

WATCH OUT: YOUR PRENUPTIAL AGREEMENT MAY BE SUBJECT TO CHALLENGE

Matrimonial & Wealth Preservation Alert
March 28, 2013

In an unprecedented case recently decided by the New York State Appellate Division, Second Department, a prenuptial agreement entered into in 1998 by a millionaire husband and his soon-to-be wife was thrown out based on the wife's claim, filed 10 years after the prenuptial agreement was executed, that she had been fraudulently induced into signing the agreement based on her future husband's promise that he would tear up the agreement after the couple had children. The wife signed the agreement just four days prior to marriage, despite a 19-month engagement. The couple had three children together after marriage.

While verbal promises historically have not been actionable in the face of a written prenuptial agreement, in *Petrakis v. Petrakis* (2013 NY Slip Op 01057, February 20, 2013), the court found the groom made a promise—a promise he knew his fiancée would rely on—with no intention of keeping it. The court reviewed the totality of the circumstances, including the fact that the groom waited until close to the wedding, when he knew it would be difficult for his bride-to-be to cancel, to present her with the prenuptial agreement, which he told her she must sign in order for the wedding to proceed. Faced with his fiancée's protestations, as noted earlier, he promised to tear up the agreement after they had a family. Despite the fact that both parties were represented by matrimonial counsel in the execution of the prenuptial agreement, the agreement was rescinded.

This decision highlights the importance of not waiting until “the eve of” one's wedding to discuss, negotiate, and sign a prenuptial agreement. While no one looks forward to the thorny discussions necessitated by a prenuptial agreement, avoidance and procrastination may eventually cause one to be without desired financial protection.

Prenuptial agreements, which provide in the event of divorce for the protection of a party's assets, including businesses, real estate, securities, and inheritances, often take months of negotiation and deliberation. These discussions should not be taken lightly or left for the last minute. In *Petrakis*, the husband's failure to present his fiancée with the agreement until just prior to the wedding gave credibility to the wife's testimony and was key in the court's credibility findings and its decision to rescind the agreement.

Attorneys

Jacqueline Meyer

Practices & Industries

Matrimonial Law & Wealth
Preservation

WATCH OUT: YOUR PRENUPTIAL AGREEMENT MAY BE SUBJECT TO CHALLENGE

For more information, please contact:

Jacqueline I. Meyer
Practice Group Leader
212.751.4300
jmeyer@hodgsonruss.com