



IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEAN SHERMAN,

Plaintiff Below/
Appellant/
Cross-Appellee,

v.

STEPHEN P. ELLIS, ESQUIRE,

Defendant Below/
Appellee/
Cross-Appellant.

No. 43, 2020

On appeal from the Superior Court
of the State of Delaware,
C.A. No. K18C-06-009 JJC

CROSS-APPELLANT'S REPLY BRIEF ON CROSS-APPEAL

ECKERT SEAMANS CHERIN & MELLOTT, LLC
Gary W. Lipkin (DE No. 4044)
Alexandra D. Rogin (DE No. 6197)
222 Delaware Avenue, 7th Floor
Wilmington, DE 19801
302-574-7400
*Attorneys for Defendant Below / Appellee /
Cross-Appellant*

Dated: May 28, 2020

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF CITATIONS ii

ARGUMENT1

 I. THE PHRASE “BEYOND THE DISCLOSURE PROVIDED” IN THE DELAWARE PREMARITAL AGREEMENT ACT (“DPAA”) HAS NO MEANING AND WOULD BE SUPERFLUOUS IF THE TRIAL COURT’S OPINION ON THIS ISSUE IS UPHELD.1

CONCLUSION.....4

TABLE OF CITATIONS

	Page
<u>Cases</u>	
<i>Davis v. Miller</i> , 7 P.3d 1223 (Kan. 2000).....	2
<i>Keeler v. Hartford Mutual Insurance Co.</i> , 672 A .2d 1012 (Del. 1996).....	2
<i>Rohe v. Reliance Training Network, Inc.</i> , 2000 WL 1038190 (Del. Ch. July 21, 2000)	2
<i>Shy v. State</i> , 459 A.2d 123 (Del. 1983).....	2
<u>Rules & Statutes</u>	
13 <i>Del. C.</i> § 326	1

ARGUMENT

I. THE PHRASE “BEYOND THE DISCLOSURE PROVIDED” IN THE DELAWARE PREMARITAL AGREEMENT ACT (“DPAA”) HAS NO MEANING AND WOULD BE SUPERFLUOUS IF THE TRIAL COURT’S OPINION ON THIS ISSUE IS UPHELD.

Under the DPAA, a party can set aside a premarital agreement by establishing that it was both “unconscionable when executed” and that the party moving to set aside the agreement:

a) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

b) *did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided;* and

c) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

13 *Del. C.* § 326(a)(2)(a-c) (emphasis added).

In its Opinion, the Trial Court held that “by including subparagraph (a)(2)(b) in the Act, the General Assembly has permitted any party who includes a waiver of disclosure provision in a premarital agreement to in all cases defeat a challenge to the Agreement based upon alleged unconscionability.” (A0680). Thus, according to the Court, a premarital agreement cannot be deemed unconscionable – even if there is no disclosure of assets or a fraudulent disclosure of assets – as long as there is a waiver of such disclosure.

Section 326(a)(2)(b) should not be read in such a manner. Instead, the inclusion of the phrase “beyond the disclosure provided” should be read to mean that the parties waive their rights to additional, supplemental, or future disclosures, as the Court held in *Davis v. Miller*, 7 P.3d 1223, 1229-30 (Kan. 2000), which was discussed at length in Ellis’ Opening Brief in Support of His Cross-Appeal.

Indeed, the phrase “beyond the disclosure provided” would be rendered meaningless if the Trial Court’s interpretation was upheld, as any disclosure made would not need to be accurate. As long as there was a waiver of disclosures, any challenge to a premarital agreement on unconscionability grounds would fail in all cases.¹

Because Delaware courts do not interpret statutes in a manner that renders their provisions meaningless, the Trial Court’s statutory interpretation of the DPAA should be rejected. *See e.g., Shy v. State*, 459 A.2d 123, 125 (Del. 1983) (“Any different reading would render part of the statute meaningless, a result foreclosed by generally accepted principles of statutory construction.”); *Rohe v. Reliance Training Network, Inc.*, 2000 WL 1038190, at *13 n 36 (Del. Ch. July 21, 2000) (citing *Keeler*

¹ Sherman does not suggest otherwise in his Answering Brief in Opposition to Ellis’ Cross-Appeal. Sherman also argues that the law already provides a remedy for a party that was fraudulently induced to enter into a contract. (D.I. 16 at 18-19). However, the law of fraudulent inducement would not protect a spouse that was provided with an inaccurate or incomplete disclosure of assets, where such disclosure was merely in error and not made fraudulently.

v. Hartford Mutual Insurance Co., 672 A .2d 1012, 1016 (Del. 1996))
 (“[I]n interpreting a statute, the court should generally avoid a reading that would render a portion of the statute superfluous.”).

CONCLUSION

For the foregoing reasons, in the event that Sherman's appeal is granted and the case is remanded, Ellis respectfully requests that this Court grant its Cross-Appeal.

ECKERT SEAMANS CHERIN & MELLOTT, LLC

/s/ Gary W. Lipkin

Gary W. Lipkin (DE No. 4044)

Alexandra D. Rogin (DE No. 6197)

222 Delaware Avenue, 7th Floor

Wilmington, DE 19801

302-574-7400

*Attorneys for Defendant Below / Appellee /
Cross-Appellant*

Word Count: 548

Dated: May 28, 2020