

Arm Yourself with Knowledge

Real-life stories of family law 'negotiations' gone wrong

Most people do not enter a marriage thinking that it will end. But, as we all know, relationships do break up, and couples negotiating that split often find themselves dealing with detailed, essential information at a time when they are stressed and overwhelmed. These cases offer a few examples of how important it is to obtain your own legal advice.

Case One – The Right Information Leads to Informed Decisions

In this case, after a 20-year marriage, a woman agreed to forfeit what she was entitled to by law, including spousal support. She was later able to prove in court that she was not properly advised. Her lawyer simply did not have enough information.

Your lawyer must be able to advise you of the options in a proposed settlement, give you an opinion on whether the proposed settlement is reasonable and discuss the pros and cons of the settlement in comparison to the other options. Only then has s/he given you enough information to make an informed decision.

In this case, the wife's lawyer had:

- no corporate financial statements;
- no statements to verify a debt the husband claimed to owe to his father of \$500,000 plus 8% interest that had been accruing for the past 8 years;
- no independent verification of the information supplied solely by the husband and his corporate accountant;
- not finally advised the wife with respect to spousal support: she had discussed with the wife that they would get to it, but had not done so before the settlement was reached and the settlement had no provision for spousal support; and
- not discussed with the wife the risk of non-payment of the settlement amount and no arrangements were made in the agreement for security.

If you were to decide to settle without full information, your lawyer has an obligation to ensure that you really understand what you may be giving up. To the extent possible, your lawyer should provide an estimate of the value that might be lost, or paid above what is warranted, and should give you a comprehensive, even compelling, description of the risk of proceeding without full disclosure. You should have that opinion in writing to avoid any misunderstanding.

Case Two: How a Husband's Deceit Affected a Judge's Decision

Prior to their marriage, the future-husband in this couple requested that his partner sign a Pre-

Nuptial Agreement to protect the “family farm”. At the time, he said he was worth \$400,000. According to the wife, they discussed an agreement, but did not finalize anything. Then, on the day of the wedding, the best man knocked on the almost-wife’s hotel room door with the document in hand, telling her he had to ensure it was signed, which she did. While the husband disputes this version of the story, the court found that the wife was tricked into signing the agreement.

The evidence at the trial showed that husband’s assets at the time of the wedding were actually close to \$3,000,000. And during the marriage, the husband’s assets increased by almost \$2,000,000.

The Justice in the case did not take the prenuptial agreement into account because “it is not an Agreement that (the Wife) had any input in, it is not an Agreement that provided any disclosure from the side who wanted the Agreement and the shadowy nature of extracting her signature”.

It is worth noting that the case did not start out well for the husband as it was found that he claimed to have purchased a diamond engagement ring “of considerable size and value”, when in fact he had spent \$250 on a synthetic diamond that he had to take in to “get cleaned” several years into the marriage, which gave him the opportunity to replace the stone as it was showing signs of wear a real diamond wouldn’t have shown. The wife discovered the ruse after separation when she took the ring to a jeweler.

The court awarded 45% of the growth of assets in “the snapshot in time within which this marriage occurred” to the wife. The husband would likely have fared better without the Agreement at all, as it was pertinent to the Court finding the husband to be “strategic and somewhat cunning, if not deceitful and parsimonious”, although the “Ring Issue” might still have caused him some damage.

Again, had the wife had the time to review and obtain independent advice, this story might have had a different ending.

Case Three: A Quick Meeting with an Unknown Lawyer Does Not Equal Good Advice

In this case, the wife signed a Matrimonial Property Agreement four years into their 14-year Common Law relationship. However, because the wife had not received independent, or thorough, legal advice, the judge declared the Agreement was not enforceable.

At the time of signing the agreement, the husband farmed/ranched in a partnership with his father. While the wife did meet with a lawyer, his fees indicated that he spent as little as 15 - 20 minutes with her. The Court also found that factors of pressure amounting to undue influence were at play:

- the wife understood that the contract was to waive any claim to the husband’s father’s share of the Partnership;
- she had been advised that this was a condition of the husband’s Partnership with his father

- and she would have to leave the farm if she did not sign;
- she was not given a copy of the agreement to review in advance;
 - she was taken to her husband's lawyer's office. He reviewed the agreement with both of them before the husband signed it; and
 - then she was sent to another lawyer's office, "a complete stranger who spent approximately 15 minutes with her before she signed the agreement".

The wife was entitled to make claim against the approximately \$3,700,000 increase in value of the husband's assets.

Going through a separation or divorce is unpleasant for both parties at the best of times. We shared these cases with you to point out how important it is for both parties to obtain informed and independent legal advice when you sign a Co-habitation, Pre-nuptial or Post-Nuptial Agreement or when you are negotiating a settlement after a split. Without it, both parties are at risk – one of not receiving what they would be entitled to in a Court, and the other of paying for an unenforceable agreement and then having it overturned by a Court with the other party then being awarded an amount as determined by a Judge, as opposed to what the two parties might have been able to negotiate between themselves.

Both partners should always obtain independent legal advice. You will be more likely to have all the information you need, and you will both be treated fairly.

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