

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: November 19, 2014)

BENJAMIN R. STRAUSS, in his  
capacity as Executor of the Estate of  
Charles M. Strauss

vs.

BRENDA K. MALLICOAT

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C.A. No. PC-2013-3439

DECISION

**LICHT, J.** In cross Motions for Summary Judgment pursuant to Super. R. Civ. P. 56 (Rule 56), the parties ask the Court to interpret the terms of a Property Settlement Agreement (the PSA) entered into by Charles M. Strauss (Mr. Strauss or Decedent) and Brenda K. Mallicoat (Ms. Mallicoat or Defendant) at the time of their divorce. The specific issue presented is as follows: Is a designated beneficiary of retirement accounts, who agreed in the PSA that such accounts are awarded to her spouse “free of all claims,” entitled to the proceeds of the accounts if her former spouse failed to change the beneficiary designation prior to his death? The Court believes our Supreme Court has never addressed this question. For the reasons set forth below, the Court concludes that the answer in this case is she is not.

**I**

**Facts and Travel**

Ms. Mallicoat and Mr. Strauss married on October 11, 2002 and divorced in 2008. Their marriage produced no children, but each had grown children from prior marriages. As part of their divorce proceedings, Ms. Mallicoat and Mr. Strauss entered into the PSA on March 20, 2008. The recitals to the PSA state that the parties “desire to settle forthwith any and all rights of property . . . as well as . . . any and all claims each may have against the other for any reasons

whatsoever[.]” In addition to the customary boilerplate language found in such agreements, the PSA dealt specifically with the parties’ assets, including their residence, household furnishings, automobiles, bank and retirement accounts, and investments. Subsection 4 of Article SIXTH, entitled “Retirement and Pension Accounts,” identified the respective parties’ retirement accounts with approximate values and concluded as follows:

“(a) Both the Husband and the Wife shall be awarded the exclusive right, title and interest to any and all retirement accounts, IRAs, State Teachers Pension and the like standing in his or her name, free of all claims by the other.”

The Final Judgment of Divorce entered on July 3, 2008 approved and incorporated by reference the PSA.

After their divorce, Mr. Strauss and Ms. Mallicoat did not maintain any relationship. Mr. Strauss passed away on February 10, 2013, survived by his three adult children—one of whom is Benjamin R. Strauss, who in his capacity as Executor of the Estate is the Plaintiff in this matter. Prior to the divorce, Mr. Strauss had named Ms. Mallicoat the beneficiary of his TIAA-CREF retirement annuity accounts (Retirement Accounts). After the divorce, Mr. Strauss never changed the beneficiary designation. Consequently, TIAA-CREF paid Ms. Mallicoat \$334,705.99 in survivor benefits from Mr. Strauss’ Retirement Accounts. Plaintiff filed suit against Ms. Mallicoat claiming that express and specific waivers in the PSA bar her from having a valid claim to any proceeds from the Retirement Accounts. Ms. Mallicoat placed the proceeds in a separate account and agreed to “refrain from using or otherwise accessing the TIAA-CREF proceeds until a resolution of this case.”

The parties now bring cross Motions for Summary Judgment.

## II

### Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that it “is a drastic remedy and should be cautiously applied.” Steinberg v. State, 427 A.2d 338, 339–40 (R.I. 1981) (quoting Ardente v. Horan, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976)). “Thus, ‘[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the [C]ourt determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law.’” Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Educ., 93 A.3d 949, 951 (R.I. 2014). However, only when the facts reliably and indisputably point to a single permissible inference can this process be treated as a matter of law. Steinberg, 427 A.2d at 340.

The party who opposes the motion for summary judgment “carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.” Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1225 (R.I. 1996); see also McAdam v. Grzelczyk, 911 A.2d 255, 259 (R.I. 2006).

## III

### Analysis

In this case, the parties concede that there is no genuine issue of material fact. They both agree that summary judgment is in order. It comes as no surprise that they disagree as to whose motion should be granted. The Court’s Decision rests on interpreting the terms of the PSA.

With respect to contract interpretation, it is well settled that the primary task for the Court is to “attempt to ascertain the intent of the parties.” Woonsocket Teachers’ Guild v. Sch. Comm.

of Woonsocket, 117 R.I. 373, 376, 367 A.2d 203, 205 (1976). The intention of the parties must govern if that intention can be clearly inferred from the terms and express language of the contract. Id. (citations omitted). In the absence of ambiguity, the interpretation of a contract is a question of law. Andrukiewicz v. Andrukiewicz, 860 A.2d 235, 238 (R.I. 2004); see also Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 558 (R.I. 2009). The mere fact that parties differ as to the meaning of an agreement does not necessarily mean that the agreement is in fact ambiguous, and, therefore, when the court looks at unambiguous contractual words, “what is claimed to have been the subjective intent of the parties is of no moment.” Young, 973 A.2d at 560 (emphasis in original). However, because the ultimate goal is to determine the intent of the parties, our Supreme Court has noted that even where there is no ambiguity, it is permissible for the Court nonetheless to “consider the situation of the parties and the accompanying circumstances at the time the contract was entered into, not for the purpose of modifying or enlarging or curtailing its terms, but to aid in the interpretive process and to assist in determining its meaning.” Haffenreffer v. Haffenreffer, 994 A.2d 1226, 1233 (R.I. 2010) (citation omitted).

In this case, the parties do not contend there is any ambiguity in the PSA. The disagreement revolves around the effect of the PSA, not necessarily what the terms mean.

Plaintiff argues that Defendant voluntarily relinquished and waived any rights she had to Mr. Strauss’ property via the PSA and is now attempting to use an outdated, pre-divorce beneficiary designation to circumvent the terms of the divorce agreement. Plaintiff contends that (1) the terms of the PSA make the pre-divorce designation obsolete and (2) the PSA terms unequivocally and pervasively waive all rights and claims that each former spouse had in the other’s property. In support of his position, Plaintiff points out that it is undisputed that the PSA is a contract that was incorporated by reference and not merged into the divorce judgment.

Plaintiff argues that the unambiguous language of the PSA—when read in its entirety and giving the words their plain, ordinary, and usual meaning—demonstrate the parties’ intention to divest any rights or claims of one spouse to any property owned by the other spouse, including the Retirement Accounts. Specifically, Plaintiff highlights the portion of the PSA that deals with both parties’ retirement accounts, where the language states that each spouse “shall be awarded the exclusive right, title and interest to any and all retirement accounts, IRAs, State Teachers Pension and the like standing in his or her name, **free of all claims by the other.**”<sup>1</sup> Thus, Plaintiff maintains that any rights Defendant may have had at one time to the Retirement Accounts based on the pre-divorce beneficiary designations are trumped by the PSA. Likewise, Plaintiff suggests that surrounding circumstances—that the PSA was the product of a failed marriage, the divorce severed all ties between the parties, and Mr. Strauss eliminated Defendant from his estate plan shortly after the divorce was finalized—further demonstrate that the parties intended to relinquish any rights to each other’s retirement accounts.

Defendant argues that the terms of the PSA permitted each of the parties to deal with his or her own property as if he or she were single,<sup>2</sup> giving Mr. Strauss the unfettered right to deal with the Retirement Accounts without interference from a spousal interest. Defendant contends that Mr. Strauss was free either to leave in place or change the beneficiary designation on the Retirement Accounts. Since he failed to make a change, Defendant asserts she is entitled to the proceeds. Defendant counters that Mr. Strauss acted upon other beneficiary designations relating

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<sup>1</sup> Emphasis is taken from Plaintiff’s Memorandum.

<sup>2</sup> In support of this contention, Defendant points to the PSA’s provision regarding Property Rights, which states in pertinent part that “[e]xcept as otherwise more specifically provided in this Agreement, all the property of each of the parties . . . shall be and remain her or his sole and separate property, free from all rights of the other spouse and party hereto, with power in the party owning such property to deal with or otherwise dispose of the same as if she or he were single. . . .”

to other retirement accounts, but he never changed the beneficiary designations in question.<sup>3</sup> Further, Defendant argues that there is no language in the PSA that waives any designations that were in place prior to the divorce. Defendant maintains that while she agreed never to challenge Mr. Strauss' selection of beneficiaries, she did not waive her right to keep the money if she were designated as such a beneficiary. Defendant insists that renouncing all rights to a spouse's retirement account—which is what she did via the PSA—is different than promising to return money distributed in accordance with a valid contractual directive that her ex-spouse had a right to make.

The Court found, and the parties offered, no Rhode Island case law addressing the question the Court presented at the outset of this Decision: Is a designated beneficiary on retirement accounts, who agreed in the PSA that such accounts are awarded to her spouse “free of all claims,” entitled to the proceeds of the accounts if her former spouse failed to change the beneficiary designation prior to his death?

The Court, therefore, has looked to other jurisdictions and found the precedents of other states overwhelmingly in Plaintiff's favor. The cases the Court reviewed deal with life insurance contracts or Individual Retirement Accounts (IRAs) and pose a similar question as the one at issue in the instant case. The rule that emerges is that a property settlement agreement waiver of rights in a retirement account or life insurance contract trumps a pre-divorce beneficiary designation which is not changed prior to death, if it is clear from the agreement that the parties so intended.

In Beneficial Life Ins. Co. v. Stoddard, 516 P.2d 187, 188 (Idaho 1973), the Idaho Supreme Court found that an ex-wife relinquished her rights to her former husband's life

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<sup>3</sup> The reason Mr. Strauss changed some beneficiary designations was because he began to receive minimum distributions from other retirement accounts and was, therefore, actively dealing with those accounts. The same does not apply to the Retirement Accounts in question.

insurance policy, which was addressed in a property settlement agreement, even though the former spouse did not change the beneficiary designation on the policy. The language in the agreement relied on by the court was quite general, broadly stating that: “[i]t is further expressly agreed between the parties that this shall be a full and complete settlement of all property rights . . . and it is further agreed that each party waives any and all further demand against the other party of every kind and nature . . . .” Id. at 187.

Later, the Idaho Court of Appeals looked to Stoddard in Johnson v. Johnson, 746 P.2d 1061, 1063 (Ct. App. 1987), when it held that an ex-wife waived her rights as a beneficiary to an IRA where the property settlement agreement specifically provided that the IRA be awarded to the husband “free and clear of all claims” from the wife.

In Larsen v. Nw. Nat’l Life Ins. Co., 463 N.W.2d 777, 780 (Minn. Ct. App. 1990), a divorce decree provided that “[e]ach party may be awarded all right, title, and interest in those life insurance policies covering his or her respective life.” It further transferred property free and clear of any claim by the other spouse. Id. The court found this language, when read together, demonstrated the decedent spouse’s intention to divest her former husband of his right as a beneficiary to her life insurance policy. Id. at 781.

In Clift v. Clift, 210 F.3d 268, 272 (5th Cir. 2000), the court determined that an ex-wife voluntarily and in good faith waived her beneficiary interest in her former husband’s life insurance policy when the divorce decree provided that she was “divested of all right, title, interest, and claim in and to . . . [a]ny and all policies of life insurance” belonging to her former husband.

Here, the Court must turn to the language in the PSA to determine if it was the parties’ intent to waive any and all interest in the other’s retirement accounts, including the right to be a

beneficiary. Even though there is no ambiguity in the contract, the Court will not interpret the PSA in a vacuum, and it will consider the surrounding circumstances to aid in the interpretive process and to assist in determining the meaning, intent, and effect of the PSA. See Haffenreffer, 994 A.2d at 1233. The PSA was the product of a divorce, an event that typically involves each spouse extricating himself or herself from the other spouse’s life as much as possible. Moreover, the PSA, in its recitals, expresses an unambiguous and candid desire to settle “any and all claims each may have against the other for any reasons whatsoever.” See Compl., Ex. B (PSA at 1). Subsection 4(a) of Article SIXTH addresses the Retirement Accounts in specific terms and expressly states that “[b]oth [Mr. Strauss] and [Ms. Mallicoat] shall be awarded the exclusive right, title and interest to any and all retirement accounts, IRAs, State Teachers Pension and the like standing in his or her name, **free of all claims by the other.**” See id. (PSA at 6) (emphasis added).

The only conclusion the Court can draw from this language is that the parties intended to give up all their rights in the other’s accounts—including the right to be a beneficiary.

It is undisputed that there was no post-divorce relationship or interaction between Mr. Strauss and Ms. Mallicoat. Further, Plaintiff points to the fact that Mr. Strauss changed his will post-divorce to eliminate Ms. Mallicoat. Thus, Defendant’s argument that the PSA merely permitted Mr. Strauss to change his designated beneficiary is unavailing. Mr. Strauss’ action speaks louder to the Court than his inaction in failing to change the beneficiary designation.

Given the circumstances that (1) the PSA was entered into as part of the divorce proceedings between Defendant and Mr. Strauss and (2) the express language in the PSA states that each spouse’s retirement accounts are free of all claims from the other spouse, there is no doubt that the parties intended to prevent either spouse from having any claim to the other’s



retirement accounts. As such, this Court finds that Ms. Mallicoat, by executing the PSA, waived all of her claims to the Retirement Accounts.

#### **IV**

#### **Conclusion**

The parties differ with respect to the effect of the PSA on a pre-divorce beneficiary designation on Decedent's Retirement Accounts with TIAA-CREF. The plain, unambiguous, and common-sense interpretation of the PSA's terms provides that Defendant released all of her claims to Decedent's TIAA-CREF Retirement Accounts, including her rights as a beneficiary. Not only does the language in the agreement expressly state that each spouse's retirement accounts are "free of all claims by the other," but also the fact that the PSA was entered into as a result of the divorce between the Defendant and the Decedent, can only lead to the conclusion that the parties intended that each ex-spouse have no claim to the other's retirement accounts. Thus, the Court finds that there is no genuine dispute of material fact between the parties and grants Plaintiff's Motion for Summary Judgment. The Defendant's Motion for Summary Judgment is denied.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Benjamin R. Strauss v. Brenda K. Mallicoat

**CASE NO:** PC-2013-3439

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** November 19, 2014

**JUSTICE/MAGISTRATE:** Licht, J.

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