A prenuptial agreement lawyer's role in disputing a BFA

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It is best to seek out a prenuptial agreement lawyer if you want to dispute a binding financial agreement ('BFA'). This type of agreement, like any other contract in law is subject to strict rules. However, s 90K (1) of the *Family Law Act 1975* allows a court to set aside a binding financial agreement. There is a list of reasons outlined in this section including:

- The agreement was obtained by fraud
- The agreement is void, voidable or unenforceable
- If arising circumstances make it impracticable for part of or the entire agreement to be carried out

Fraud

A prenuptial agreement lawyer can advise you on what makes an act of "fraud". Ordinarily it is involves using false representations to obtain an unjust advantage. To prove fraud, it must be shown that the false representation was made knowingly. This can be either without belief in its truth or in a reckless manner.

Void, Voidable or Unenforceable

The terms void, voidable or uncertain will not be unfamiliar to your prenuptial agreement lawyer. Both in common law and equity, a court can deem a BFA invalid if there is duress undue influence, unjust enrichment or unconscionability. In *Teves & Campomayor* duress meant 'sufficient oppression…to vitiate the reality of…consent.' The presence of unconscionable behavior reflects conduct by one party attempting benefit from a person with a disability. If the conduct of the stronger party is not consistent with good conscience, then the court of equity can intervene.

Practicality

A prenuptial agreement lawyer will be able to discuss with you practicality of an arrangement. Specifically, that a distinction can be drawn with the doctrine of frustration in contractual matters. Essentially, the Court will concern itself with the occurrence of events that are not reasonably foreseeable. A prenuptial agreement lawyer will inform you that such events can cause the termination of a BFA if they have the effect of causing an injustice. Whether it be to yourself or other concerned parties.

This is a limited overview of the Courts power to set aside a BFA. Since every scenario is unique it is best to speak to one of our prenuptial agreement lawyers. They will be able to provide advice that is specific to your circumstances and the possible outcome of proceedings.

Contact us on 1800 300 170 or email us at famlaw@matthewsfolbigg.com.au

Disclaimer

Family law situations can be complex and sometimes they can involve serious issues. Information outlined is proposed to provide general guidance only. Due to the seriousness of legal matters as well as the uniqueness of your individual situation, professional advice should be sought. For advice, please contact one of our Family Lawyers.