

Can a property settlement agreement be rescinded under certain circumstances?

March 1, 2013 | by Einhorn Barbarito

(We've redacted a large amount of personal information to protect the identities of those who are discussed in this question)

Dear Ask the Attorney:

I started crying when I saw a friend's property settlement agreement (PSA). [They were a very successful, well educated couple, both with prestigious jobs and with two daughters who divorced after 19 years together]. He crumbled under the pressure of working endless hours [to pay for their lifestyle] ... and started taking tranquilizers to escape – and then started drinking. .

His wife served him with divorce papers. He was so detached from himself, so guilty (feeling it was all of his fault), did not want the marriage to end. The guy . . . never so much as consulted an attorney throughout the divorce process . . .

The end result? She received one half of his practice's profits, the house and all its belonging and cleaned out their shared account, asked for and received a new car every four years, had full insurance, gained half of his Social Security retirement, and received an insane amount of child support, with him footing the cost of his daughter's expensive college education, car, wedding when the time came, ad nauseum. She received lifetime alimony. He is still driving the beaten up car.

Oddly . . . she announced that he would become his office manager, working from home. . . . allowing her access to his business checking accounts which she took money out whenever she felt like it.

I was taking a paralegal course and was in a Family Law Class when this story unfolded after six years of silence. I suggested the three grounds for nullifying the PSA: 1) Coercion, 2) Duress, and 3) Under the influence of prescription drugs. I strongly suggested obtaining an attorney; of seeing experts in the field of addiction and psychology; to make his ex=wife see a vocational assessment expert; to get an actual appraisal on the marital house; to immediately get her OUT of his office, OFF all his banking accounts, to obtain years of banking and other financial records of hers – not an exhaustive list. Is there a chance of nullifying (hope this is the correct term) the PSA under these circumstances?

Thank you so much in advance for your time and assistance.

GTG

Our guest blogger today is Cimmerian A. Morgan, Esq. Mr. Morgan is Counsel with the firm of with Einhorn, Barbarito, Frost and Botwinick, PC in the family law and matrimonial department and concentrates his practice solely on matrimonial and family law issues. He has litigated many divorce and custody cases.

Dear GTG,

In answering your question, I shall assume that the Settlement Agreement you described was incorporated into a Final Judgment of Divorce (“FJOD”) by a New Jersey Superior Court.

It does appear, based on the facts you have provided, that your friend entered into a settlement that was unfair. However, the task of vacating a FJOD and the parties’ Settlement Agreement can be a difficult one, especially where significant time has passed since the entry of the FJOD. In short, a motion must be filed pursuant to New Jersey Court Rule 4:50-1 in order to request that a FJOD be vacated. Under that Rule, there are only a few circumstances which, if proven, would allow for the Judgment to be vacated. Even if the moving party can meet one of more of the criteria, Rule 4:50-2 requires that the motion be filed with one (1) year of the entry of the FJOD, except when extraordinary circumstances exist.

That being said, if the terms of your friend's Settlement Agreement are truly unconscionable, then he may in fact be able have a Court vacate the FJOD and Settlement Agreement if a proper motion is filed. Your friend should certainly consult with an experienced and skilled matrimonial attorney to assess the facts and determine whether a motion to vacate would be appropriate.

Even if a motion to vacate is deemed not to be the best course of action, it may be that your friend can nonetheless seek and obtain a modification of his obligations pursuant to other New Jersey law. A skilled matrimonial attorney will need to carefully review the existing Settlement Agreement and thoroughly understand the underlying facts before making this assessment.

In short, it is quite possible that your friend may be entitled to relief, but the decision of which relief to pursue and how to pursue that relief should be thoughtfully considered with a matrimonial attorney who is familiar with the relevant law and procedures.

“Ask the Attorney” is a blog in which answers to your legal questions submitted to asktheattorney@einhornlawyers.com may be answered. The answers to the questions are posted every Thursday and are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case is different, therefore you should seek competent legal representation.