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# Family Law Update

When a couple that jointly commits fraud is getting along, the plan may go undetected. But when the relationship deteriorates, the joint fraud may become the undoing of at least one, if not both of the participants.



## Don't Try This One at Home

It is always better when a divorcing couple is able to work together for each other's benefit rather than each other's destruction. Problems arise when the cooperation becomes fraud.

When a couple who jointly commits fraud is getting along, the plan may go undetected. But when the relationship deteriorates, the joint fraud may become the undoing of at least one, if not both of the participants.

Consider the case of Artie and Connie Espenshade. This couple separated and later divorced. They entered into a settlement agreement providing that Artie would pay alimony to Connie.

This was no problem until Artie decided he wanted to purchase a new home, and applied to the bank for a mortgage. Artie was worried that his support obligation to Connie would hinder his loan approval, so he devised a plan to fool the bank. He approached Connie with the idea that they would create a new "paper agreement" which would reflect only \$600 per month in alimony payments. In that way, the bank would be duped into believing that Artie's debts were less than what they actually were. Artie assured Connie that he would continue to pay the real alimony amount, and would destroy the phony agreement as soon as the financing was approved for the mortgage.

Although she was reluctant to do it, Connie eventually agreed to this scheme, and the parties created a phony addendum to their original agreement. Artie used the phony addendum with the bank to obtain his mortgage.

It's not hard to guess what happened next. For a time Artie continued to pay the original amount of alimony. Eventually, however, he began to make late payments, and ultimately reduced the amount significantly. Connie finally tired of this and filed an action to enforce the original agreement. In response, Artie pulled out the addendum as a defense to Connie's action.

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**The moral of the story is that when parties engage in schemes intended to defraud others, their actions will not be endorsed by the Court. Further, if one chooses to embark upon such a course of conduct, one does so at his own risk.**

Artie was held in contempt by the trial court, and he appealed to the Superior Court. His main argument on appeal was that the parties had entered into a valid addendum that modified the original support obligation. He reasoned that the addendum was clear and unambiguous, so the trial court should have accepted it at face value, instead of allowing testimony about how the addendum came into being.

The Superior Court did not accept this argument. Instead, the addendum was deemed unenforceable because neither Artie nor Connie really intended it to be binding, and because the purpose of the addendum was to perpetrate a fraud on the bank. This was especially clear because for a time after the addendum was created Artie continued to pay Connie the original \$350 per week despite the new support terms in the addendum.

Consequently Artie's finding of contempt was affirmed. He was ordered to pay \$12,713 in back support and \$2,868 of Connie's attorneys' fees, and to resume paying \$350 per week under the original agreement. The moral of the story is that when parties engage in schemes intended to defraud others, their actions will not be endorsed by the Court. Further, if one chooses to embark upon such a course of conduct, one does so at his own risk.

There is no telling when an already strained relationship will deteriorate further, and with it the evaporation of any cooperation that may have existed. Artie "lost" this one, but the Court just as readily may have punished Connie for participating in this deceit. Don't try this one at home.

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*The information contained in Family Law Update is not meant to provide opinions or advice on specific legal matters. If you would like to consult with me on a specific issue, please call.*

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