

Manifestly Unfair Marital Agreements

By Bari Brandes Corbin

Part Two of a Two-Part Article

In last month's issue, we began an analysis of case law that followed the seminal decision in *Christian v. Christian*, 42 NY2d 63 (1977), in which the Appellate Division declared that a marital agreement can be set aside if it is "manifestly unfair," even if a similar contract between parties in a less "fiduciary" relationship would be upheld.

'UNFAIR' AND 'UNCONSCIONABLE': FURTHER GUIDANCE

In *Terio v. Terio*, 150 AD2d 675 (2d Dept. 1989), a brief memorandum decision, the Second Department affirmed an order of the Supreme Court that, after a hearing, set aside the financial provisions of a separation agreement entered into in 1987 during the pendency of the parties' divorce action. The wife claimed that she ignored the advice of her counsel when she signed it. The appellate court found it significant that the parties were married for over 35 years and that the wife claimed that the husband continually pressured her until she signed the agreement. It further found that the terms of the agreement gave rise to an inference of overreaching, because they were manifestly unfair to plaintiff, but the court gave no indication as to what those terms were.

In *Battista v. Battista*, 482 NYS2d 63 (3d Dept. 1984), the court noted that the attorney testified that relevant facts and the legal ramifications of certain clauses in the agreement were not fully discussed with or disclosed to plaintiff. Nor could he recall if he explained the Equitable Distribution Law to plaintiff and the benefits of her husband's employment, which she relinquished. For her part, plaintiff testified that she did not comprehend her right to equitable distribution of the marital property. Finally, the financial status of both parties was not disclosed to the attorney to enable any meaningful discussion.

In *Gibson v. Gibson*, 284 AD2d 908 (4th Dept. 2001), the Appellate Division held that the wife was entitled to an order setting aside a property settlement and separation agreement on the grounds it was manifestly unfair because plaintiff received no share of the business that was the sole source of income for both parties, and received no share of the parties' net assets of approximately \$235,000. While the defendant assumed the liabilities of the business, the business also provided him with future benefits, such as contracts that would generate revenues over and above their cost. Pursuant to the agreement, the plaintiff was left with no resources and no source of income or other means of support.

We can only surmise the reason the Appellate Division set aside the provisions of the parties' separation agreement relating to economic issues in *Yoell-Mirel v. Mirel*, 34 A.D.3d 796 (2d Dept. 2006), apparently on the grounds that it was manifestly unfair. The agreement was drafted by the wife and signed by the parties without legal counsel. Supreme Court entered a judgment incorporating the terms of the agreement which related to economic issues, except for a provision concerning the marital home, which the Supreme Court determined denied the husband his interest in a significant marital asset without countervailing benefit. The Supreme Court rewrote that provision to provide the wife with a more limited interest in the marital home, and incorporated the rewritten provision into the judgment. The Appellate Division held that the Supreme Court erred in rewriting rather than setting aside the provision of the agreement concerning the marital home. It also held that the Supreme Court erred in entering a judgment incorporating the provision of the agreement concerning child support since it neither complied with nor validly opted-out of the relevant statutory guidelines, and erred in incorporating the remaining portions of the agreement which related to economic issues and dismissing all other claims for relief, as the agreement neither waived nor adequately addressed various significant economic issues. The court held that given the interrelated nature of the economic issues addressed

by the provisions of the agreement and those not adequately addressed by the agreement, the whole of the agreement as it related to economic issues should have been set aside.

In *Bright v. Freeman*, 24 AD3d 586 (2d Dept. 2005), the doctrine of manifest unfairness was applied to an agreement between an unmarried couple. The parties, who were never married, were the parents of two children. When they separated, they entered into a "separation and child support agreement" pursuant to which the father agreed to pay child support in the sum of \$450 per month per child. The father brought action for judgment declaring that the child support agreement between himself and the children's mother was valid and enforceable. The Supreme Court granted the father's motion for summary judgment, declaring that "the agreement is enforceable." The Appellate Division reversed the order on the law, and upon searching the record, granted summary judgment declaring that the agreement was unconscionable and unenforceable. The Appellate Division concluded that "the agreement is so one-sided and inequitable as to be unconscionable." It was of such a quality that no reasonable and competent person would have consented to it.

CONCLUSION

In each of the cases since *Christian*, where the agreement was set aside as manifestly unfair, the unfair financial terms of the agreement and the great disparity in the distribution of the marital assets were considered by the court when it reached the conclusion that the agreement was manifestly unfair and that there was overreaching in its execution. The absence of independent counsel and the fact that no disclosure was made appear to be the other significant factors considered by the courts in determining whether an agreement is unfair. See *Jaus v. Jaus* 562 NYS2d 727 (2d Dept. 1990). A substantially disproportionate allocation in the *Christian* case was the most important factor considered. However, *Christian* was a case of omission, since that court held that the husband had a duty to disclose the values of the assets to the wife. As *Christian* held, the particular result reached by the parties may warrant an inference of overreaching and a determination that an agreement is manifestly unfair.

In a recently decided case, *D.M. v. K.M.*, 14 Misc.3d 1206(a), Slip Copy, 2006 WL 3742801 (Table) *N.Y.Sup., 2006). Justice Visitacion-Lewis noted, in accordance with *Christian*, that in determining the validity of a separation agreement, the court would look at the terms of the agreement to see if there is an inference — or even a negative inference — of overreaching in its execution. It would also take into account the conditions under which the agreement was signed. The court found that the ex-husband in *D.M. v. K.M.* was the only party who stood to benefit from the terms of the amended agreement, which relieved him of his obligation to pay his ex-wife nearly \$1 million of his originally stipulated maintenance obligation of more than \$1.5 million. The ex-wife, meanwhile, was giving up not only her rights to most of her spousal support but also to custody of her children and the corresponding right to receive child support. She gained nothing whatsoever from the amended agreement. In addition, although the ex-husband told the plaintiff that no attorneys would be involved in the renegotiation process, he received his attorney's advice on the issue, and had his attorney write up the agreement. The ex-wife had no attorney representation. Finally, the circumstances of the signing were not conducive to the ex-wife's calm reflection, as plaintiff and his attorney briefly met with her in her apartment building's lobby to present her with the document, telling her the attorney was there to notarize her signature. There was no discussion of the terms incorporated in the amended agreement. Concluded Justice Visitacion-Lewis: "Given that plaintiff was well aware that defendant was drinking regularly during this period, the circumstances under which the amended agreement was executed, together with its inequitable terms, constitute overreaching by plaintiff. Because equity will not validate separation agreements 'born of and subsisting in inequity' (*Christian* at 72), the parties' Amended Agreement is void ab initio and unenforceable."

Bari Brandes Corbin maintains her offices for the practice of law in Laurel Hollow, NY. She is Vice-President of Joel R. Brandes Consulting Services Inc., Jersey City, NJ, and Ft. Lauderdale, FL. © Copyright, 2006. Joel R. Brandes Consulting Services, Inc. and Bari Brandes Corbin. All rights reserved.

LAW JOURNAL NEWSLETTERS REPRINT SERVICE

Promotional article reprints of this article or any other published by LAW JOURNAL

NEWSLETTERS are available.

Call Matt Solomon at 212-545-6289 or e-mail msolomon@alm.com for a free quote.

Reprints are available in paper and PDF format.

4 New York Family Law Monthly www.ljnonline.com/alm?nyfam April 2007

[Go To Top of Page](#)