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Not a Love Story

Category: Separation Agreements

Love means never having to say you're sorry". A familiar expression to that generation mature enough to recall the tear gusher romantic flick "Love Story". But, depending upon a soon to be decided ruling of the Supreme Court of Canada "love" could also mean, "never having to say it's over".

The case involves a Separation Agreement entered into between Eric and Linda Miglin in 1994. Both parties received a division of assets which, by most ordinary people's standards, would seem generous.

The terms of the Separation Agreement provided that the wife obtained ownership of the family home, now apparently worth over one-half a million dollars, and child support of \$5,000 a month for the support of the couple's four (4) children. The husband received ownership of the couple's "Killarney Lodge" a resort which apparently earns the husband millions of dollars in annual revenue. The parties also agreed that the husband was not responsible to pay spousal support to the wife and a provision to that effect was included in the Agreement. It's this spousal support provision which is the focus of the current dispute.

Despite the fact that terms also described the Agreement as being a "full and final settlement", the wife successfully took her husband to the Ontario Court of Appeal to have the Agreement varied, to provide her with monthly spousal support of \$4,400.00. This Court of Appeal decision is currently before the Supreme Court of Canada.

The basis for the wife's legal position is not particularly unusual or unique. Basically, she has found it difficult to obtain satisfactory employment and financial independence with a Bachelor's degree in English literature. She is also claiming that she was pressured into signing the Agreement by her husband at a time when she was "emotionally vulnerable". The husband's lawyer counters with the argument that a "deal is a deal" and that the husband has relied on the fact that he was not responsible to pay spousal support, and arranged his financial affairs

accordingly.

What do I think? Courts, at all levels, can and do decide for a variety of reasons to overturn Separation Agreements. Factors such as duress, undue influence, non-disclosure and lack of independent legal advice are frequently cited in such proceedings. Courts will also be reluctant to enforce the terms of the Agreement if it appears that the Agreement is simply unfair according to it's terms.

What I have yet to hear in this particular case is whether or not the parties received independent legal advice. Although considering the value of the assets it certainly appears likely that they did. If this is indeed the case, and the legal advice they each received was competent and independent, then I believe the Agreement should be enforced according to it's original terms, which would mean no spousal support for the wife.

It may not seem like a fair result (at least for the wife) but everything in life contains an element of risk, and everything we do signifies our acceptance of such risk. Whether it means crossing the street, simply getting up in the morning or even signing a Separation Agreement! 🍷