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Prenups Revisited

This article discusses recent legal cases and issues surrounding prenuptial agreements, emphasizing the importance of clear, specific, and fair drafting. It reviews cases where vague or unfair provisions led to agreements being invalidated or modified, highlighting the need for careful language and consideration of fairness at the time of signing. The recent high-profile engagement of Taylor Swift and Travis Kelce brings attention to these issues.

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The recent engagement announcement of Taylor Swift to Travis Kelce has once again focused the celebrity spotlight on the topic of prenuptial agreements, with the media rife with speculation as to what the terms of their prenup might provide.

Taylor Swift and Travis Kelce Announce Their Engagement, The New York Times 8/26/2025; *Taylor Swift Puts Her Fortune at Risk If She Forgoes a Prenup,* Bloomberg Law 8/27/2025.

Two years ago, this column reviewed then-recent “case law surrounding the interpretation and enforcement of prenuptial agreements” noting that legal practitioners ought to review new rulings for their precedential value in assisting

their clients “in the private ordering of their financial affairs as they enter into a marriage.” *See, Prenups: Recent Controversies Over Plans for Perpetuity,* NYLJ 8/14/2023.

Thus, with the passage of time, the point has been reached where another look at decisional developments makes practical sense for the readers of this column and matrimonial law practitioners in general, with the Swift-Kelce engagement bringing the myriad of issues involved into sharp focus.

A month after this column’s last visit to this topic, the Appellate Division, Second Department, in *Schlosser v. Schlosser,* 219 A.D.3d 1455 (9/20/2023) was called on to review a prenuptial agreement executed three weeks prior to the marriage. In that matter, the husband had purchased a condominium as the parties’ marital residence for $1.6 Million by providing a downpayment of $700,000, while placing title in the wife’s sole name and taking out a mortgage for which he would be solely responsible.

At the time of the commencement of the action, the parties had been married for less than five years.

Their prenuptial agreement provided, in relevant respect, that the husband would contribute $700,000 towards the purchase of a marital residence; if the purchase price was more than said amount, title was to be placed in joint names; if a termination event occurred prior to their fifth anniversary, the wife was to receive a ‘residence payment’ of not more than $700,000, or, in the husband’s sole discretion, he could cede to the wife all of the parties’ right, title and interest in the residence.

The parties’ settlement agreement incorporated the terms of the prenuptial agreement into their 2016 judgment of divorce.

In 2020, the now ex-wife informed the ex-husband that she intended to sell the residence and they then argued over the distribution of the sales proceeds, which led to a motion by the husband to limit the wife to $700,000 of the sales proceeds and to the wife’s cross-motion that the entirety of those proceeds belonged to her because their prenuptial agreement provided that property held in the sole name of one of the parties was that party’s separate property and that she was entitled to the entire sales proceeds as a result.

The court below held that the marital residence was treated differently and separately in the prenuptial agreement from the provisions regarding the parties' marital and separate property and ruled in the husband's favor.

The wife then appealed. Citing to the line of cases holding that "[w]here a prenuptial agreement is clear and unambiguous on its face, the intent of the parties is gleaned from the four corners of the writing as a whole with a practical interpretation of the language employed so that the parties' reasonable expectations are met [citations omitted]," the Appellate Division affirmed the lower court.

In doing so, the court held that "although the husband allowed title to the marital residence to be placed in the wife's name at the time of its purchase, no divorce action was pending at that time, and allowing the wife to retain title at the time of the divorce could not be considered a 'distributive award' because the clear intent of the prenup was to limit the wife's share of the marital residence to $700,000, and to rule to the contrary would provide the wife with a windfall, particularly because the husband had continued to remain solely responsible for the payment of the marital residence mortgage."

Schlosser gives us two important concepts to bear in mind when drafting prenuptial agreements and/or litigating over their validity and enforceability. The first is that the scrivener of the agreement must pay careful attention to the interplay between the various operative provisions, so as to ensure that where a particular asset is treated differently than the other categories of assets, the parties' intention to afford that asset different treatment is clearly stated.

The second is that, when presented with conflicting arguments over the unstated intentions of the parties as to the treatment of a particular asset, courts are going to rule in favor of fundamental fairness as viewed by the courts under the totality of the circumstances presented—e.g., in *Schlosser* the court clearly felt that it was unfair to saddle the husband with the debt incurred in acquiring the asset and to allow the wife to walk away with the entire sales proceeds without satisfying that debt.

On the heels of *Schlosser*, the Appellate Division, Second Department, decided *McEvoy v. McEvoy*, 219 A.D.3d 1513 (9/27/2023), which highlighted a circumstance in which a waiver of spousal maintenance would be held unconscionable, particularly when coupled with provisions stating that marital

property would only be created if marital earnings were deposited into a joint account or if property were titled in the joint names of the parties.

Five years into the marriage, the wife suffered a stroke, having ceased working and after first becoming a stay at home parent following the birth of the first of the parties' two children early in the marriage.

Noting that an agreement which may not have been unconscionable at the time of its making may nevertheless become unconscionable at the time that a final judgment of divorce is entered, the court held that the wife had sustained her burden of proof because she received no benefit from the prenuptial agreement, since no marital assets were created during the marriage, and under the agreement's terms she had relinquished all claims to property or earnings titled in the husband's sole name.

In addition, "enforcement of the agreement would result in the risk of the [wife] becoming a public charge, as she had recently suffered a debilitating stroke, had been unemployed since the birth of the parties' first child, and would be left largely without assets, while the [husband] would retain approximately $942,000 in assets and continue to earn approximately $190,000 per year * * *."

Thus, the wife was awarded $34,631.28 per year for spousal maintenance and $2,885.94 per month for child support, plus 80% of the children's add-on expenses for the then eight and four year old children.

This decision is consistent with the requirements of Domestic Relation Law (DRL) §236B(3) requiring that a marital agreement be "fair and reasonable" at the time of its making and with respect to spousal maintenance "not unconscionable" at the time of entry of a final decree of divorce.

Later in 2023, the Third Department decided *Gaudette v. Gaudette,* 222 A.D.3d 1313 (Third Dept. 12/28/2023) involving an appeal by a husband from the denial of his motion to enforce the parties' prenuptial agreement and from a post-trial order providing for equitable distribution of their marital property.

The court below had found that the terms of the prenuptial agreement were "vague and undefined," which "rendered the agreement void." Despite that ruling the husband continued to argue at trial for a division of the marital property in accordance with the prenuptial agreement.

The Third Department held that the lower court should have permitted the introduction at trial of extrinsic evidence to "attempt to ascertain the parties' intent" due to the ambiguities in the agreement and that voiding the agreement as essentially "meaningless" was a "last resort."

The order setting aside the prenuptial agreement was reversed and the case was remanded to the trial court for further proceedings in accordance with the decision of the Third Department.

Here, again, the lack of specificity in the terms of the agreement was the flaw that fueled the litigation; even with that lack of specificity, however, the Third Department was reluctant to throw out the agreement altogether without further inquiry, underscoring New York's preference for allowing parties to order their own affairs.

At issue in *Almountaser v. Abdo,* 225 A.D.3d 651 (Second Dept. 2024), decided last year, was an Islamic Mahr agreement that was attached to the parties' marriage license from Yemen where they had been married 15 years prior to the commencement of the divorce action. A Mahr agreement provides "in accordance with Islamic law, that the husband will pay to the wife a specified sum in the event of a divorce."

The husband claimed "that the Mahr agreement resolves all issues concerning equitable distribution, maintenance, and counsel fees." The wife claimed otherwise. Each party submitted differing translations of the Mahr agreement, and the husband moved for summary judgment dismissing the complaint to the extent that it sought awards of equitable distribution, maintenance and counsel fees.

The Appellate Division affirmed the lower court's denial of the husband's motion, noting that neither translation of the Mahr agreement contained "an explicit waiver of equitable distribution, maintenance or counsel fees * * *." This is yet another example of the absence of specific agreement language undercutting a proponent's arguments regarding a prenuptial agreement.

In *Block v. Block*, Sup Ct. Suffolk County, NYLJ 5/9/2024, Justice Valerie M. Cartright addressed a wife's attack on the validity of the parties' 12 year old prenuptial agreement because the spaces for the date of the acknowledgement had not been filled in by the subsequently deceased notary, although the month

and year had been specified, and because the agreement was “manifestly unfair, the product of overreaching and unconscionable.”

Both parties testified that each of them had signed the agreement prior to the marriage and acknowledged it in the presence of the notary. At the outset of her decision, Cartright denied that part of the wife’s summary judgment motion which had been based on the notary’s failure to fill in the date as insufficient to vitiate the agreement.

The court then went on to analyze the agreement in light of the wife’s other attacks, finding, among other things, that the agreement unfairly protected from equitable distribution all of the husband’s assets (which were much greater in value than the wife’s) without affording the wife’s significantly lesser assets the same protections; that the wife was unrepresented by counsel with respect to the agreement which had been prepared by the husband’s attorney; that the schedule of the husband’s assets appended to the agreement did not assign specific values to each asset while indicating that total value of his premarital assets were “worth more than [$1 Million]”; and that two significant assets of the husband were not listed on his schedule.

Cartright found the agreement to be the product of overreaching in that the husband “failed to persuade the court that no deception was practiced, no undue influence was used, and that all was fair, open, voluntary and well understood on the part of the [wife].”

In addition, the justice found that the agreement was unconscionable because, while affording the wife no ownership interest in the husband’s business, the agreement additionally classified the husband’s business income as his “separate property” and rendered it unavailable for spousal support purposes. Thus, *Block* is another example of a court looking at the “fundamental fairness” of the agreement and finding it wanting.

In *Kirshner v. Kirshner*, 228 A.D.3d 923 (Second Dept. 6/26/2024), the parties had entered into a prenuptial agreement which provided that upon the occurrence of a separation event “all marital property, including the increase in value of the [husband’s] separate property retirement accounts, shall be equally divided between the parties.”

The prenuptial agreement defined a “separation event” as “the commencement of an action or proceeding by either party which seeks a divorce” or “the voluntary separation of the parties for a period of not less than 90 days.”

The trial court valued the husband’s retirement accounts as of the date of the action’s commencement and divided them accordingly. On appeal, the wife argued that she should have been awarded one-half of the appreciation in the value of those retirement accounts which had accrued following the commencement of the action.

The Appellate Division, Second Department, held that the trial court properly valued the retirement accounts as of the date of commencement based upon a “practical interpretation” of the prenup’s language as gleaned from its four corners “so that the parties’ reasonable expectations are met. [citations omitted]”

Thus, because the language of the prenuptial agreement referred to the occurrence of a “separation event” for equally dividing the increase in value of the husband’s retirement accounts, both the trial court and the Appellate Division utilized the date of commencement of the action for purposes of valuing the wife’s share of the husband’s premarital retirement assets as reflective of the plain meaning of the language employed in the parties’ agreement.

Early this year, a husband was granted partial summary judgment vacating the portion of a prenuptial agreement containing a waiver of spousal maintenance in *J.M. v. G.V.*, 225 N.Y.S.3d 859 (Sup. Ct. Kings County 1/2/2025).

The parties in that matter had been married just shy of five years at the time that the wife commenced her divorce action. Seven days prior to their wedding, the husband signed the prenuptial agreement at the office of the wife’s attorney.

The husband was not represented by counsel, and he did not have an attorney review the agreement before he executed it. He claimed, among many other things, that the wife “assured him” that the prenuptial agreement was designed to protect as separate property the assets that each of them owned at the time of the marriage.

The husband sought summary judgment setting aside the prenup as “unconscionable, fraudulent and/or the result of overreaching.” Citing several precedents, Justice Jeffrey Sunshine noted that “[d]espite the presumption that a duly executed written instrument which was deliberately prepared by the parties

manifests their true intentions (* * *), an agreement between prospective spouses can be set aside where if the party challenging the agreement demonstrates that it was the product of fraud, duress, overreaching resulting in manifest unfairness, other inequitable conduct."

On the issue of the husband's lack of representation and his claim that he was "deprived of the advice of independent counsel when negotiating and executing the prenuptial agreement," Sunshine noted the provisions of that agreement which indicated that he had been afforded the chance to retain counsel and that he had waived that right, as well as the provisions which noted that the parties had been afforded the opportunity to think about the agreement prior to signing it, and acknowledging that they were entering into the agreement "freely and voluntarily."

The court also noted precedents holding that "threats to cancel the wedding" did not constitute a "sufficient" basis to reach the level of overreaching and duress to set aside an agreement when "standing alone."

After an in depth analysis of the provisions of the prenup relating to separate property, Sunshine found that "the clear and unambiguous language" of the prenuptial agreement demonstrated the parties' intent to retain as their separate property those assets designated as separate and not subject to equitable distribution by their agreement.

Further, even though the agreement permitted the wife who was the wealthier spouse to retain a greater share of assets that would otherwise be marital assets without such an agreement, "the circumstances surrounding the execution of the agreement disclose[d] no issue of fact as to whether there was overreaching," and, therefore, there was no reason for the court decide whether the terms of the agreement were "manifestly unfair on [that] basis."

Sunshine then turned his attention to the issue of "unconscionability", and held that the provisions as to assets were not unconscionable under existing case law.

However, the court then went on to hold that the waiver of spousal maintenance was unconscionable because of the agreement's "failure to provide the full presumptive calculation of the amount of maintenance that would be waived, to a self-represented spouse-to-be" because that was not a "knowing waiver." Citing to *Spiegel v. Spiegel*, 206 A.D.3d 1178 (Third Dept. 2022), Sunshine focused on

the fact that the agreement did not contain the calculations required by DRL §236B (5-a) with respect to temporary maintenance nor the calculations required by DRL §236B (6) as to the presumptive amount of post-divorce maintenance.

In doing so, he noted that the statute's intent was to "ensure that unrepresented [parties] who do not have the benefit of legal counsel have a full and fair opportunity to know what they may be entitled to under the maintenance guidelines statute in the form of an explicitly articulated sum. Only after such an articulated sum is detailed can a self-represented party or parties make a 'knowing waiver' of that right. Without an expressly articulated sum resulting from the statutory calculation, any 'waiver' by a self-represented [party] is, pursuant to the statute, not knowingly made."

Therefore, the court granted the husband summary judgment on this issue.

To a certain degree, Sunshine leaves us to speculate about whether his decision was the result of an effort to achieve fundamental fairness or simply one which turned on the technical deficiencies of the parties' prenuptial agreement.

Readers of this column are strongly urged to review in detail the entirety of Sunshine's decision in *J.M. V. G.V.* to obtain deeper insight with respect to his analysis of the facts and his application of the law in that case because the factual circumstances described by the court are not uncommon in the world of prenuptial agreements.

Finally, in *Dwyer v. Dwyer,* 235 A.D.3d 489 (First Dept. 2/18/2025), the First Department address a husband's appeal from an order granting the wife's cross-motion to fix the asset valuation date for equitable distribution purposes as Aug. 10, 2023, in an action that had been commenced more than ten years earlier on Aug. 1, 2013.

The parties' prenuptial agreement "set a trigger event for determination of the parties' interest in appreciation in value of premarital separate property as of the date of the parties' separation or pending divorce . . ."

Noting that the intent of the parties to a clear and unambiguous agreement "should be determined from what is expressed in writing [citation omitted]," the Appellate Division reversed the court below, while recognizing that "this will likely result in a greater financial disparity than if the trigger date was the date set by

the motion court, 'any such inequality is simply not a basis for vitiating [the parties'] freely-negotiated agreement.'"

Therefore, the Appellate Division set the 'operative date' as the date on which the husband had filed this action for a divorce.

Because the terms of the prenuptial agreement were sufficiently specific and devoid of ambiguity, implicit in the Appellate Division's determination was the view that the parties knew what they were agreeing to with respect to a valuation date regardless of whether with the passage of time one might view their deal as fundamentally unfair to the non-titled spouse where a divorce litigation has dragged out for more than a decade when the values of holdings in almost every asset class have substantially increased.

Following the concept discussed in the above cases regarding the need for specificity, because the parties here were quite specific in their prenuptial agreement about the valuation date to be utilized in the event of a divorce, the court upheld their agreement in that respect.

The lessons in all of these cases for both Taylor Swift and Travis Kelce is that any prenuptial agreement must be carefully composed, not legally unfair or incomplete, specific as to its terms, and not the result of fraud, deceit, overreaching or coercion. Otherwise, *Bad Blood* will be the end result if the planned marriage goes awry.

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