

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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G/cb

_____AD3d_____

Argued - September 18, 2007

HOWARD MILLER, J.P.
DAVID S. RITTER
GLORIA GOLDSTEIN
THOMAS A. DICKERSON, JJ.

2006-03563

DECISION & ORDER

Angela Barchella, respondent, v Frank Barchella,
appellant.

(Index No. 11997/02)

Daniel D. Molinoff, Larchmont, N.Y., for appellant.

Domenick J. Porco, Scarsdale, N.Y., for respondent.

In an action for a divorce and ancillary relief, the defendant appeals from an order of the Supreme Court, Westchester County (Tolbert, J.), entered February 24, 2006, which, after a nonjury trial, granted the plaintiff's motion to vacate the parties' postnuptial agreement.

ORDERED that the order is affirmed, with costs.

The plaintiff-wife moved to set aside the parties' postnuptial agreement (hereinafter the agreement) pursuant to which she surrendered her interest in significant assets in exchange for the defendant-husband's agreement to purchase a home for her with a maximum value of \$600,000. The wife signed the agreement against the advice of her attorney, while she was undergoing treatment and suffering from the mental and physical effects of complications arising from a surgery. The agreement was drafted by the husband's attorney. After a nonjury trial, the Supreme Court granted the wife's motion to vacate the agreement. We affirm.

In general, postnuptial agreements are subject to ordinary principles of contract law (see *O'Malley v O'Malley*, 41 AD3d 449; *Whitmore v Whitmore*, 8 AD3d 371, 372). However, because of the fiduciary relationship that exists between spouses, postnuptial agreements are closely

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scrutinized by the courts and are more readily set aside on grounds that would be insufficient to nullify an ordinary contract (*cf. Levine v Levine*, 56 NY2d 42, 47; *Cardinal v Cardinal*, 275 AD2d 756, 757; *Paruch v Paruch*, 140 AD2d 418, 421). “To warrant equity’s intervention, no actual fraud need be shown, for relief will be granted if the settlement is manifestly unfair to a spouse because of the other’s overreaching” (*Christian v Christian*, 42 NY2d 63, 72). Here, the Supreme Court properly set aside the agreement as manifestly unfair to the wife because of the husband’s overreaching (*see Frank v Frank*, 260 AD2d 344; *Thomas v Thomas*, 145 AD2d 477; *Stern v Stern*, 63 AD2d 700).

MILLER, J.P., RITTER, GOLDSTEIN and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court