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 - Can Courts Override Pre- and Post-Nuptial Agreements?
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Announcements

- The Law Offices of Russell I. Marnell, P.C. has moved its offices down one floor to Suite 400 at 90 Merrick Avenue, East Meadow, New York 11554.
- Russell Marnell moderated a Judicial Forum presented by a panel of Nassau and Suffolk County Supreme and Family Court judges. The program provided matrimonial and family law attorneys with practical tips for effective communication with the court, and was hosted by the National Business Institute on October 3, 2013.
- Russell I. Marnell, lead attorney of Law Offices of Russell I. Marnell, P.C. spoke about “Execution and Enforcement of Prenuptial Agreements” at the Association of Divorce Financial Planners on Tuesday, October 8, 2013.
- Law Offices of Russell I. Marnell, P.C. are pleased to announce that they have been nominated for Best Divorce Lawyer by Best Of L.I., 2014.

Can Courts Override Nuptial Agreements?

A post-nuptial agreement is a contract or agreement executed after the parties get married to address issues that may arise, including division of assets and the like, in the event of a separation or divorce. Two recent cases suggest that these agreements, as well as pre-nuptial agreements, may no longer be viable tools to fully protect assets from equitable distribution.

In *Petracca v. Petracca*, the parties entered into a post-nuptial agreement three months after the marriage. In the agreement, the Wife waived any claim to the Husband’s business interests (including future appreciation), and the marital residence, which was purchased after the marriage for approximately \$3.1 million.

The agreement expressly stated that the parties had been advised by counsel of his or her own choosing. The Appellate Court set the parties’ post-nuptial agreement aside because it was patently unconscionable and unfair given that the Wife waived any interest in the parties’ multimillion dollar residence.

The Court reasoned that the parties have a fiduciary relationship to one another, and as a general matter agreements will be set aside “if manifestly unfair to a spouse because of the other’s overreaching.” The Appellate Court also found that the Husband’s assets were undervalued.

In the second case, *Cioffi-Petrakis, v. Petrakis*, the Wife signed a pre-nuptial agreement against her attorney’s advice. The agreement’s equitable distribution provision limited the Wife to no more than \$25,000 for each year of the marriage and a one-third interest in one of the Husband’s businesses.

The agreement also contained a series of express disclaimers that:

- there were no oral representations other than those set forth in the agreement;
- the agreement set forth the entire understanding of the parties;
- the agreement and its provisions merge any prior agreement; and
- neither party was relying upon any promises that were not set forth in the agreement.

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Despite these express disclaimers, the trial court and Appellate Court relied on the Wife's testimony that the Husband fraudulently induced the Wife to execute the pre-nuptial agreement. As a result, the Court set aside the parties' pre-nuptial agreement.

Judge: Wealth Has No Effect on Child Support

In a case recently decided by the Appellate Division First Department, the Court found that a Father who has custody of his child a majority of the year cannot be directed to pay child support. The Court made this determination even though the Father had \$20 million in assets and the Mother has not held employment since 2001 and has no income.

The Father in this case has custody of the parties' son 56 percent of the year, during the school year. And the Mother exercises parenting time with the child 44 percent of the year, having the child on alternate weekends and Thursday nights.

The Court applied the Child Support Standards Act (CSSA) statute strictly and agreed that the Father as custodial parent could not be compelled to pay child support irrespective of the parties' income.

Flawed Pre-Nuptial Agreements Cannot Be Fixed

In a case recently decided by the New York Court of Appeals, the Court found that a pre-nuptial agreement that contained an improper acknowledgment of the Husband's signature is invalid.

Under New York Law, a prenuptial agreement shall be valid and enforceable if the agreement is in writing, subscribed by the parties, and is acknowledged or proven in the manner required to entitle a deed to be recorded.

In this case, the parties decided that neither would seek maintenance from the other. There was no dispute that the parties' signatures on the pre-nuptial agreement were authentic, nor any claim that the agreement was procured through fraud or duress.

However, the Court found that the pre-nuptial agreement was invalid because the notary who notarized the document failed to include the specific language in his acknowledgment when attesting to the Husband's signature that the Husband was "to me known and known to me." And the notary could not prove that he verified the identity of the Husband. The notary submitted an Affidavit to the court indicating that he could not recall specifically witnessing the Husband's signature. Instead, the notary noted that it was his custom and practice to verify the identity of the person signing the document.

The Court reasoned that it was crucial for the notary's Affidavit to describe a specific protocol that the notary used in witnessing the parties' signatures. The notary failed to do so in this case. As such, the Court found that the pre-nuptial agreement was unenforceable.



LAW OFFICES OF

Russell I. Marnell, P.C.

Divorce and Family Law



Russell I. Marnell, Esq.

Russell I. Marnell is admitted to the bars of New York, California, Nevada, Florida, the United States Tax Court, and Federal District Court. In addition to receiving his J.D. from Hofstra University School of Law, Mr. Marnell has earned a MBA in Accounting and has passed the CPA examination. He has litigated over two hundred trials specializing in cases involving complex custody, equitable distribution, child support, and maintenance issues.

Mr. Marnell's accomplishments include:

- Current member of the Matrimonial Committees of The Nassau and Suffolk County Bar Associations
- Member of the prestigious New York Family Law American Inns of Court
- Fellow of the American Academy of Matrimonial Lawyers

Mr. Marnell has published numerous articles on matrimonial and family law topics, is a frequent lecturer on these subjects, and has appeared on several television and radio programs. Additionally he is 'AV' rated by Martindale-Hubbell. **(An AV rating shows that a lawyer has reached the height of professional excellence. He or she has usually practiced law for many years, and is recognized for the highest levels of skill and integrity.)

Susan P. Marnell, Esq.

Susan P. Marnell, who is of counsel to the firm, concentrates on estate planning, drafting of wills, trusts and related documents, estate administration and guardianship matters.



Gina Dorcelus, Esq.

Gina Dorcelus is an associate attorney with the Law Offices of Russell I. Marnell, P.C. concentrating in divorce and family law. Ms. Dorcelus holds a J.D. from the Ohio State University, Michael E. Moritz College of Law and is a member of the New York and New Jersey Bars. She is a member of the New York Family Law Section of the New York State Bar Association as well as the Matrimonial Committees of the Nassau and Suffolk County Bar Associations and the Immigration Lawyers Association.



Bruce W. Albert, Esq.

Bruce W. Albert, of counsel, has been engaged in the practice of family law in New York City, Long Island and Westchester for more than 35 years and is an adjunct professor at Hofstra University Law School. Bruce W. Albert is a New York State Court appointed Arbitrator and has served as a Referee and Neutral Evaluator in numerous matrimonial cases. Mr. Albert also presently serves on a select committee to make recommendations on behalf of the matrimonial bar to streamline the operations of the matrimonial courts.

Please see our website www.marnelllaw.com for complete attorney profiles.



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About Law Offices of Russell I. Marnell, P.C.

Founded in 1985, the Law Offices of Russell I. Marnell, P.C. provides the residents of Long Island and all areas of New York City exceptional attorney representation as they navigate the difficult journey through complex divorce and custody proceedings. For nearly 30 years our attorneys have concentrated their practice in aggressively defending the rights and interests of our clients in all matters involving divorce, custody, and family law. We understand that the process of resolving family issues is emotionally and financially taxing, and our legal team will respond quickly and honestly to any issues and concerns that you may have throughout the process.

The information in this newsletter is presented as general information and is not to be construed as legal advice to apply to any person or particular situation. Please keep in mind that the law is constantly changing and therefore you should always consult an attorney for legal advice based on the individual circumstances of your situation.

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