Despite the Court of Appeals' Pronouncements in *In Re Greiff* Two Decades Ago, the Burden of Proof to Challenges to Prenuptial Agreements Remains Unsettled in the First Department

The Fiduciary Standard Between Betrothed Parties and Spouses No Longer Exists[1]

By Elliott Scheinberg

In 1998, in *In re Greiff*,[2] the Court of Appeals resolved the issue of which party has the initial burden of proof in challenges to prenuptial agreements: "as an incentive toward the strong public policy favoring individuals ordering and deciding their own interests through contractual arrangements, including prenuptial agreements," "a party seeking to vitiate a contract on the ground of fraud bears the burden of proving the impediment attributable to the proponent seeking enforcement. This rubric also applies generally to controversies involving prenuptial agreements. . . . [T]his Court has eschewed subjecting proponents of these agreements to special evidentiary or freighted burdens."[3]

The Court of Appeals underscored that only after the challenger to the agreement has first satisfied her burden of demonstrating "exceptional circumstances," "by a preponderance of the evidence that the premarital relationship between the contracting individuals manifested 'probable' undue and unfair advantage,' that the burden falls upon the proponent of the agreement to show freedom from fraud, deception or undue influence."[4]

Greiff cited *Gordon v. Bialystoker Ctr. & Bikur Cholim, Inc.*,[5] as the scope of "exceptional" circumstances that must occur before burden shifting is directed. In *Gordon*, an estate administrator challenged a gift by the decedent to the nursing home, where the decedent had been "confused, drowsy and at times semicomatose, partially paralyzed, unresponsive and uncooperative, sometimes required to be restrained for her own safety and of impaired hearing . . . not coherent, could not be understood and was not capable herself of understanding," as the predicate "analogous contractual context" before the burden shifts to the proponent of a prenuptial agreement to establish that the agreement was free from wrongdoing.

Nevertheless, two decades later, this issue still receives inconsistent parabolic treatment in appellate decisions.

Greiff also addresses fiduciary relationships and parties "placing themselves in a relationship of trust and confidence at the time of execution." This article briefly explains the origin of the fiduciary and whether case law still preserves that status when parties are steeped in litigation or in a litigation-like posture such as when they are represented by independent counsel in an adversarial-like situation.

Ray v. Ray

Ray v. Ray,[6] decided on February 11, 2020, establishes that the issue of burden shifting, *Greiff* and *Gordon* notwithstanding, remains in flux in the First Department. Therein, not only did the First Department incorrectly apply *Greiff* and *Gordon* but it also cited its own prior erroneous 2013 decision, *Robinson v. Day*,[7] a decision which it effectively reversed 20 months thereafter, in *Anonymous v. Anonymous*.[8]

Nevertheless, while, the First Department, in *Lorenc v. Lorenc*,[9] correctly applied *Greiff* and *Anonymous*, it is unclear why, less than two months later, the same court, in *Ray*, relied upon *Robinson* to erroneously announce a blanket rule regarding burden shifting to the proponent of a prenuptial agreement.

A. The Purpose of a Prenuptial Agreement

Not all marriages are made in Heaven, nor entered solely for reasons of the heart.[10] The purpose of a prenuptial agreement is to either shield the monied spouse's assets or to protect children from prior relationships.

> Prenuptial agreements most often involve substantial disparities of wealth between the parties; nevertheless, such disparities by themselves do not create grounds to set aside marital agreements.

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> Although "there is a heavy presumption that a deliberately prepared and executed written instrument manifests the true intention of the parties," an agreement between prospective spouses may be invalidated if the party challenging the agreement demonstrates that it was the product of fraud, duress, or other inequitable conduct. Nevertheless, such results remain the exception rather than the rule. The burden of producing evidence of such fraud, duress or overreaching is on the party asserting the invalidity of the agreement.[11]

The late scholar and commentator, Leonard Florescue, Esq., framed it such:[12]

> It is fair to say that the wealthy people who enter into prenuptial agreements would not have married without the agreement having been signed. Otherwise, why would they bother with the agreements? The courts of this state have regularly held that such agreements are fully enforceable as other contracts are. These people entered into a marriage contract in reliance on that law.
>
> Now, take the poorer spouse. When the agreement is attacked it is not an academic exercise. He or she does not want to be put back where the parties would be without the agreement, i.e., unmarried and with no rights at all [rescission restores the parties to the original status quo before the agreement]. No, he or she wants all the rights of marriage without having to accept the obligations of the very document without which there would have been no marriage in the first place. Does that sound equitable to you? It doesn't to me and indeed it cries for an estoppel to be asserted. Also, why doesn't the enjoyment of the marriage itself (without the agreement, remember there is no marriage) constitute a ratification of the agreement?

In *Gottlieb v. Gottlieb*,[13] the First Department held:

> The terms of a prenuptial agreement are not manifestly unfair merely because a party may enjoy a less lavish lifestyle upon divorce than existed during the marriage. The purpose of a prenuptial agreement is not to equitably divide up assets, and to maintain the marital standard of living for the lessermonied spouse. That is the purpose of the statutory scheme DRL § 236(B)(5), (6), and is not the reason why most prospective spouses enter into prenuptial agreements.

B. The Court of Appeals: Absent "Exceptional Circumstances" the Burden of Proof to Set Aside a Prenuptial Agreement Rests Upon Its Challenger, Not Its Proponent

In re Greiff; Gordon v. Bialystoker Center & Bikur Cholim, Inc.; Anonymous v. Anonymous; Robinson v. Day; Lorenc v. Lorenc; Ray v. Ray

Actions to vacate prenuptial agreements are extremely popular, in fact, anticipated and almost de rigueur; "litigation over the validity, enforceability and interpretation of prenuptial agreements is one of the mainstays of matrimonial practice."[14]

The rule with respect to antenuptial agreements in this state places no special evidentiary or other burden on the party to the agreement or one on his or her behalf who seeks to sustain the agreement.[15] The party challenging the agreement "bears the very high burden of showing that it is manifestly unfair and that this unfairness was the result of overreaching."[16] In *Gottlieb v. Gottlieb*,[17] the First Department held that the party seeking to set aside an agreement, a prenuptial agreement therein, must "meet a heavy burden." The party seeking to invalidate a prenuptial agreement has the burden of coming forward with evidence showing fraud but, in the absence of proof of facts from which concealment or imposition may reasonably be inferred, fraud will not be presumed; such a presumption must have as its basis evidence of overreaching the "concealment of facts, misrepresentation or some other form of deception."[18]

(I) *In re Greiff, Gordon v. Bialystoker Center & Bikur Cholim, Inc.*

The party seeking to invalidate a prenuptial agreement has the burden of coming forward in evidentiary fashion; wrongdoing will not be presumed.[19] *Greiff* did not shift the initial burden of proof from the challenger to the proponent, except in "exceptional" circumstances.[20]

In *Greiff*, the Court of Appeals reviewed an appeal from a widow whose husband died three months after their marriage; he was 77, she 65. The wife signed a prenuptial agreement waiving her right of election against the estate. Learning upon his death that her husband left all of his possessions to his children, she challenged the will raising all the standard allegations of wrongdoing. The surrogate invalidated the agreement on the ground that the husband exploited his "great influence and advantage" over his wife-to-be and subordinated her interests to her prejudice and detriment. The husband, in also having selected and paid for her attorney, was found to have exercised bad faith, unfair and inequitable dealings, undue influence and overreaching when he induced her to sign the agreement. The Appellate Division reversed. The Court of Appeals reversed the Appellate Division.

The Court framed the issue as to "whether the special relationship between betrothed parties, when they execute a prenuptial agreement, can warrant a shift of the burden of persuasion bearing on its enforceability." The Court sought to "clarify and harmonize" variant precedent decisions across a century of evolving social climates.[21] The Court opened:

> [a] party challenging the judicial interposition of a prenuptial agreement, used to defeat a right of election, may demonstrate by a preponderance of the evidence that the premarital relationship between the contracting individuals manifested "probable" undue and unfair advantage. In these exceptional circumstances, the burden should fall on the proponent of the agreement to show freedom from fraud, deception or undue influence.[22]

Greiff cited *Gordon v. Bialystoker Center & Bikur Cholim, Inc.*,[23] "as an illustration" of an extreme instance before "a special burden may be shifted to the party in whom the trust is reposed (or to the proponent of the party's interest, as in this case) to disprove fraud or overreaching." In *Gordon*, the estate administrator challenged the transfer of funds by the decedent to the nursing home in which she had been a patient one month before her death in support of burden shifting. Medical testimony proved that the patient, following a stroke, was

> confused, drowsy and at times semicomatose, partially paralyzed, unresponsive and uncooperative, sometimes required to be restrained for her own safety and of impaired hearing . . . not coherent, could not be understood and was not capable herself of understanding. There was little change in her condition during the entire period of her stay at the hospital.[24]

Greiff held that the burden shifts in "analogous contractual contexts":

> [W]here parties to an agreement find or place themselves in a relationship of trust and confidence at the time of execution, a special burden may be shifted to the party in whom the trust is reposed (or to the proponent of the party's interest) to disprove fraud or overreaching.[25]
>
> Whenever the relations between the contracting parties appear to be of such a character as to render it certain that either on the one side from superior knowledge of the matter derived from a fiduciary relation, or from an overmastering influence, or on the other from weakness, dependence, or trust justifiably reposed, unfair advantage in a transaction is rendered probable, it is incumbent upon the stronger party to show affirmatively that no deception was practiced, no undue influence was used, and that all was fair, open, voluntary and well understood.' (*Gordon v Bialystoker Ctr. & Bikur Cholim*, at 698699, 412 N.Y.S.2d 593, 385 N.E.2d 285 [emphasis added], quoting *Cowee v. Cornell*, 75 N.Y. 91, 99100).

The facts in *Gordon* confirm *Greiff*'s principled consonance with *Gordon* as well as with the general rule regarding the burden of proof. The illumination becomes further apparent when analogized to a sister principle in tort law, res ipsa loquitur, circumstances attendant on an occurrence may establish the plaintiff's prima facie[26] case in light of common sense, taken with the surrounding circumstances and past experience to present a question of fact for the defendant to meet with an explanation. The decedent's condition in *Gordon* in and of itself established the administrator's prima facie burden of proof of the impossibility of a lucid transfer of funds to the nursing home, thereby warranting a shifting of the burden unto the nursing home to establish no wrongdoing. Thus, despite the dramatically divergent factual settings between *Gordon* and *Greiff*, there remains an common reasoning.

Greiff emphasized that "burden shifting is neither presumptively applicable nor precluded; "[W]e eschew absolutist rubrics that might ill serve the interests of fair conflict resolution of these kinds of ordinarily useful agreements":

a. A party seeking to vitiate a contract on the ground of fraud bears the burden of proving the impediment attributable to the proponent seeking enforcement. This rubric also applies generally to controversies involving prenuptial agreements. . . . [T]his Court has eschewed subjecting proponents of these agreements to special evidentiary or freighted burdens,[27] and

b. A century later society and law reflect a more progressive view and they now reject the inherent inequality assumption as between men and women, in favor of a fairer, realistic appreciation of cultural and economic realities … Indeed, the law starts marital partners off on an equal plane. Thus, whichever spouse contests a prenuptial agreement bears the burden of establishing a fact-based, particularized inequality before a proponent of a prenuptial agreement suffers the shift to disprove fraud or overreaching.[28]

Greiff stressed that burden shifting is not absolute but rather must be determined on an individualized, fact-based review when a particularized and exceptional scrutiny may obtain, viewed against the backdrop of the "analogous contractual context" test.

(i) *Greiff*, Betrothed Parties as Fiduciaries; the Derivation of the Body of Law Regarding the Fiduciary; Termination of the Fiduciary Relationship

While it has been argued that the Court of Appeals, in *Greiff*, first elevated the status of betrothed parties entering into prenuptial agreements to a fiduciary relationship,[29] this is inaccurate because affianced parties had long been considered to stand in a relationship of confidence, synonymous with a fiduciary relationship.[30] Rather, *Greiff* overruled prior law that held there was no fiduciary relationship between an engaged couple.[31] Notably, the majority opinion, in *Gottlieb v. Gottlieb*,[32] citing *Greiff*, stated: "The parties shared a fiduciary relationship. At the time the prenuptial agreement was entered into, the parties were engaged, had been living together for more than three years, had a child together, and were expecting another. Thus, their relationship was 'permeated with trust, confidence, honesty and reliances."

The imposition of an interspousal confidential relationship rule under the common law had its origins at a time when the husband-to-be was bound to being in the dominant economic position, not only as a matter of fact, but also because of the social and legal structures that made him so. The definition of the intended spouses' relationship as one having fiduciary character was a way of protecting the woman from being left without adequate financial protection and position.[33]

(ii) The Duty of the Fiduciary and the Prohibition Against Personal Interest and Conflict

In *Birnbaum v Birnbaum*,[34] the Court of Appeals held that the "sensitive and inflexible fidelity" of a fiduciary applies to "every situation in which a fiduciary, who is bound to singlemindedly pursue the interests of those to whom a duty of loyalty is owed," which "requir[es] avoidance of situations in which *a fiduciary's personal interest possibly conflicts* with the interest of those owed a fiduciary":

> [I]t is elemental that a fiduciary owes a duty of undivided and undiluted loyalty to those whose interests the fiduciary is to protect (e.g., *Meinhard v. Salmon*, supra, 249 N.Y. at 463–464, 164 N.E. 545 ...). This is a sensitive and "inflexible" rule of fidelity, barring not only blatant selfdealing, but also requiring avoidance of situations in which *a fiduciary's personal interest possibly conflicts* with the interest of those owed a fiduciary duty (*Matter of Ryan*, 291 N.Y. 376, 407, 52 N.E.2d 909). (emphasis provided).
>
> Included within this rule's broad scope is every situation in which a fiduciary, who is bound to singlemindedly pursue the interests of those to whom a duty of loyalty is owed, deals with a person "in such close relation [to the fiduciary] that possible advantage to such other person might consciously or unconsciously" influence the fiduciary's judgment (*Albright v. Jefferson County Natl. Bank*, 292 N.Y. 31, 39, 53 N.E.2d 753).

In *Meinhard v. Salmon*,[35] the Court of Appeals synthesized the essence of the duties and the responsibilities of the fiduciary:

> A trustee [fiduciary] is held to something stricter than the morals of the market place. Not honesty alone, but *the punctilio of an honor the most sensitive*, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "disintegrating erosion" of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court. (emphasis provided).

(iii) Termination of the Fiduciary Relationship

Case law, even in matrimonial situations, has finally acknowledged truth and reality: "A fiduciary relationship ceases when parties become adversaries in litigation"[36] because the parties' interests now conflict. The parties are represented by counsel, effectively locked in combat, each aggressively advancing his or her self interests which are plainly to the detriment of the other. Parties negotiating a prenuptial agreement are in no less an adversarial posture. The retention of independent counsel is diametrically opposed to the fiduciary relationship where trust or dependence has been "justifiably reposed" in another, where the lesser monied advantaged party will likely become the challenger of the agreement.[37] Thus the parties' adversarial interests and postures can hardly be said to be "permeated with trust, confidence, honesty and reliance."[38] No goodwill can be said to have been reposed by one party in the other.

(III) *Greiff* on Remand

On remand, the Second Department adhered to its original decision that the wife, at the trial level, had failed to meet her burden by a preponderance of the evidence to show that: (1) the premarital relationship between her and the decedent manifested probable undue and unfair

advantage; (2) her execution of the agreement whereby she waived her right to an elective share was procured through the decedent's fraud or overreaching; and (3) she was not advised of the effect of the prenuptial agreement, failed to comprehend it, or entered into it unwillingly.[39]

Furthermore, a comparison between the Appellate Division's decision on remand and its first decision[40] shows that the last two sentences in both are virtually identical, including the cited decisional authority. Even the preliminary statements of law were the same except that, on remand, the Second Department incorporated the word "probable" into its ruling.

In sum, despite its length, *Greiff* has neither expanded nor abridged any existing evidentiary standards and remains consistent with traditional principles of contract doctrine.

(IV) *Sepulveda v. Aviles*

In *Sepulveda v. Aviles*,[41] a case involving the exploitation of an 81-year-old woman with mental impairment, the First Department, citing *Gordon* and *Greiff*, noted that the parties and the trial court had erroneously assumed that the plaintiffs bore the burden of proof on their equitable claim to rescind the transfer as the product of fraud or undue influence: "Normally, the burden of proving undue influence rests with the party asserting its existence. However, if a confidential relationship exists, the burden is shifted to the beneficiary of the transaction to prove the transaction fair and free from undue influence."

A superficial reading of *Sepulveda* might suggest that any confidential relationship shifts the burden, which is contrary to *Greiff*. However, *Sepulveda* clearly states that "burden shifting" has "time and time again, [been] applied [as a] mechanism to evaluate transactions which, at least on the surface, appear to involve the exploitation of elderly or mentally incapacitated persons by those intent on violating the trust reposed in them,"[42] not where parties are represented by independent counsel and the challenger to the agreement has not first established any evidence of wrongdoing by the proponent of the agreement.

(V) *Robinson v. Day, Anonymous v. Anonymous, Lorenc v. Lorenc, Ray v. Ray*

The clear language in *Greiff*, *Gordon* and *Sepulveda* notwithstanding, in *Robinson v. Day*,[43] which involved a breach of contract between two parties who had been romantic companions for 14 years, the First Department issued an erroneous blanket per se rule of burden shifting: "if a confidential relationship exists, the burden is shifted to the beneficiary of the transaction to prove the transaction fair and free from undue influence." However, in *Anonymous v. Anonymous*,[44] some 20 months after *Robinson*, the First Department, citing *Greiff*, retreated from *Robinson* and confirmed that *Greiff* did not shift the burden of proof:

> Although "there is a heavy presumption that a deliberately prepared and executed written instrument manifests the true intention of the parties" . . . an agreement between prospective spouses may be invalidated if the party challenging the agreement demonstrates that it was the product of fraud, duress, or other inequitable conduct. . . . Nevertheless, such results remain the exception rather than the rule. The burden of producing evidence of fraud, duress or overreaching is on the party asserting the invalidity of the agreement.

In *Lorenc v. Lorenc*,[45] the plaintiff argued that the agreement was unconscionable. She asserted that it was thrust upon her at the last minute and that she was deprived of any opportunity to review and consider its terms with the advice of independent counsel. However, there was no support for these assertions in the record. The First Department, correctly applied *Greiff* and *Anonymous* ruling that she failed to establish that the prenuptial agreement had been the product of fraud, duress, or other inequitable conduct and should therefore be set aside.

Nevertheless, it is unclear why the First Department, in *Ray v. Ray*,[46] decided less than two months after *Lorenc*, cited *Robinson* as good law, without any reference to *Greiff* or to *Gordon*, in support of the erroneous blanket proposition that the trial court properly shifted the burden of proof to the plaintiff, the proponent of the agreements, to demonstrate that the agreements were fair to defendant based on no more than that the parties had been in a romantic relationship during the time the defendant entered into the agreements.

Conclusion

Stay tuned.

Endnotes

1. The analysis derives from Chapter 41 of the fourth edition of Contract Doctrine and Marital Agreements in New York, E. Scheinberg, NYSBA, (2 vols., 2020). Reprinted with permission from the upcoming 2020 revision of Contract Doctrine & Marital Agreements in New York, published by the New York State Bar Association, One Elk Street, Albany, NY 12207.
2. 92 N.Y.2d 341 (1998).
3. *Greiff*, 92 N.Y.2d at 344, citing *Gordon*, 45 N.Y.2d at 692.
4. *Greiff*, 92 N.Y.2d at 343.
5. 45 N.Y.2d 692, 412 N.Y.S.2d 593 (1978).
6. 2020 N.Y. Slip Op. 00985 (1st Dep't 2020).
7. 103 A.D.3d 584, 960 N.Y.S.2d 397 (1st Dep't 2013).
8. 123 A.D.3d 581, 999 N.Y.S.2d 386 (1st Dep't 2014).
9. 178 A.D.3d 623 (1st Dep't 2019).

10. *In re Estate of Geyer*, 516 Pa. 492, 506, 533 A.2d 423 (1987), abrogated by *Simeone v. Simeone*, 525 Pa. 392, 581 A.2d 162 (1990).
11. *Anonymous v. Anonymous*, 123 A.D.3d 581 (1st Dep't 2014) (Justice David Saxe, concurring opinion).
12. *Prenuptial Agreements: Claims and Defenses After Bloomfield*, N.Y.L.J., July 24, 2004.
13. 138 A.D.3d 30 (1st Dep't 2016).
14. *Robbins v. Robbins*, 39 Misc. 3d 1216(A) (Sup. Ct., N.Y. Co. 2013) (Cooper, J.).
15. *In re Sunshine*, 51 A.D.2d 326 (1st Dep't 1976), aff'd, 40 N.Y.2d 875 (1976); *In re Barabash*, 84 A.D.3d 1363 (2d Dep't 2011).
16. *Gottlieb v. Gottlieb*, 138 A.D.3d 30, (1st Dep't 2016); *Anonymous v. Anonymous*, 123 A.D.3d 581 (1st Dep't 2014); *Bronfman v. Bronfman*, 229 A.D.2d 314 (1st Dep't 1996).
17. 138 A.D.3d 30, 37 (1st Dep't 2016).
18. *Pulver v. Pulver*, 40 A.D.3d 1315, 1317, (3d Dep't 2007) ("A duly executed prenuptial agreement will be considered valid and binding unless the contesting party can establish that he or she was induced by fraud, overreaching or duress attributable to the party seeking enforcement."); *Darrin v. Darrin*, 40 A.D.3d 1391 (3d Dep't 2007), *lv. to appeal dismissed*, 9 N.Y.3d 914 (2007); *Korngold v. Korngold*, 26 A.D.3d 358 (2d Dep't 2006), *lv. to appeal dismissed*, 7 N.Y.3d 861 (2006); *In re Garbade*, 221 A.D.2d 844 (3d Dep't 1995), *appeal denied*, 88 N.Y.2d 803 (1996); *Costanza v. Costanza*, 199 A.D.2d 988 (4th Dep't 1993).
19. *Weinstein v. Weinstein*, 36 A.D.3d 797 (2d Dep't 2007); *Lombardi v. Lombardi*, 235 A.D.2d 400 (2d Dep't 1997); *In re Garbade*, 221 A.D.2d 844 (3d Dep't 1995), lv. to appeal denied, 88 N.Y.2d 803 (1996); *Forsberg v. Forsberg*, 219 A.D.2d 615 (2d Dep't 1995).
20. Citing *Gordon v. Bialystoker Ctr. & Bikur Cholim, Inc.*, 45 N.Y.2d 692 (1978); see *Gottlieb v. Gottlieb*, 138 A.D.3d 30 (1st Dep't 2016).
21. See *In re Phillips' Estate*, 293 N.Y. 483 (1944); *Graham v. Graham*, 143 N.Y. 573 (1894).
22. *Greiff*, 92 N.Y.2d at 343.
23. 45 N.Y.2d 692 (1978).
24. 45 N.Y.2d at 696.
25. *Grieff*, 92 N.Y.2d at 345.
26. Res Ipsa Loquitor, Black's Law Dictionary (11th ed. 2019).
27. *Greiff*, 92 N.Y.2d at 344 (citing *Gordon*, 45 N.Y.2d at 692); *In re Barabash*, 84 A.D.3d 1363 (2d Dep't 2011).
28. *Greiff*, 92 N.Y.2d at 346); *In re Barabash*, 84 A.D.3d 1363 (2d Dep't 2011).
29. *Greiff*, 92 N.Y.2d at 347.

    The unique character of the inchoate bond between prospective spouses—a relationship by its nature permeated with trust, confidence, honesty and reliance. It allows further for a reasonable expectation that these relationships are almost universally beyond the pale of ordinary commercial transactions. Yet, the dispositive tests of legitimacy and enforceability of their prenuptial agreements need not pivot on the legalism or concept of presumptiveness. Instead, a particularized and exceptional scrutiny obtains.
30. *Graham v. Graham*, 143 N.Y. 573 (1894); *Pierce v. Pierce*, 71 N.Y. 154, 15759 (1877).
31. *Eckstein v. Eckstein*, 129 A.D.2d 552, 553 (2d Dep't 1987) ("A duly executed antenuptial agreement is given the same presumption of legality as any other contract, commercial or otherwise, and is not, regardless of the fairness and reasonableness of the agreement, burdened by a presumption of fraud arising from the subsequent confidential relationship of the parties ... Conclusory allegations of fraud are insufficient to raise a question of fact as to the validity of such an agreement, precluding summary judgment ... The defendant urges that she was induced to enter into the agreement by fraud in that the plaintiff failed to make a full and fair disclosure of his assets. The agreement, however, contains no representation by the plaintiff that he had made a disclosure of his assets, but only reciprocal acknowledgments by each of the parties that the other had answered all questions that had been asked concerning his or her finances. In addition, the agreement provided that there were no representations made by the parties other than those expressly set forth therein. *Since there was no confidential relationship between the parties at the time they entered into the agreement...*"); *Panossian v. Panossian*, 172 A.D.2d 811, 569 N.Y.S.2d 182 (2d Dep't 1991) ("A duly executed antenuptial agreement is given the same presumption of legality as any other contract, and is not burdened by a presumption of fraud simply because the parties subsequently enter into a confidential relationship.").
32. 138 A.D.3d 30 (1st Dep't 2016).
33. *Graham v. Graham*, 143 N.Y. 573 (1894); *Pierce v. Pierce*, 71 N.Y. 154, 15759 (1877).
34. 73 N.Y.2d 461 (1989); *Drucker v Mige Assoc. II*, 225 A.D.2d 427, 428 (1st Dep't 1996).
35. 249 N.Y. 458 (1928); *Mercury Bay Boating Club Inc. v. San Diego Yacht Club*, 76 N.Y.2d 256 (1990).
36. *Etzion v. Etzion*, 138 A.D.3d 678 (2d Dep't 2016), citing *Carr v. Neilson*, 77 A.D.3d 877 (2d Dep't 2010); *EBC I, Inc. v. Goldman Sachs & Co.*, 91 A.D.3d 211 (1st Dep't 2011); *Genger v. Genger*, 121 A.D.3d 270 (1st Dep't 2014) (While family members stand in a fiduciary relationship toward one another in a coowned business venture, a fiduciary relationship ceases once the parties thereto become adversaries.); *6D Farm Corp. v Carr*, 63 A.D.3d 903 (2d Dep't 2009) (The "fiduciary relation between partners terminates upon notice of dissolution, even though the partnership affairs have not been wound up."); *Eastbrook Caribe A.V.V. v. Fresh Del Monte Produce, Inc.*, 11 A.D.3d 296 (2004), *lv. dismissed in part, lv. denied in part*, 4 N.Y.3d 844 (2005) (Nor can plaintiff sufficiently allege that defendants owed plaintiff a fiduciary duty of full disclosure during those negotiations, since any fiduciary relationship between the parties had, by the time of the negotiations, ceased, the parties having become adversaries in litigation (*Baldasano v. Bank of New York*, 174 A.D.2d 457 (1991)).
37. *See In re Grieff*, 92 N.Y.2d 341 (1998); *Gordon v. Bialystoker Ctr. & Bikur Cholim*, 45 N.Y.2d 692, 699 (1978); *Etzion v. Etzion*, 62 A.D.3d 646 (2d Dep't 2009), *lv. to appeal dismissed*, 13 N.Y.3d 824 (2009); *Oakes v. Muka*, 69 A.D.3d 1139 (3d Dep't 2010), *appeal dismissed*, 15 N.Y.3d 867 (2010); *Parker v. Parker*, 66 A.D.2d 328 (1st Dep't 1979).
38. *Greiff*, 92 N.Y.2d at 347.
39. *In re Greiff*, 262 A.D.2d 320 (2d Dep't 1999).
40. *In re Greiff*, 242 A.D.2d 723 (2d Dep't 1997).
41. 308 A.D.2d 1 (1st Dep't 2003).
42. *Sepulveda*. at 8, citing *McClellan v. Grant*, 83 A.D. 599 (4th Dep't 1903), *aff'd*, 181 N.Y. 581 (1905); *see Cowee v. Cornell*, 75 N.Y. 91 (1878); *In re Connelly*, 193 A.D.2d 602 (2d Dep't 1993), lv. to appeal denied, 82 N.Y.2d 656 (1993).
43. 103 A.D.3d 584 (1st Dep't 2013).
44. 123 A.D.3d 581 (1st Dep't 2014).
45. 178 A.D.3d 623 (1st Dep't 2019).
46. 2020 N.Y. Slip Op. 00985 (1st Dep't 2020).