



Signing Pre-Nuptial Agreements under Duress

In a recent Federal Magistrates Court decision of *Blackmore & Webber [2009]*, the Court held that a Binding Financial Agreement entered into before marriage (a "Pre-Nuptial Agreement") was void on the basis of duress and unconscionability.

The facts of this case were that five days before the date set for the parties' wedding, the husband-to-be gave to the wife-to-be, for the first time, the Pre-Nuptial Agreement. When the wife made it clear that she did not wish to sign the Agreement, the husband told her that the wedding was off unless she signed the Agreement.

What made the circumstances even more remarkable were that the wife was from Thailand and was only in Australia on a fiancé visa, which was due to expire in less than two months, meaning that if she was not married in that time she would not be able to stay in Australia. There was also the added pressure that the wife was four to five months pregnant and had made arrangements to visit her family in Thailand three days after the wedding.

After initially refusing to sign the Agreement, the wife eventually signed the Agreement in front of solicitors that had been introduced to her by the solicitors for the husband. There were even issues as to the wife not signing in her usual signature until the husband noticed and made her sign again.

The Court held that by producing the Pre-Nuptial Agreement to the wife for signature less than five days before the wedding, when she was four to five months pregnant, about to return to Thailand in circumstances where her family expected her to return as a married woman, and where she was faced with the real risk of not being able to remain in Australia due to her visa about to expire and threatening her with no marriage, placed the wife in a position where she had little to no choice but to sign the Agreement.

In requiring her to sign the Agreement in these circumstances, the Court found that the pressure placed on the wife by the husband was "illegitimate" and was therefore signed under duress. As such, the Agreement was set aside for duress pursuant to section 90K(1)(b) of the Family Law Act 1975.

What this case highlights is that in signing a "Pre-Nuptial Agreement", all parties must enter the Agreement voluntarily without feeling pressured by one party. Whilst parties do have the right to seek a "Pre-Nuptial Agreement" be entered prior to marriage, demanding that the other party sign such an Agreement, especially just a few days before a wedding, could be seen as duress and therefore grounds for setting the Agreement aside.

If you have any queries in relation to "Pre-Nuptial Agreements", or any other Family Law matter, at Everingham Solomons we have the experience and expertise to assist you, because ***Helping You is Our Business.***



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