

Stolte v McLean

2012 NY Slip Op 30265(U)

January 25, 2012

Supreme Court, Suffolk County

Docket Number: 29288-2010

Judge: Peter H. Mayer

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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 17 - SUFFOLK COUNTY

P R E S E N T :

Hon. PETER H. MAYER
Justice of the Supreme Court

MOTION DATE 8-25-10
ADJ. DATE 10-12-10
Mot. Seq. # 001 - MotD

CONFERENCE SCHEDULED FOR FEBRUARY 28, 2012 @ 9:30 AM

-----X			
PATRICIA McLEAN STOLTE, ROBERT	:	Reynolds, Caronia, Gianelli, Hagney,	
McLEAN and MICHAEL McLEAN,	:	LaPinta & Quatela, LLP	
	:	Attorneys for Plaintiffs	
	:	35 Arkay Drive, Suite 200	
Plaintiff(s),	:	Hauppauge, New York 11788	
	:		
- against -	:	Cahn & Cahn, LLP	
	:	Attorney for Deft Marilyn McLean	
	:	22 High Street, Suite 3	
MARILYN McLEAN and NEW YORK STATE	:	Huntington, New York 11743	
and LOCAL RETIREMENT SYSTEM,	:		
	:	Attorney General for the State of New York	
Defendant(s).	:	Attorney for Deft NYS Retirement System	
-----X		300 Motor Parkway, Suite 205	
		Hauppauge, New York 11788	

Upon the reading and filing of the following papers in this matter: (1) Order to Show Cause by the plaintiffs, signed August 11, 2010 (Costello, J.), and supporting papers; (2) Affirmation in Opposition by the defendant McLean, dated September 13, 2010, and supporting papers; (3) Affirmation by the defendant New York State and Local Retirement System, dated September 27, 2010, and supporting papers; (4) Reply Affirmation by the plaintiffs, dated October 8, 2010, and supporting papers; (5) Sur-Reply by the defendant McLean, dated October 12, 2010, and supporting papers; and now

UPON DUE DELIBERATION AND CONSIDERATION BY THE COURT of the foregoing papers, the motion is decided as follows: it is

ORDERED that plaintiff, Patricia McLean Stolte is declared to be the rightful owner of 25% of the proceeds of Robert G. McLean's \$125,000.00 life insurance policy; and it is further

ORDERED that the plaintiff Robert McLean is declared to be rightful owner of 25% of the proceeds of Robert G. McLean's \$125,000.00 life insurance policy; and it is further

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ORDERED that the plaintiff Michael McLean is declared to be rightful owner of 25% of the proceeds of Robert G. McLean's \$125,000.00 life insurance policy; and it is further

ORDERED that plaintiff's Robert McLean and Michael McLean are declared to be the joint rightful owners of the pension benefits of Robert G. McLean, deceased, to the extent of the value of said pension as of July 5, 1985; and it is further

ORDERED that all parties shall appear for a compliance conference on **February 28, 2012 at 9:30 a.m.** in the courtroom of the undersigned, located at One Court Street, Room A-257, Part 17, Riverhead, NY 11901, and shall enter into a discovery order for the purpose of ascertaining the value of the Robert G. McLean's pension as of July 5, 1985; and it is further

ORDERED that the temporary restraining order set forth in the August 11, 2010 Order to Show Cause, which was extended pursuant to the on-the-record directive of the undersigned on October 11, 2010, (Costello, J.) is hereby vacated.

In this declaratory judgment action, plaintiffs Patricia McLean Stolte, Robert McLean and Michael McLean seek an order:

- a) declaring plaintiff PATRICIA MC LEAN STOLTE to be a 25% beneficiary, ROBERT MC LEAN a 25% beneficiary, and MICHAEL MC LEAN a 25% beneficiary of a life insurance policy originally with the face value of \$125,000.00 on the life of ROBERT G. MC LEAN, deceased, and
- b) directing defendant MARILYN MC LEAN to turn over 75% of the proceeds from the life insurance policy held by Robert G. McLean, consisting of 25% to PATRICIA MC LEAN STOLTE, 25% to ROBERT MC LEAN and 25% beneficiary (sic) to MICHAEL MC LEAN.
- c) declaring plaintiffs MICHAEL MC LEAN and ROBERT MC LEAN the sole beneficiaries of the pension payable by the defendant NEW YORK STATE and LOCAL RETIREMENT SYSTEM under Reg. Number 0A328377 upon the death of ROBERT G. MC LEAN; and
- d) directing defendant NEW YORK STATE and LOCAL RETIREMENT SYSTEM to pay to plaintiffs MICHAEL MC LEAN and ROBERT MC LEAN the full pension and death benefit proceeds under Reg. Number 0A328377 payable upon the death of their father ROBERT G. MC LEAN, deceased, and to determine that plaintiffs are the sole beneficiaries thereof; and
- e) restraining defendant NEW YORK STATE and LOCAL RETIREMENT SYSTEM from disbursing any and all benefits and proceeds from the pension payable on the death plaintiffs' father, ROBERT G. MC LEAN, deceased, to any individual or entity other than plaintiffs MICHAEL and ROBERT MC LEAN during the pendency and determination of the within action; and
- f) Restraining defendant MARILYN MC LEAN from applying for, or negotiating any check or draft issued by NEW YORK STATE and LOCAL RETIREMENT SYSTEM in relation to Reg. Number 0A329377 payable for pension/death benefits of ROBERT G. MC LEAN, deceased; and

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- g) Ordering that defendant MARILYN MC LEAN, sign and deliver to the NEW YORK STATE and LOCAL RETIREMENT SYSTEM a waiver of all pension/death benefits rights under Reg. Number 0A328377 which are payable upon the death of ROBERT G. MC LEAN; and
- h) Granting such other and further relief as to this Court may seem just, proper and equitable.

Plaintiff Patricia McLean Stolte and the decedent Robert McLean were married on May 14, 1966. In 1985, Patricia commenced an action for divorce against Robert in Supreme Court, County of Suffolk, under index # 11830-1985. On March 31, 1985 the parties entered a Stipulation settling the divorce action ("Settlement Agreement" or "Stipulation of Settlement"). On July 5, 1985, the Hon. William R. Geiler granted a Judgment of Divorce. When the Judgment of Divorce was entered, the Stipulation of Settlement was incorporated by reference, but not merged into the Judgment.

Subsequent to his divorce, Robert McLean married defendant Marilyn McLean. Robert McLean retired in 2001 and began collecting pension benefits. He died on September 3, 2009. Following his death, Marilyn McLean filed a claim for the pension and life insurance benefits accorded to Robert.

The Settlement Agreement provided, in pertinent part, that Patricia waived all rights and interests she had in Robert's pension benefits accorded him through his employment with the Suffolk County Police Department. This waiver was on the specific condition that Robert name the couple's "infant issue," Michael McLean and Robert McLean as sole beneficiaries of his pension. The defendant Local Retirement System has apparently represented that it will pay the defendant Marilyn McLean the pension benefits, unless it is otherwise Ordered by a Court of competent jurisdiction. In addition to pension benefits, plaintiff Patricia also seeks a declaration that 75% of the proceeds of life insurance go to herself and the two children, each to receive 25% of the face amount of the policy of \$125,000.00.

The pertinent section of the Stipulation of Settlement, as it relates to the insurance claims, reads as follows:

11. The defendant hereby agrees that he will maintain his \$125,000.00 life insurance policy through his employment naming the following individuals as irrevocable beneficiaries: PATRICIA A. MC LEAN as to 25% interest; MICHAEL MC LEAN, as to 25% interest; ROBERT MC LEAN, as to 25% interest; with the remaining 25% interest to a designated beneficiary. However, if no individual is designated on the policy as to the remaining 25% interest, then said sum shall be divided equally between ROBERT MC LEAN and MICHAEL MC LEAN.

Plaintiffs contend that the decedent received the consideration bargained for in that plaintiff Patricia gave up all rights and interests she had in Robert's pension, as well as her right to maintenance predicated on the specific agreement that he would maintain the couple's children as sole beneficiaries of his pension, and that she and the children would be irrevocable beneficiaries of his life insurance.

As it relates to the pension claims, Paragraph 12 of the Settlement Agreement, reads as follows:

12. The parties acknowledge that the concept of Equitable Distribution in the State of New York provides that pension plans as well as any other form of accumulated benefits, can be considered as marital property and subject to distribution. The plaintiff hereby waives any and all rights that she might have to share in the value of the pension plan as well as any other benefits that the defendant may have. However, the parties hereby agree that the infant issue of this marriage, to wit: ROBERT MC LEAN and MICHAEL MC LEAN shall be named as the beneficiaries of the defendant's pension.

Defendant Marilyn argues, *inter alia*, that the relief sought in the motion is identical to the ultimate relief sought in the complaint, and that discovery is necessary, since even if the plaintiffs are correct, they would be entitled only to the value of the pension accumulated during the marriage, thus mandating a valuation of the pension as of the time of divorce in July 1985. Marilyn further argues that plaintiff Patricia waived all rights to the pension in exchange for receiving the marital residence and child support payments for her children until their emancipation. Finally, defendant Marilyn argues that declaring the "infant issue" as pension beneficiaries no longer applies, as they are no longer infants in need of support.

The Court of appeals has recognized that a Separation Agreement expressly distributing pension benefits as marital property pursuant to the Equitable Distribution Law is enforceable (*Kaplan v Kaplan*, 82 NY2d 300, 604 NYS2d 519 [1993]). Pension benefits are clearly marital property and thus are properly the subject of Court Ordered equitable distribution awards (*Kaplan*, 82 NY2d 300, 306).

The pension benefits here were assigned pursuant to a Separation Agreement as opposed to a Court Ordered equitable distribution award. The Agreement itself, which was incorporated but not merged in the final decree of divorce, states that both parties recognize that the concept of equitable distribution provides that pension plans as well as other forms of accumulated benefits can be considered marital property and subject to distribution (see *Olivo v Olivo*, 82 NY2d 202, 604 NYS2d 23 [1993]).

Indeed, New York Domestic Relations Law §236(B) recognizes that marriage is an economic partnership that each spouse has individually contributed to during the marriage. Accordingly, a former spouse is understood to have acquired an independent ownership interest in any marital property acquired during the marriage. The goals of the Equitable Distribution Law may be achieved equally through property division fashioned by Court Order, which has considered all relevant equitable factors or by an agreement between the parties providing for the "ownership, division or distribution of separate and marital property" (DRL § 236[B][3]). Therefore, separation agreements purporting to equitably assign pension benefits should be given the same protection as Court Ordered benefits.

The Separation Agreement is an independent contract which is subject to the principles of contract interpretation. These principles require that a court ascertain the intent of the parties from within the four corners of the instrument, and not from extrinsic evidence (*Rainbow v Swisher*, 72 NY2d 106, 531 NYS2d 775 [1988]; *Tierney v Drago*, 38 AD3d 755, 833 NYS2d 127 [2d Dept 2007]).

"When interpreting a contract, such as a separation agreement, the Court should arrive at a construction that will give fair meaning to all of the language employed by the parties to reach a practical interpretation of the expressions of the parties so that their reasonable expectations will be realized" (*Fragin*

v Fragin, 80 AD3d 725, 916 NYS2d 783 [2011], quoting *Schiano v Hirsch*, 22 AD3d 502, 502, 803 NYS2d 643 [2d Dept 2005]; *Herzfeld v Herzfeld*, 50 AD3d 851, 857 NYS2d 170 [2d Dept 2008]; *Fetner v Fetner*, 293 AD2d 645, 741 NYS2d 256 [2d Dept 2002]). Moreover, “where the intention of the parties is clearly and unambiguously set forth, effect must be given to the intent as indicated by the language used” (*Fetner*, 293 AD2d 645, 646).

The phrase “irrevocable beneficiaries” as used in Paragraph 11 of the Separation Agreement is highly germane, in that it is clear and unequivocal in its meaning. “Irrevocable” means unalterable or without power to revoke (Miriam Webster’s Dictionary, 10th Edition). The life insurance policy in question was a benefit of the deceased that he acquired through his employment so the word “beneficiaries” used in conjunction with the modifier “irrevocable” refers to, the Court concludes, funds payable on death of the insured. The Court also notes that this paragraph does not refer to Michael McLean or Robert McLean as “infant issue.” The declarative portion of paragraph 11 simply names them as irrevocable beneficiaries without any further description such as “children of the parties,” or “issue.”

A promise in a separation agreement to maintain an insurance policy designating a spouse as beneficiary vests in the spouse an equitable interest in the policy specified, and that spouse will prevail over a person in whose favor the decedent executed a gratuitous change in beneficiary (*Rogers v Rogers*, 63 NY2d 582, 483 NYS2d 976 [1984]). The language here clearly evinces the intent of the parties, that the beneficiaries of the life insurance proceeds were Patricia McLean as to 25%, Michael McLean as to 25%, and Robert McLean as to 25%. The Court grants the plaintiffs’ motion and declares that each of those beneficiaries is entitled to 25% of the proceeds paid on the death of decedent Robert McLean.

Notably, with regard to pension rights, while paragraph 11 expressly refers to Robert and Michael McLean as “irrevocable beneficiaries,” paragraph 12 fails to declare the infant issue “irrevocable” beneficiaries of those pension rights. Defendant Marilyn argues that the term “infant issue” can only mean that Robert and Michael were to be beneficiaries of the pension only as long as they remained “infants” in need of support. Infancy, under the law, terminates when one reaches the age of 18 (CPLR § 105[J]).

In many cases, reaching majority does not necessarily mean emancipation. Indeed, this very Separation Agreement defines “emancipation” as occurring upon reaching the age of 21 with certain exceptions (attending full time college, sporadic or part-time employment), in which case emancipation will be extended. The purpose was to specifically define how long the deceased would be responsible for child support. Therefore, inferring the length of time Robert and Michael were meant to be beneficiaries, whether through infancy or emancipation or for life, from the term “infant issue,” cannot be discerned from the four corners of the instrument.

As in *Kaplan*, the assignment of pension benefits in this case was made pursuant to a Separation Agreement, was incorporated but not merged in the final decree of divorce, was negotiated with the parties express recognition of the wife’s equitable interest in the pension benefits, and is enforceable. Such a holding is consistent with the statutory policy of encouraging non-litigated resolution of former spouses economic disputes (*Kaplan*, 83 NY2d 300, 307).

Pension benefits, however, are marital property to the extent that the spouses accrued an interest in

those benefits during the marriage, and thus become the subject of Court Ordered equitable distribution awards (see *Olivo v Olivo*, 82 NY2d 202, 207 [1993]). Accordingly, a former spouse is understood to have acquired an independent ownership interest in any “marital property” acquired during the marriage and prior to separation or divorce (DRL § 236[B][1][c]; *Denaro v Denaro*, 84 AD3d 1148, 924 NYS2d 453 [2d Dept 2011]). Thus, the pension benefits assigned to Robert and Michael could be no greater than the value of the vested equitable property rights of the wife in the pension at the time of the divorce.

Based upon the foregoing, the Court finds that co-plaintiffs Robert and Michael McLean are the joint rightful owners of pension benefits to the extent of the value of the pension as of July 5, 1985. The Court is unable to determine this value, as no evidence relevant thereto has been proffered. Accordingly, the parties shall enter a discovery order at the scheduled compliance conference for the purpose of obtaining a determination of the value of the pension of Robert McLean as of July 5, 1985 (see *Majauskas v Majauskas*, 61 NY2d 481, 474 NYS2d 699 [1984]; *Olivo v Olivo*, 82 NY2d 202, 604 NYS2d 23 [1993]).

As for the plaintiffs’ request for continuation of the restraining order, it is well established that to prevail on a motion for preliminary injunctive relief under CPLR 6301, the moving party must demonstrate 1) a likelihood of success on the merits; 2) the prospect of irreparable injury if the provisional relief is withheld; and 3) a balance of the equities tips in the moving party’s favor. (CPLR § 6311, *Town of Goshen v Serdarevic*, 17 AD3d 576, 793 NYS3d 485 [2nd Dept 2005]). The decision to grant a preliminary injunction is committed to the sound discretion of the Court, as the remedy is considered to be a drastic one (*Bergen-Fine v Oil Heat Institute, Inc.*, 280 AD2d 504, 720 NYS2d 378 [2d Dept 2001]).

With respect to a showing of a likelihood of success on the merits, to sustain this burden the movant must demonstrate a clear right to relief that is plain from the undisputed facts (*Blueberries Gourmet, Inc. v Aris Realty Corp.*, 255 AD2d 348, 680 NYS2d 557 [2d Dept. 1998]). Factors militating against the granting of preliminary injunctive relief include that the movant can be fully recompensed by a monetary award, or other appropriate remedy at law (*White Bay Enterprises v Newsday, Inc.*, 258 AD2d 520, 685 NYS2d 257 [2d Dept. 1999]; *McIntyre v Metropolitan Life Ins. Corp.*, 221 AD2d 602, 634 NYS2d 180 [2d Dept 1995]).

Clearly, the claim of the plaintiffs here is essentially one seeking enforcement of equitable ownership rights of certain funds derived from the equitable distribution of marital property in the Separation Agreement of March 31, 1985 and subsequent Divorce Decree of July 5, 1985. Both claims may be satisfied by monetary compensation. Indeed, the deceased died in 2009 and there appears to be no dispute that the life insurance proceeds have been tendered and received by defendant Marilyn prior to this application.

Therefore, this is no longer a situation, in so far as the insurance question is concerned, in which “it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff’s rights” regarding the life insurance proceeds (see CPLR § 6301). In fact, payment of the life insurance proceeds has already been made to defendant Marilyn McLean. Therefore, there is no “status quo” that has to be maintained to prevent injury or damage to the plaintiff, since the sole remedy for the plaintiff is monetary compensation.

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As to the pension, the rights of the plaintiffs have been determined, and will ultimately be represented by a finite value to which the plaintiffs may seek judgment, thus giving them an adequate remedy at law. This finding changes the circumstances existing heretofore and militates against any further cessation of pension benefits to the defendant. Therefore, in analyzing all the proof herein, the Court finds that there is presently insufficient evidence of the elements required for the continuation of the injunction. This is further validated by the fact that the plaintiffs have failed to prove that jurisdiction has been properly acquired over defendants New York State and Local Retirement System.

Accordingly, the injunction is vacated. All other requested relief is denied.

Settle Judgment on notice.

Dated: January 25, 2012


PETER H. MAYER, J.S.C.

FINAL DISPOSITION

NON FINAL DISPOSITION