LAW AND THE FAMILY

## The Validity of Prenuptial Agreements

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PROPERTY SETTLEMENTS are encouraged as consistent with the public policy of New York. Such settlements in prenuptial agreements must be fair and reasonable and not tainted with fraud, misrepresentation, coercion or imposition. In the absence of such taints, these agreements have been presumed to be valid, and the party alleging taints or defects has had the burden of proof to establish their invalidity.[1](#bottom)

Domestic Relations Law (DRL) §236,[B](3), enacted in 1980, attempted to modernize the New York law dealing with prenuptial agreements and with agreements made between spouses during their marriage. Such agreements are commonly referred to as a "stipulation of settlement," "property settlement," "settlement agreement" or "opting out agreement" (referred to as "settlement agreements" in this article).

The subject matter of such agreements includes:

1) a contract to make a testamentary provision of any kind, or a waiver of any right to elect against the provisions of a will; (2) provision for the ownership, division or distribution of separate and marital property; (3) provision for the amount and duration of maintenance or other terms and conditions of the marriage relationship, subject to the provisions of §5-311 of the General Obligations Law, and provided that such terms were fair and reasonable at the time of the making of the agreement and are not unconscionable at the time of entry of final judgment; and (4) provision for custody, care, education and maintenance of any child of the parties.

Where a settlement agreement has been incorporated into a judgment that is valid on its face,[2](#bottom) collateral attack is inhibited. Representation by experienced counsel[3](#bottom) and ratification[4](#bottom) of the agreement, or laches,[5](#bottom) also inhibit or bar subsequent challenges to the validity of the agreement.

**The Issue of Disclosure**

Perhaps the most intriguing issue relates to nondisclosure. During marriage spouses are subject to the special duties imposed by their confidential relationship. As noted in *Christian v. Christian*,[6](#bottom) those fiduciary duties are imposed independently of any statute. In addition, the spirit and the letter of the Equitable Distribution Law (EDL) requires full disclosure between spouses, and to "opt out" of the statutory system there must be a full and complete disclosure of all financial data unless, *perhaps*, there is an intelligent waiver. Nevertheless, it is a perilous undertaking and it invites trouble. Courts ordinarily are wary of waivers of full disclosure.

Matrimonial attorneys often insert clauses in settlement agreements that contain self-serving declarations that each party has made full financial disclosure to the other; that their respective counsel has fully explained to each of them the legal and practical effect of the terms of the agreement, and that the circumstances surrounding the preparation and execution of the agreement were fair, and not the result of fraud, duress or undue influence.[7](#bottom)

If "unconscionability" is established, such clauses certainly have limited, if any, effect. But if the settlement agreement is fair on its face, and especially if the complaining party was represented by independent counsel, such clauses are effective and, at a minimum, place a heavy burden on the party who asserts invalidity.[8](#bottom) Statements of net worth are mandatory and liberal discovery procedures on financial matters are available.

This obligation regarding disclosure also applies to the bargaining stage prior to reaching an agreement. Since the settlement agreement may serve in lieu of valuation and distribution by the court, it is imperative that the parties know what they are doing and what is at stake.

In the past, prenuptial agreements were treated differently from settlement agreements. Courts sustained the validity of a prenuptial agreement where there was an intelligent waiver and full disclosure was *not* made. In *Hoffman v. Hoffman*,[9](#bottom) the court held that a failure to disclose the full extent of a party's assets does not in itself constitute such fraud or overreaching that would invalidate a prenuptial agreement, where no representations were made and thus none were relied upon.

In *Matter of Greiff* [10](#bottom) the Court of Appeals extended the concept of "fiduciary relationships" to engaged parties when they execute a prenuptial agreement, and it held that the existence of certain "exceptional circumstances" can warrant a shift of the burden of proof bearing on its legality and enforceability.

Appellant Helen Greiff married Herman Greiff in 1988 when they were 65 and 77 years of age, respectively. They entered into reciprocal prenuptial agreements in which each expressed the usual waiver of the statutory right of election as against the estate of the other. The husband died three months after the marriage, leaving a will that made no provision for his surviving spouse. The will left the entire estate to his children from a prior marriage.

When Mrs. Greiff filed a petition seeking a statutory elective share of the estate, Mr. Greiff's children countered with the two prenuptial agreements, which they claimed precluded Mrs. Greiff from exercising a right of election against her husband's estate.

**'Influence and Advantage'**

The Surrogate found, after a trial, that the husband "was in a position of great influence and advantage" in his relationship with his wife to be, and that he was able to subordinate her interests, to her prejudice and detriment. It further determined that the husband "exercised bad faith, unfair and inequitable dealings, undue influence and overreaching when he induced the petitioner to sign the proffered antenuptial agreements," particularly noting that the husband "selected and paid for" the wife's attorney. The Surrogate's Court invalidated the prenuptial agreements and granted a statutory elective share of decedent's estate to the surviving spouse.

The Appellate Division reversed on the law, declaring that Mrs. Greiff had failed to establish that her execution of the prenuptial agreements was procured through her then-fiance's fraud or overreaching.

The Court of Appeals granted the widow leave to appeal, and it reversed.

It stated the general rule that a party seeking to vitiate a contract on the ground of fraud bears the burden of proving the impediment attributable to the proponent seeking enforcement.[11](#bottom) It said that this rule also applies generally to controversies involving prenuptial agreements.[12](#bottom) However, it noted that it has held that where parties to an agreement find or place themselves in a relationship of trust and confidence at the time of execution, a special burden may be shifted to the party in whom the trust is reposed to disprove fraud or overreaching, citing, among other things, *Christian v. Christian*.[13](#bottom)

As an illustration, the Court referred to *Matter of Gordon,*[14](#bottom) where the administrator of the decedent's estate challenged the transfer of funds by the decedent, one month before her death, to the nursing home in which she was a patient. It pointed out that when it invalidated the transfer it stated:

Whenever \* \* \* the relations between the contracting parties appear to be of such a character as to render it certain that \* \* \* either on the one side from superior knowledge of the matter derived from a fiduciary relation, or from an overmastering influence, or on the other from weakness, dependence, or trust justifiably reposed, unfair advantage in a transaction is rendered probable, \* \* \* it is incumbent upon the stronger party to show affirmatively that no deception was practiced, no undue influence was used, and that all was fair, open, voluntary and well understood" \* \* \* .

The court held that this rule can be applied to the execution of prenuptial agreements. It emphasized, however, that the shift of the burden of proof is neither presumptively applicable nor precluded.

The court noted that its 1894 decision in *Graham v. Graham* [15](#bottom) has been read to hold that prenuptial agreements were presumptively fraudulent because of the nature of the relationship between prospective spouses. Its more recent decision in *Matter of Phillips*,[16](#bottom) on the other hand, was urged to suggest that prenuptial agreements may never be subject to burden-shifting, regardless of the relationship of the parties at the time of execution and the evidence of their respective conduct.

**Equal Footing**

The Court pointed out that *Graham* was decided more than 100 years ago, and it indicated that prospective spouses stand in a relationship of confidence that necessarily casts doubt on or requires strict scrutiny concerning the validity of a prenuptial agreement. *Graham* was based on the outdated premise that the man "naturally" had disproportionate influence over the woman he was to marry. In 1998, society and the law reflect a more progressive view. They now reject the assumption of inherent inequality between men and women, in favor of a fairer, realistic appreciation of cultural and economic realities. The law now starts marital partners off on an equal plane.

Noting that *Phillips* "tugs in the opposite direction" from *Graham*, the court found that it did not upset the principles enunciated in *Graham*, because while holding that prenuptial agreements are not enveloped by a presumption of fraud, the Court in *Phillips* indicated that some extra leverage could arise from the "circumstances in which the agreement was proposed." It distinguished this language in *Phillips* from the holding in *Graham*, finding it was broad enough to encompass the unique character of the bond between prospective spouses whose relationship, by its nature, is "permeated with trust, confidence, honesty and reliance."

The Court of Appeals held that the spouse who contests the validity of a prenuptial agreement bears the burden to establish a "fact based, particularized inequality" before the burden shifts to the party seeking to uphold the validity of the agreement to disprove fraud or overreaching. The court thus eliminated the presumption of fraud enunciated in *Graham* and adopted a "particularized and exceptional scrutiny" test.

As the Appellate Division did not apply these legal principles, the Court remitted the case to it for a new determination. It directed that the question for it to determine is "whether, based on all of the relevant evidence and standards, the nature of the relationship between the couple at the time they executed their prenuptial agreements rose to the level to shift the burden to the proponents of the agreements to prove freedom from fraud, deception or undue influence."

*Greiff* demonstrates that the issue is one of fairness in the negotiations, and that, like beauty, may lie in the eyes of the beholder. Prior to this determination, the intermediate appellate courts upheld antenuptial agreements not tainted by fraud, without an affirmative obligation on the part of both parties to fully disclose their finances and without consideration of whether the terms of the agreement were fair when made. These cases did not reflect the new public policy of New York as enunciated in the *Christian* case and in the EDL, but adopted the policy that existed prior to July 19, 1980.

*Greiff* apparently changes all of this and elevates the status of being engaged to its rightful place as a fiduciary relationship.

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Notes

(1) *Matter of Phillips*, 293 NY 483, 58 NE2d 504, reh den 294 NY 662, 60 NE2d 389.

(2) *Re Estate of Miller*, 97 AD2d 581; *Lambert* *v.* *Lambert*, 530 NYS2d 223.

(3) See *Stoerchle* *v.* *Stoerchle*, 101 AD2d 831; *Richardson* *v.* *Richardson*, 142 AD2d 563.

(4) See *Stoerchle* *v.* *Stoerchle*, supra, *Glaser* *v.* *Glaser*, 127 AD2d 741; *McDougall* *v.* *McDougall*, 129 AD2d 685.

(5) See *Rubinstein* *v.* *Rubinstein*, 130 AD2d 567.

(6) 42 NY2d 63.

(7) See *Wile* *v.* *Wile* (2d Dept) 100 AD2d 932, which attached significance to such clauses.

(8) *Wile* *v.* *Wile*, supra. *Levine v. Levine,* 56 NY2d 42 (1982).

(9) (3d Dept) 100 AD2d 704.

(10) \_\_ NY2d \_\_ , 98 N.Y. Int. 0130. Oct. 27, 1998.

(11) *Matter of Gordon* v. *Bialystoker Ctr. and Bikur Cholim*, 45 NY2d 692.

(12) *Matter of Phillips*, supra.

(13) 42 NY2d 63 (1977).

(14) Supra, N. 11.

(15) 143 NY 573, 579, 580.

(16) Supra.

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