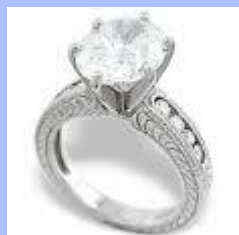




## LAW OFFICES OF PETER J. RUSSO P.C.

ATTORNEYS AT LAW

### Engagement Rings...



### It's MY Ring... Right?

The largest pre-wedding investment a couple makes is usually the engagement ring. So what happens when the wedding doesn't happen? Who keeps the ring?

The Pennsylvania Supreme Court in *Lindh v. Surman* has decreed that an engagement ring is a gift "conditioned" on the marriage event. Therefore, if the marriage does not take place the ring must be returned to the purchaser.

In *Lindh v. Surman*, Rodger Lindh, a previously

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#### INSIDE THIS ISSUE

- 1 Engagement Rings .. Whose are they?
- 1 Nicholson v. Johnston
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- 5 The Problematic Prenuptial

### Different Kinds of "Engagement Rings"



**LYNN M. NICHOLSON v. TOBIN M. JOHNSTON**  
**SUPERIOR COURT OF PENNSYLVANIA**  
**855 A.2d 97; 2004 Pa.**

Nicholson became romantically involved with Tobin Johnston, in 1989, and in 1995 they became engaged to be married. In anticipation of marriage, they purchased a home on June 15, 1998, for \$ 185,000.00. Although the parties were named joint tenants with a right of survivorship, and both were signatories to the \$ 148, 000.00 mortgage, the parties agreed that Johnston would be responsible for paying the mortgage and Nicholson would be responsible for the other costs of living.

Nearly two years after she moved from the home, Nicholson filed a complaint for partition of the property on November 9, 2001, requesting that it be sold and the proceeds divided. The parties agreed to the partition but the matter of the parties' respective interests remained outstanding.

married middle-aged man purchased a \$17,400, engagement ring for his fiancé, Janis Surman. Prior to the wedding problems developed and Rodger broke off the engagement. Rodger decided to ask Janis to return the engagement ring and Janis agreed to do so. As love would have it, the couple reconciled and Rodger again asked Janis to be Mrs. Lindh "the second" and gave Janis back the same ring. Janis, not learning the first time around that things happen for a reason, agreed to marry Rodger. Once again Rodger called off the wedding and again sought the return of the engagement ring. Janis refused this request and Rodger filed suit against Janis.

The value of the ring forced the matter into a mandatory arbitration where the panel of arbitrators decided that Janis could keep the ring. Rodger appeal, because he could and the Court of Common Pleas awarding Rodger the value of the ring. Janis then decided that she didn't like the decision of the Court of Common Pleas and appealed. Eventually the Pennsylvania Supreme Court got the case and agreed with the Court of Common Pleas judge's award to Rodger.

While the parties agreed that the ring was a conditional gift they argued to the Supreme Court that the condition upon which the gift was based was acceptance of the engagement versus the marriage itself. The parties also argued whether fault was relevant to determining the resolution. The Supreme Court found the gift was conditioned on the actual marriage, not just Janis saying yes to Rodger's request and fault was not a factor in the decision of who got the ring.

Part of the court's reasoning was the difficulty in determining who was "wrong" or "right" in the demise of an engagement. Determining fault would require such a detailed inquiry into the facts of the relationship and its demise that it would be burdensome to the lower courts.



LAW OFFICES OF  
PETER J. RUSSO P.C.

## **BUSINESS TIPS:**

*Thinking About  
Starting a business?*



### **Which business entity is right for you?**

- Sole proprietorship
- Partnerships
- Limited Liability Corporation
- S corporation
- C corporation

### **Treatment of Net Operating Income**

#### **Sole Proprietorship:**

Taxed directly to owner on 1040

#### **Partnership:**

Passed through to partners 1040 via form K-1 whether or not distributed

#### **"S" Corporation:**

Passed through to shareholders 1040 via form K-1 whether or not distributed

#### **"C" Corporation:**

Double tax-once on C Corp., again when paid to shareholder as dividends

*We can help guide you through the options and help find the best fit for you!*

**Dear Valued Client,**

**It is a pleasure to service your legal needs. We are here to help you and provide you with legal services with a personal touch. We hope you find this newsletter helpful and we look forward to continuing our relationship with you!**



**Sincerely**  
**Pete, Liz, Ashley & Amber**

## **OUR PRACTICE AREAS**

### **Family Law**

Divorce - Custody - Support - Adoption  
Property Agreements  
Name Changes - Visitation - PFA  
Collaborative Law

### **Business Law**

Business Startup - Business Litigation - Contract Disputes  
Business Startup - LLCs - S Corps - Contract Review &  
Negotiation Business Purchase or Sale

### **Real Estate Matters**

Buying or Selling - Residential or Commercial  
Title Insurance - Agreement of Sale  
Post Settlement Problems

### **Wills & Estates**

Wills - Power of Attorney - Living Will  
Probate - Trusts

### **Employment Law**

Workers' Compensation  
Unemployment Compensation  
HIPPA - Discrimination - Sexual Harassment  
PHRC - EEOC - Employment Agreements

At the initial stage, the trier of fact was "not persuaded by [Johnston's] argument that the titling of the real estate was any type of a conditional gift to [Nicholson]," and concluded that "at the time of original conveyance each party became owner of one-half interest in the subject property." Johnston was not permitted any direct credit for payments he made to the mortgage principal or interest and the date of the parties' separation to determine the mortgage balance.

The Judge found that the financial arrangements were a conditional gift and therefore clearly and indubitably contingent upon a marriage occurring. Johnston advanced monies, for the down payment on a home, with the understanding that a marriage would occur between he and Nicholson. That marriage did not occur. Therefore, this Court determined that Johnston is entitled to recover the initial payments he made.

The Court concluded, with regard to the proportionate share of the rental value of the property, that the mortgage expenses incurred by Johnston offset any claims by Nicholson for rental payments. Nicholson did not contribute any monies toward the mortgage expenses. As the Court already concluded that the arrangement was contingent upon the effectuation of a marriage and the marriage did not occur, it is only equitable that Nicholson not benefit from payments made solely by Johnston.

The Judge was appealed and agreed with the trial Judge who found that the down payment money constituted a conditional gift contingent upon a marriage occurring, and, since the marriage did not occur therefore Johnston was entitled to recover the down payment he made. advantage of tax benefits, and protect yourself against rent increases.

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## THE PROBLEMATIC PRENUPTIAL



**LOUIS J. PORRECO v. SUSAN J. PORRECO**  
SUPREME COURT OF PENNSYLVANIA  
571 Pa. 61; 811 A.2d 566; 2002 Pa. LEXIS 2468

### **Question for the Court:**

Whether a misstatement by one party to a prenuptial agreement of the assets of the other party constitutes fraud such that the prenuptial agreement is voidable.

### **Factual Background:**

Louis Porreco ("Louis") was forty-five years old, and previously married, when he met Susan Porreco ("Susan"), who was seventeen years old, in high school, living with her parents, and working part-time at a ski shop. The parties dated for over two years, during which time Louis provided Susan with an apartment, an automobile, insurance, a weekly allowance, access to one of his credit cards as a secondary card holder, and a gas charge account at his car dealership's fueling station.

When the parties engaged to be married, Louis presented Susan with an engagement ring. The parties dispute whether Susan knew at the time Louis gave her the ring that it was not a genuine diamond but, instead, a cubic zirconium. The trial court believed Susan that she believed the engagement ring contained a real diamond and did not discover that it was fake until the parties separated many years later.

In July of 1984, Louis presented Susan with the first draft of a prenuptial agreement. Louis did not discuss the agreement with Susan, other than to say that it was a standard agreement with the provisions left blank, and that Susan should seek legal counsel. This first draft of the agreement made no provision for Susan, other than that she was to retain her separate property in the event of a divorce.

Louis later presented Susan with a second version of the agreement, which provided that, in the event of divorce, Susan was to receive \$ 3,500.00 for each year of marriage in lieu of alimony, alimony pendente lite, and spousal support. Louis would provide Susan with an automobile and health insurance for one year.

Prior to the execution of the final version of the agreement, Louis prepared, in his own handwriting, a personal financial statement that listed Susan's assets. Included in this list was an entry for the engagement ring, with the value listed at \$ 21,000.00. The financial statement described the ring as an engagement ring but did not state that the ring contained a diamond. Based on this financial statement, the net worth of Susan's assets appeared to be \$ 46,592.00 and Louis' net worth at \$ 3,317,666.00.

Susan testified that she understood the consequences of signing the prenuptial agreement and an attorney reviewed the agreement on Susan's behalf, although he conducted no negotiations for her.

## THE PROBLEMATIC PRENUPTIAL



Ten years later the parties separated and Susan took the ring to a jeweler who informed her that it was not a diamond. As part of her divorce proceedings Susan filed a Petition for Special Relief to set aside the prenuptial agreement. Susan alleged three grounds for invalidation of the prenuptial agreement: (1) that Louis fraudulently induced her to enter the prenuptial agreement by misrepresenting the value of the ring; (2) that Louis breached a confidential relationship with her; and, (3) that Louis violated his duty of a full and fair disclosure.

The trial court invalidated the prenuptial agreement. The court concluded that a confidential relationship existed between Louis and Susan, due to the difference in the parties' age, sophistication, wealth and status, and Susan's dependence on Louis for her material and social well-being. Louis breached this confidential relationship, according to the trial court, by having a prenuptial agreement drafted that was lopsided in his favor. Additionally, the court found that Louis misrepresented the nature and value of the ring in order to induce Susan to sign the prenuptial agreement, which she signed in reliance on Louis' representation as to the ring's value, and that this misrepresentation was material to her decision to sign the agreement. Finally, the court declined to address Susan's claim that Louis violated his duty to provide her with a full and fair disclosure.

The Superior Court affirmed the trial court and an appeal from the Superior Court was taken.

Since neither the trial court nor the Superior Court addressed the issue of the "full and fair" disclosure rule, the Supreme Court was limited to decide the case on whether the trial court properly concluded that Louis fraudulently induced Susan to sign the prenuptial agreement by misrepresenting the value of the engagement ring on the list of her individual assets, which he prepared as part of the prenuptial agreement.

After an analysis of the elements of fraudulent misrepresentation the Court seemed to focus on whether there was justifiable reliance on the misrepresentation. In essence, whether reliance on an alleged misrepresentation is justified depends on whether the recipient knew or should have known that the information supplied was false.

The Supreme Court determined that Susan's alleged reliance on Louis' misrepresentation of the value of the ring on the schedule of her assets was not justifiable. The Court reasoned that Susan had possession of the ring and was not impeded from doing what she ultimately did when the parties separated: obtain an appraisal of the ring. She had sufficient opportunity to inform herself fully of the nature and extent of her own assets, rather than rely on Louis' statements concerning the valuation of her holdings. We find her failure to do this simple investigation to be unreasonable. Although we do not excuse Louis' actions, we will not sanction the avoidance of an entire prenuptial agreement -- the consequences of which Susan admittedly understood -- on the basis of fraud in these circumstances.

It should be noted that Susan did not own the ring at that time Rodger and Janis' case was decided by the Supreme Court.