

NEW YORK SUPREME COURT : QUEENS COUNTY
MATRIMONIAL PART 52

P R E S E N T : HON. JEFFREY D. LEBOWITZ
Acting Justice

CHI YUAN HWANG,

Plaintiff,

- against -

HELEN HWANG,

Defendant.

Index No.: 6038/98

Motion Date: 6/08/04

Motion No: 5

The following papers numbered 1 to 7 read on this motion:

Papers Numbered

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| Order to Show to Show Cause/Notice of Motion/Aff(s)-Exh(s) | 1-3 |
| Cross Motion/Answering Affidavit(s)-Exh(s) | 4-5 |
| Replying Affidavit(s)-Exh(s) | 6-7 |

Defendant, Helen Hwang, seeks to resettle an Order of this Court (Gavrin, J.) dated November 5, 2001, which was based upon a memorandum decision of August 13, 2001 (Corrado, JHO).

In particular, this resettlement seeks to modify the 2001 divorce judgment with regard to certain real property that was directed to be sold with the proceeds, after taxes, closing costs and satisfactions of outstanding judgments, to be utilized to reimburse defendant for her awarded share of plaintiff's law license, law practice, and though not noted in the memorandum decision by Judge Corrado, support arrears, attorney's fees and rental income (apparently withheld by the plaintiff from concededly marital property).

It is the defendant's position that in satisfying defendant's distributive share and related awards that the listed property, net of taxes, closing costs and outstanding judgments, should have been first divided equally between the litigants as per Judge Corrado's decision, and thereafter, from husband's one-half share, the outstanding debt to defendant wife should be satisfied. Essentially defendant wife argues that the satisfaction of plaintiff's obligations to her before the actual equitable distribution of the property results in her subsidizing the underlying awards to her and is contrary to the wording and intent of Judge Corrado's decision.

It is the plaintiff's position that the submitted judgment of divorce which he concedes was agreed to by him, enhanced Judge Corrado's initial memorandum decision by allowing outstanding support arrears, attorney's fees and rental income to also be deducted from the listed real property, and that the defendant did not object to this amendment to Judge Corrado's decision when it was to her benefit. That some two years later to now seek to resettle the judgment of divorce when it concededly does not benefit her, violates notions of fairness and should be precluded by untimeliness or, as plaintiff states, "laches". In addition, plaintiff indicates that a supplementary enforcement proceeding resulted in a January 13, 2003 stipulation which reaffirmed the judgment of divorce and specifically reaffirmed payments to plaintiff's wife for her interest in outstanding support arrears, her husband's law license and practice, past due rental income and attorney's fees, without mention how this obligation should be satisfied from the above stated property.

At the outset, the Court notes that the procedural vehicle for resettlement is inappropriate to cure the defects alleged by the defendant in the judgment of 2001. A motion to resettle is used to correct errors and omissions and may not be used to correct a substantive change. See, Harbas v. Gilmore, 214 A.D.2d 440, (1st Dept., 1995).

An I.A.S. court is without authority to resettle an order that affects a matter of substance absent mistake, inadvertence, surprise or excusable neglect. See, Foley v. Roach, 68 A.D.2d 558, (1st Dept., 1979); Miller v. Lanzisera, 273 A.D.2d 866, (4th Dept., 2000); Barretta v. Webb Corp., 181 A.D.2d 1018, (4th Dept., 1992).

Substantive rights may not be the subject of resettlement orders other than one clearly inconsistent with the intention of the parties and must be cured on appeal (which is time barred at this point in the instant matter), or a vacature of judgment under C.P.L.R. 5015 or 5019(a), the latter which is clearly not applicable to the facts at hand as that section pertains only to mistake, defect or irregularity in the order in which the party seeks to resettle. See, Okebiyi v. Crew, 303 A.D.2d 684, (2nd Dept., 2003).

In the instant matter, to resettle the Order by equitably dividing the property between the parties and then having the outstanding amounts deducted from plaintiff's distributive share would create a substantial financial burden on him and can hardly be considered merely procedural in nature. See, Able v. Able, 209 A.D.2d 972, (4th Dept., 1992), (wherein it was held inclusion of back pay affects a substantive right and therefore bars resettlement as an appropriate tool to cure).

Accordingly, a resettlement order cannot be utilized to adjust the manner of distribution in this case as it affects the substantive rights of the non-moving party. See, Salamone v. Wincaf Properties, Inc., 777 N.Y.S.2d 37, (1st Dept., 2004).

Assuming arguendo, however, that the resettlement order did not affect a substantive right, for the following reasons defendant's application to resettle is denied.

A stipulation of settlement in a matrimonial action is a contract subject to general principles of contract interpretation. See, Sieratzki v. Sieratzki, N.Y.L.J., June 25, 2004, pg. 30, col. 2, (Appellate Division, 2nd Dept.), Rainbow v. Swisher, 72 N.Y.2d 106, (1988).

It is well settled that a stipulation between parties made in open court and before a justice and read into the record pursuant to C.P.L.R. 2104 is a contract between the parties and as such is governed by general principles for its interpretation and effect. See, Thomas-Burton v. Thomas, 188 A.D.2d 459, (2nd Dept., 1992). As in any contract interpretation, it is the role of the Court to determine the intent and purpose of the stipulation which is generally accomplished from an examination of the record as a whole.

The stipulation in question indicated that the escrow agent would be permitted to satisfy certain obligations emanating from the judgment of divorce. It is clear from a reading of the stipulation of January, 2003 and the transcript of the proceedings, that the amounts to be covered in fact included the outstanding monies owed to the defendant for her share of plaintiff's law license and practice, plus interest, one-half of the above mentioned rental income, child support arrears and attorney's fees. There is no indication in the stipulation that this money should be netted exclusively from defendant's one-half distributive share of the properties in question, or contrary to defendant's position is there any indication in Judge Corrado's memorandum decision that in allowing the properties to be used as a source for insuring defendant's one-half share of her husband's law practice and license that it was to be accomplished only after the property was first equitably distributed between the parties.

Where the terms of a stipulation are ambiguous, the stipulation will be construed so as to avoid interpreting the agreement in such a fashion as to highlight the ambiguity. ...The Court should be careful not to apply the broader interpretation absent of clear manifestation of intent. See, Mandia v. King Lumber and Plywood, 179 A.D.2d 150 (2nd Dept., 1992), citing, Kraker v. Roll, 100 A.D.2d 424, (2nd Dept., 1984).

Unless public policy is violated, the parties are free to chart their own procedural course and may fashion the basis upon which a particular controversy will be resolved. See, Loretto-Utica Properties Corp. v. Douglas Corp., 226 A.D.2d 1058, (3rd Dept., 1996). In this case, not only the judgment of divorce, but the subsequent stipulation failed to specify the manner in which the outstanding post marital obligations were to be satisfied. The satisfaction of these obligations prior to the distribution of the properties is neither unfair nor violative of public policy. The parties, having chosen the manner in which to resolve the post judgment disposition of property, must adhere to a reading that is the least ambiguous and does the least harm to the general intent of the agreement, and which does not unnecessarily allow for a broader interpretation absent a clear intent by them.

Even if the Court were to believe that the stipulation was sufficiently ambiguous as to justify a hearing, the Court is troubled by the delay in seeking resettlement.

Equitable or legal relief may be barred when in reliance upon an election, in this case an agreement to satisfy outstanding obligations, the opposing party has suffered some detriment. See, 331 East 14th Street LLC v. 331 East Corp., 293 A.D.2d 361, (1st Dept., 2002). In the interests of fairness, enforcement of defendant's interpretation would work an injustice upon the person whom this interpretation is sought, and where the party against whom this enforcement is sought has complied with the terms and conditions of the stipulation, fairness dictates the interpretation relied upon by the plaintiff be upheld by this Court. C.f., In Re Frohlich, 1 Misc.3d 908 (2004).

Accordingly, defendant's motion to resettle the Order is denied.

A copy of this Decision has been mailed to the parties and/or their respective attorneys.

This constitutes the decision of this Court.

Dated: Jamaica, New York
June 29, 2004

JEFFREY D. LEBOWITZ, A.J.S.C.