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Family Matters: Can You Enforce a Contract Against Family?

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Have you ever been in a situation where you want to help a family member, but want to protect yourself as well? Here we will discuss what a legally binding contract between family members consists of, and the odd circumstances where an agreement with family is not considered a legally binding contract.

Most family members, at some point, lean on each other. Whether it is in business or in our personal lives, we tend to seek assistance from family before looking to outside help. This happens in almost every aspect of life, from co-signing a loan to assisting with child or elder care.

One of the most commonly overlooked aspects to contract law is the intent to form a legally binding contract. Without consensus ad idem (a meeting of the minds), a contract cannot be formed. How can the terms be accepted if they are unknown, or if there was never an intention to form a contract?

For example: A single mother asks her son to babysit her daughter in exchange for \$20, the son agrees yet never receives payment.

One of the reasons it is unlikely this would be found to be enforceable by the courts is there was no intent to create legal relations. "They are not contracts, and they are not contracts because the parties did not intend that they should be attended by legal consequences"¹.

However, if that same son were a licensed child care provider and the mother signed the same contract as other parents, outlining the terms of agreement, it is likely that the courts would find the contract enforceable.

This principle is demonstrated through the case of *Balfour v. Balfour*² where a husband and wife originally resided in Ceylon. Taking leave, the couple returned to England to live. When the husband eventually returned to Ceylon for work, it was realized the wife would be unable to return due to her poor health. The couple agreed the husband would send his wife 30£ per month as support. When the

¹ *Balfour v. Balfour* (1919) 2 KB, decision of Atkin L.J.

² *supra*

couple's marriage deteriorated, the wife took her husband to court to enforce the agreement. The court held that such an agreement between husband and wife is not an enforceable contract because at the time the agreement was made there was no intention to enter into legal relations.

If every family dispute were considered a contract the court simply would not have the time or resources to deal with them all. Warrington L.J. "...if we were to hold that there was a contract in this case we should have to hold that with regard to all the more or less trivial concerns of life."³

For now, we are left to dream "if only I had a penny for every-time my spouse broke a promise!"

While this provides a brief overview, the law can be very complex, and many aspects are case specific. If you have an issue, call Cochrane Moore LLP for a free consultation.

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³ *Supra*, decision of Warrington L.J.