

**Kane v Galtieri**

2012 NY Slip Op 32332(U)

September 7, 2012

Supreme Court, Richmond County

Docket Number: 100185/08

Judge: Philip G. Minardo

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND

-----X

PATRICIA KANE, as the Limited  
Administratrix of the Estate of JEANNE  
KANE and PATRICIA KANE, individually,

Plaintiffs,

-against-

JOHN F. GALTIERI, a/k/a JOHN GALTIERI

Defendant,

MARILYN GALTIERI,

Intervenor.

-----X

DCM PART 6

Present:

HON. PHILIP G. MINARDO

DECISION AND ORDER

Index No. 100185/08

Motion Nos. 1088-017  
1501-018  
1506-019

The following papers, number 1 -11 were marked fully submitted  
on the 28<sup>th</sup> day of June, 2012.

Papers  
Numbered

"Motion in Limini" of defendant John F. Galtieri,  
with Supporting Papers  
(dated March 16, 2012).....1  
Plaintiffs' Affirmation in Opposition, with  
Supporting Papers and Memorandum of Law  
(dated May 1, 2012).....2  
Intervenor's Notice of Motion, with Supporting Papers  
and Memorandum of Law  
(dated May 9, 2012).....3  
Defendant's Reply  
(dated May 11, 2012).....4  
Plaintiffs' Notice of Cross Motion, with Supporting  
Papers and Memorandum of Law  
(dated May 14, 2012).....5  
Defendant's Affidavit in Opposition to Plaintiffs'  
Cross Motion, with Supporting Papers  
(dated June 1, 2012).....6

Papers  
Numbered

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Plaintiffs' Supplemental Affirmation (dated June 1, 2012).....	7
Plaintiffs' Reply Affirmation (dated June 8, 2012).....	8
Affirmation of Rhonda Cavagnaro (dated June 19, 2012).....	9
Intervenor's Affirmation in Opposition to Plaintiffs' Cross Motion, with Supporting Papers and Memorandum of Law (dated June 25, 2012).....	10
Affidavit of Marilyn Scibetti (dated June 26, 2012).....	11

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Upon the foregoing papers, the motions are decided as follows.

These motions arise out of a wrongful death action commenced in the Supreme Court, Richmond County by plaintiff Patricia Kane, individually, and as Limited Administratrix of the Estate of her mother, Jeanne Kane (hereinafter "plaintiffs"), following latter's death at the hands of her former husband, defendant John F. Galtieri, a retired New York City Police Officer, in January 2007. On or about February 19, 2009, defendant was convicted and, later, sentenced for murdering his ex-wife. Prior to her death, the decedent had been receiving the bulk of defendant's New York City Police Department pension pursuant to a Judgment of Divorce granted in New Jersey on May 19, 2003. Pertinently, defendant herein was the plaintiff in that action.

Following defendant's conviction, plaintiffs at bar moved to amend their complaint in the pending action to include a claim

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under Executive Law § 632-a, more commonly referred to as the "Son of Sam Law". Said motion was granted by Justice Fusco of this Court in a Decision and Order dated March 8, 2010. Defendant's appeal of that order was dismissed for failure to perfect on or about July 29, 2011. Defendant subsequently moved, *inter alia*, to dismiss the complaint, whereupon plaintiffs cross-moved for partial summary judgment on the issue of liability on their causes of action for both wrongful death and under the Son of Sam Law. In relevant part, defendant's motion was denied and plaintiffs' cross motion was granted on July 26, 2010. Following a trial on the issue of damages, plaintiffs were awarded judgments in excess of \$31,000,000.00 on May 4, 2012.

Prior to murdering his ex-wife, defendant had remarried the intervenor, Marilyn Galtieri, in the State of Florida. Insofar as it appears, at some point during the pendency of the criminal charges, the remaining Ms. Galtieri commenced divorce proceedings against defendant in Florida, in the course of which they entered into a "Marital Settlement Agreement" pursuant to which the intervenor was "granted" a 99.8 percent interest in defendant's only asset, his New York City Police Department Pension. Critically, this "Agreement", later incorporated into a Florida Judgment of Divorce dated April 15, 2009, was executed *between* the dates of defendant's conviction and sentence, and at a time when plaintiffs'

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wrongful death action was already pending in the Supreme Court. It further appears that at the time of said Agreement, the vast majority of defendant's pension had already been "garnished" by the Superior Court of the State of New Jersey in order to satisfy his financial obligations under the terms of that State's Judgment of Divorce.

In Motion No. 1088-017, defendant Galtieri moves, *inter alia*, to vacate plaintiffs' attachment of the proceeds of his pension in partial satisfaction of their multi-million dollar judgment on the ground that it is exempt from execution, garnishment, attachment, assignment or any other legal process under the provisions of, e.g., the Administrative Code of the New York City. In addition, he claims that to whatever extent the Son of Sam Law may be construed to permit any of the foregoing, it represents an unconstitutional infringement upon his rights of contract and due process under the New York State and United States Constitutions. This motion is opposed by plaintiffs, but is unopposed by the New York City Police Department Pension Fund (hereinafter "PPF"), which is ultimately supportive of plaintiffs' right of attachment.

Essentially the same argument as that tendered herein was raised and rejected by Justice Fusco in his March 2010 Decision and Order, which remains in full force and effect. Accordingly, defendant is bound by that determination. In any event, while

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defendant's position may, at the time of that decision, have been *arguable*, the Third Department has since ruled in Matter of NY State Office of Victim Servs. V Raucci (\_\_\_AD3d \_\_\_, 946 NYS2d 657) that the nearly identical language of Social Security Law § 110 does not exempt New York State pensions from the reach of the Son of Sam Law (Executive Law § 632-a) which, it noted, was specifically intended to ensure "that convicted criminals are held accountable to their victims financially, regardless of their source of wealth" (*id.* at 660 [emphasis in original] [internal quotation marks omitted]).

"Although the Legislature expressly exempted certain categories of funds from the reach of the Son of Sam Law, it did not list pension proceeds as one of those categories, indicating that such funds were intended to be recoverable. Moreover, the older, more general provisions of [the Administrative Code] are subordinate to the more recent and specific dictates of the Son of Sam Law because 'a prior general statute yields to a later specific or special statute'" (*id.*, citing Matter of Dutchess County Dept. of Social Servs. v Day, 96 NY2d 149, 153).

As further noted by the Court, "despite the absolute ban on assignment contained in [the various] statutes protecting public employee pensions, [our] courts have long recognized ... limited

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exception[s] to the unyielding application of such laws for purposes of [, e.g.,] support ... and equitable distribution" (*id.* [internal quotation marks omitted]). Accordingly, defendant's motion is denied.

In their cross motion (No. 1501-018), plaintiffs seek the entry of an order, *inter alia*, directing the Sheriff and the PPF to turn over the pension funds effectively sequestered by them in accordance with the terms of the May 2009 ex parte order signed by Justice Fusco. The PPF concurs, while defendant and the intervenor, Marilyn Galtieri, are opposed. Defendant's opposition is predicated upon the same ground heretofore rejected, *i.e.*, that his police pension is exempt, *e.g.*, from execution, while the latter maintains, in effect, that there is nothing left of defendant's pension to which plaintiffs' judgment may attach under the terms of the Marital Property Agreement executed by herself and defendant on March 9, 2009. In addition, she maintains that the legitimacy of that Agreement has since been "authenticated" in a

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Florida Domestic Relations Order (hereinafter "DRO") subsequently served upon the PPF and dishonored<sup>1,2</sup>.

As previously noted, Justice Fusco held on March 8, 2010 that plaintiffs, as relevant, "ha[d a] clear right" to access the benefits available under defendant's police pension in their then-pending actions for wrongful death and (as amended thereby) under the Son of Sam Law. Defendant, as a party to those proceedings, is bound by that determination, which was based upon the same principles later found to be compelling by the Third Department in the Raucci case (*supra*).

As for the objections raised by the intervenor, in his March 2010 Decision and Order, Justice Fusco effectively rejected the purported primacy of the Florida DRO as asserted therein by Marilyn Galtieri, who had been granted intervenor status in those proceedings. As such, Ms. Galtieri, having been afforded a full and fair opportunity to litigate the issue before my fellow jurist,

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<sup>1</sup>Defendant's further contention that the matrimonial courts in New Jersey exceeded their jurisdiction in ordering the PPF to make monthly payments to his ex-wife in satisfaction of his obligation to pay alimony under the New Jersey Judgment of Divorce is essentially moot. Those payments, in which the PPF concurred, ceased upon her death at defendant's hands in January 2007.

<sup>2</sup>In a later proceeding to compel compliance with the DRO, a Florida court ruled on September 30, 2009 that it had no jurisdiction over the PPF, and that the matter of recognition for purposes of compelling compliance would have to be litigated in New York.

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is precluded from re-litigating that issue before this Court (see Schwartz v Public Admin. of County of Bronx, 24 NY2d 65; Barcov Holding Corp. v Bexin Realty Corp., 16 AD3d 282, 283). In any event, it is readily apparent from the timing of the "Marital Settlement Agreement" entered into between defendant and the intervenor barely one month after defendant's murder conviction, that its primary if not sole purpose was to render defendant judgment-proof in the wrongful death action then pending against him in this Court. Pertinent to the foregoing conclusion is (1) defendant's concession that his New York City Police Department Pension was his *only* asset, and (2) the fact that he was not awarded anything under the terms of the above purported division of assets. On these facts, the above conveyance was patently void under Debtor and Creditor Law § 273-a<sup>3</sup>. Accordingly, to the extent that such a conveyance would operate to allow a convicted murderer to deprive the Estate of his or her victim of just compensation for wrongful death and under the Son of Sam Law, judicial recognition of same in the judgments and/or orders of a sister state are not entitled to Full Faith and Credit in New York (see generally Greschler v Greschler, 51 NY2d 368, 377). A further impediment to recognition is the fact that such a conveyance of pension benefits earned or vested prior to the intervenor's marriage to defendant

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<sup>3</sup>This section was adopted in New York from the Uniform Fraudulent Conveyance Act, to which Florida is signatory (see Fla Stat §§ 726.101 et seq.).

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would not fall within the public policy exception to the anti-assignment rules (memorialized, e.g., in the Administrative Code of the City of New York), which has long been applied to public sector pensions subject to equitable distribution as martial property (see Kaplan v Kaplan, 82 NY2d 300, 306-308; Dolan v Dolan, 78 NY2d 463; Matter of New York State Off. of Victim Servs. v Raucci, 946 NYS2d at 660).

In view of the foregoing, Ms. Galtieri's motion (No. 1506-018) to compel recognition of process emanating from the State of Florida purporting to recognize her alleged primacy in the matter of reaping the benefits of defendant's police pension is denied as academic. In any event, and notwithstanding the intervenor's arguments to the contrary, the courts of that state have already declined to rule upon the question of her right to compel payment from the PPF, and have committed the resolution of that matter to the New York State courts.

This constitutes the Decision and Order of the Court.

E N T E R,

/s/ Philip G. Minardo  
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J.S.C.

Dated: September 7, 2012