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**Validity of separation agreement made under duress and without consideration
under Maryland law**

Introduction

Our Client wants to determine the validity of a separation agreement. The facts of the case are that the wife wants to separate from her husband. The husband agreed to separate provided the wife signed a separation agreement which requires the wife to undertake a number of financial responsibilities on the husband's behalf including making car payments, covering the husband and her children under her health insurance, and conveying her ownership interest in real estate to the husband. Moreover on the face of the agreement, there appears to be absolutely no consideration given to the wife other than a vague statement on the second page that the wife's contribution to clothing and school needs of the couple's children would be in lieu of child support and that "By signing below acknowledges that we have agreed and that active child support from either party will not take place."

Our Client would like to argue that the separation agreement is not enforceable as it lacks consideration, was made under duress, and the terms are unconscionable.

Question Presented

Is a separation agreement made without any consideration and made under duress enforceable?

Short Answer

A separation agreement is not valid when made without consideration or under duress, and may also be voidable as an unconscionable agreement.

Discussion

In Maryland, the courts have generally considered separation agreements as similar to general contracts. In *Young v. Anne Arundel County*, 146 Md. App. 526, 562 (Md. Ct. Spec. App. 2002), the wife contested the separation agreement's validity alleging that she signed the agreement under duress. The appellate court remanded the case to address the duress, incapacity, and consideration claims with respect to the separation agreement. The court, while dealing with the issue observed that as a contract, a marital separation agreement is subject to the same general rules of construction applicable to other contracts. *Id.* at 562.

In Maryland, a separation agreement is voidable, and subject to rescission, if it can be shown that it was unconscionable or procured through fraud, duress, or undue influence. *Id.* at 595. Grounds in equity or law for revocation of a contract include an allegation that the contract is void for lack of mutual consent, consideration or capacity or voidable for fraud, duress, lack of capacity, mistake, or violation of a public purpose. *Id.* at 595-597.

In *Blum v. Blum*, 59 Md. App. 584 (Md. Ct. Spec. App. 1984), the Appellant husband sought review of the lower court's judgment, which set aside the separation agreements and granted a monetary award and counsel fees in favor of Appellee wife. *Id.* However, the Appellate Court after considering the guidelines in determining whether to set aside the separation agreement or not, affirmed the trial court's judgment as to counsel fees but reversed and remanded those portions of the judgment relating to the setting aside of the separation agreements and relating to the monetary award. *Id.* The Appellate court laid down the guidelines for a court to decide the validity of a separation agreement and observed:

To determine the validity of a separation agreement, the chancellor must look at the consideration and determine if the terms are so unfair and inequitable as to require that the agreement be set aside. If they are not, and he hold they are not, he should then consider whether there was a confidential relationship; then he should consider whether there was duress. If he finds there was duress, he should next consider (1) whether the conditions precedent to setting aside the agreement have been met, including whether the victim retained the benefits; (2) whether the contract was thereafter ratified; and (3) whether laches applies. Then and only then should he decide whether to set aside the agreement and reach the issue of a monetary award.

Id. at 602.

In the case at hand, it appears from the face of the separation agreement that Cynthia received absolutely no consideration in return for her agreement to take on significant financial undertakings on Gary Lasher's behalf, convey real estate to Mr. Lasher and to forego child support payments. There is nothing in the agreement to indicate that Mr. Lasher was giving Cynthia anything in return for her considerable financial sacrifices on his behalf and to his benefit.

Moreover, a case for duress may be made on Cynthia's behalf, as it appears that Mr. Lasher may have coerced Cynthia to sign the one-sided agreement in return for his consent to and cooperation with the separation. In order to establish duress there must be a wrongful act which deprives an individual of the exercise of his free will. *Eckstein v. Eckstein*, 38 Md. App. 506, 512 (Md. Ct. Spec. App. 1978). The burden is on the party challenging the agreement to show that its execution resulted from coercion, fraud, or mistake. *Id.*

In *Eckstein*, 38 Md. App. 506 (Md. Ct. Spec. App. 1978), the wife, who had a history of mental problems, left the marital home without taking her belongings. The husband refused the wife's request to visit or communicate with her children and refused to give her clothing. He told her that she could see her children and take her clothes only if she signed a separation agreement. The agreement gave custody to the husband, deeded her interest in the jointly owned home to him, and waived alimony, maintenance, attorney's fees, and her rights of inheritance. After this, the husband filed for divorce and sought specific performance of the property settlement agreement. The wife objected, asserting coercion and duress. The trial court upheld the validity of the agreement. The Appellate court reversed, holding that the wife established that the separation agreement was signed under duress exercised by the husband. The court held that the husband's conduct amounted to duress as the wife was forced to convey her interest in jointly held property without an opportunity to have her questions answered by the legal advisor. *Id.* at 518. The court observed:

Any wrongful acts that compel a person to manifest apparent assent to a transaction without his volition or cause such fear as to preclude him from exercising free will and judgment in entering into a transaction, constitute

duress. While the determination of duress is dependent upon the circumstances of each individual case, three elements are common to all situations where duress has been found to exist: 1) that one side involuntarily accepted the terms of another; 2) that circumstances permitted no other alternative; and 3) that the circumstances were the result of the coercive acts of the opposite party.

Id at 515.

The *Blum* Court also elucidated the meaning of duress in the context of voidable contracts, stating:

Duress which permits avoidance of a contract consists of the use of coercion, the victim's loss of the ability to act independently and the entry by the victim into the contract.

Blum, 59 Md. App. 584 (Md. Ct. Spec. App. 1984) at 595.

Therefore, the doctrine of duress can be invoked to challenge any manipulative conduct during the bargaining stage that leaves one person at the mercy of another. In the present case where Mr. Lasher demanded that Cynthia sign the agreement before agreeing to separate, Mr. Lasher's conduct would likely amount to duress.

Moreover, if a separation agreement is so lacking in consideration, one-sided and oppressive to one party, the agreement may be deemed void as unconscionable. The incidence of duress or lack of consideration may also render a settlement agreement unconscionable. In *Williams v. Williams*, 306 Md. 332, 342 (Md. 1986), the question presented to the court was whether a trial court could set aside a separation agreement between the parties to the case on the ground that the agreement was so oppressive on the husband that it shocked the conscience of the court. *Id.* at 333. The Appellate Court, while considering the validity of a separation agreement found the agreement unconscionable since the consideration for the agreement was grossly inadequate and the burdens on the husband were oppressive and impossible to perform. The court discussed

the doctrine of "unconscionability" and observed that this doctrine is recognized in the Restatement (2d) of Contracts, § 208. *Id.* at 338

In the case at hand, the separation agreement is clearly one-sided and inures to the complete benefit of Mr. Lasher to the significant financial detriment of Cynthia. Cynthia receives nothing of value in consideration for her undertaking, and as such, the agreement may be voidable as an unconscionable agreement.

Conclusion

Maryland considers a separation agreement as a contract, and hence the general principles of contract analysis apply in determining the validity of a separation agreement. The burden of proof remains with the person seeking to set aside the agreement. The courts have delineated various principles and standards in determining the validity. It will depend on the facts and circumstances of each case. Thus, in order to prevail on the claim that the separation agreement is invalid, the client can base the claim on lack of consideration, duress, and unconscionability.