

It's Not Binding If It Is Not In Writing

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Many people think that oral agreements are not binding, when in fact that is not the case. The difficulty comes when one party wishes to enforce the terms and the other does not, or there is a discrepancy as to what the exact terms of the agreement are. When that happens, there is a “he said” “she said” dispute, which is difficult to prove unless there has been behavior demonstrating the terms of the agreement.

Oral agreements will be enforced as long as they are reasonable, equitable and made in good faith, so as not to defraud or cheat anyone and are not illegal.

Oral contracts frequently arise in the context of pre- or post-divorce litigation when parties are trying to resolve issues. This can be an overall settlement of the divorce case or limited issues, which are in dispute after the divorce has been granted.

For example, after spending hours in mediation, litigants may leave thinking the issues in dispute are resolved, however, oral settlements reached in mediation are privileged, inadmissible in court and not binding unless the agreements are in writing and signed before mediation comes to an end.

Willingboro Mall, Ltd., v 240/242 Franklin Ave., L.L.C., 215 N.J. 242 (2012).

In the case of Harrington v Harrington, 281 N.J. Super. 39 (App, Div. 1995) certif. denied, 142 N.J. 455 (1995), the attorneys, clients and an accountant met in the cafeteria of the court house for hours of settlement discussions. The parties left and eventually a proposed settlement agreement that was circulated and redrafted several times. Subsequently, one party moved to enforce the terms of the agreement and the other stated no agreement had been reached. In that case, the court held that if the broad contours of a settlement had been reached even if all of the specifics of the agreement had not been fleshed out, it would be enforced.

If an agreement is orally placed on the record, when the parties are under oath, it too will be enforced even though one party may renege on the terms, alleging that it was not enforceable because he had “second thoughts” or because it was not in writing. The oral act is the judicial act: a writing is only the ministerial act which reflects the oral statements made in court.

For many years in New Jersey, palimony claims were based on oral contracts of one party representing that he (or she) would support the other in exchange for the other living in a marriage-like relationship with him (or her). Palimony claims were enforceable if they were able to be proven by the acts and conduct of the parties over a period of time, such as the parties presenting themselves as husband and wife, sharing a residence, as well as all aspects of their lives to the economic detriment of one of the parties. Palimony was usually paid in a lump sum in contrast to alimony, which is support paid as a result of a marriage, and is paid in regular intervals over a period of time.

In January 2010, the New Jersey legislature passed an amendment to the Statute of Frauds, N.J.S.A.. 25-1-5(h) which provided that all future palimony contracts must be in writing in order for them to be enforced.

Oral contracts are enforceable and further, depending on the circumstances surrounding the oral agreement, one cannot renege, have second thoughts, and expect to be relieved of an agreed upon obligation.