

PRE-MARITAL AGREEMENT SET ASIDE IN ARBITRATION



Brian G. Paul of our matrimonial department was recently successful in having a pre-marital agreement set aside resulting in our client receiving approximately \$150,000 more in equitable distribution than if the pre-marital agreement had been enforced. Our client, the wife,

was married to an attorney. Approximately one month before the wedding ceremony, the husband drafted a pre-marital agreement, and presented it to our client, who did not sign it until the week of the wedding. The wife, who was initially represented by another firm, attempted to set aside the agreement on the basis that she had been coerced into signing it because of the close proximity of the wedding ceremony, and that she did not have legal representation at the time of signing. The Judge scheduled the matter for trial to resolve various disputed facts. Approximately three weeks before trial, the wife, who was not happy with her attorney, asked Brian to represent her.

After agreeing to represent the wife, Brian was able to convince the husband's attorney that it would be more cost effective for the parties to resolve the issue through binding, non-appealable arbitration, than to proceed through the court system where there was a high likelihood of appeal. Arbitration is an alternative dispute resolution practice where the parties select their own Judge to resolve their dispute outside the judicial system, with the arbitrator's decision then being confirmed and entered by the Court. The arbitrator's award has the same effect as if the Judge

had decided the case, except that the parties have the ability to make the arbitrator's decision final, and non-appealable, thereby bringing the litigation process to an end in a more expeditious fashion.

At the arbitration hearing, Brian was able to successfully set aside the pre-marital agreement by advancing a technical argument that the wife's prior counsel had not asserted. Pursuant to N.J.S.A. 37:2-33, there are certain prerequisites that must be met for an agreement to be considered a valid Premarital Agreement under New Jersey law. One important prerequisite is that the agreement have a detailed schedule of assets and liabilities of both parties attached to it at the time of signing, so that there can be no dispute later regarding whether an individual had fully disclosed their financial circumstances at the time of signing. In this case, the husband had attached a Statement of Assets and Liabilities that was dated three weeks after the wedding, meaning it could not have been attached at the time the wife had signed it. Although the husband argued that he had simply updated the balances after the marriage and there was an earlier version of the schedule attached when the wife signed the document, the arbitrator agreed with Brian that without the husband being able to physically produce the earlier version, it was impossible for the arbitrator to determine whether there had been full disclosure. Accordingly, the arbitrator set aside the agreement, accepting Brian's argument that it failed to meet the formality requirements of New Jersey's premarital agreement statute necessary for it to be enforceable. Ultimately, our client received approximately \$150,000 more in equitable distribution than if the pre-marital agreement had been enforced.

Brian, a partner with the firm, practices exclusively in the matrimonial area of the law, and has effectively represented clients before the New Jersey Supreme Court, Appellate Division, Superior Courts of New Jersey and the Federal Court system. Brian is one of the few attorneys in New Jersey who has earned the title Certified Matrimonial Law Attorney, meaning that our State's highest court has recognized him as an expert on divorce and family law matters.

In 2007, 2008, 2009, 2010, 2011 and 2012, after a selection process based upon peer voting and credentials research aimed at identifying the top 5% of all attorneys in the State of New Jersey, a blue ribbon panel named Brian a "Super Lawyer™". In 2009, the blue ribbon panel compiling the Super Lawyers™ list identified Brian as one of the Top 100 Super Lawyers™ in New Jersey. Brian was the only Mercer County Family Law Attorney in the Top 100, and one of only two attorneys in the County to be included in the Top 100. In 2006, Brian was honored to be included on the New Jersey Law Journal's "40 under 40" list. In addition, Martindale-Hubbell™ has given Brian its highest rating of "AV Preeminent" in both of his practice areas - Family Law and Appellate Practice.