your spouse's financial position and disclosures. In this way, you can be sure that the agreement will be more likely to be valid and enforceable in Pennsylvania and help you to avoid unnecessary litigation in the future.

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