

The Pitfalls of Making “Side-Deals” in Divorce

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A Property Settlement Agreement (“PSA”) is the blueprint for how the parties to a divorce agree to divide assets, and establish custody and support, among other issues to be resolved. Before the court can properly incorporate the PSA into a Judgment of Divorce, however, it is necessary to establish on the record, that both parties actually understand the agreement and are not entering into the agreement under duress, under the influence of drugs or alcohol, and believe that the agreement is fair. If a party does not completely understand the PSA, does not believe it to be fair, or agreed to it as a result of some improper threat, it is critical that the party speak up prior to a final Judgment of Divorce being entered. Parties are generally not permitted to re-litigate their divorce later, simply because they decide later on what they could have done better, or agreed to something that they probably shouldn’t have agreed to.

In Corman v. Corman, the plaintiff-wife waived equitable distribution to certain real property owned by the defendant-husband located in Brooklyn, New York. Why the wife agreed to waive equitable distribution with respect to these assets was perplexing to all involved, and something her attorney specifically advised her was a bad deal. Nevertheless, before the Judgment of Divorce (which would incorporate the PSA) was finalized, the wife gave testimony that she understood the terms of the PSA and intended to be bound by it. The wife also denied the existence of any side deals. About one year after the divorce was finalized, however, the wife moved to set aside certain portions of the PSA, including the portion regarding the Brooklyn properties. Contrary to her earlier testimony, the wife now argued that the PSA was essentially a contract of adhesion, and she only agreed to it primarily because of the husband’s promise to keep the family intact after the divorce. The wife also argued that the husband represented to her that the Brooklyn properties were in a state of financial collapse, and he wanted to secure a divorce so he could file for bankruptcy without damaging the wife’s credit.[1]

In the end, the court disagreed with the wife's position, and declined to set aside the requested portions of the PSA. Applying well-established principals of contract law, the court noted that a party to an agreement (such as a PSA) is bound by the apparent intention that he or she outwardly manifests to the other party according to the actual terms of the agreement. To that end, it is immaterial if the party had some secret or unknown intent, even if that intent differs from the actual terms of the agreement. Accordingly, even if the wife secretly believed she was giving up rights to the Brooklyn properties in exchange for the husband's promise to keep the family together, that understanding was not evident in the terms of the PSA itself and therefore cannot be a basis to reform the PSA.

The result in Corman shows the major risk a party to a PSA takes by making a side deal that differs from the actual terms of the PSA. If the other party fails to follow through with their end of the side deal, there is a strong likelihood that no recourse will be available to the other party, and they will be stuck with the terms of the PSA as written.

[1] It is unclear if this was a misrepresentation.