

Termination of Maintenance Provisions

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A SEPARATION AGREEMENT, stipulation of settlement,¹ matrimonial agreement or "opting-out" agreement are to be construed just like any other agreement, considering the ordinary principles of contract interpretation.² The interpretation is measured by the understanding of the parties as expressed in the agreement.³

Where the terms of an agreement are clear, and only one reasonable interpretation can be given, that construction will be adopted.⁴ The Court of Appeals has held that such agreements should be given a strict, rather than a broad, construction insofar as it may tend to limit the rights of the recipient.⁵

A valid remarriage terminates a former spouse's maintenance obligation.⁶ The parties may, however, agree that "maintenance" shall continue despite a spouses remarriage.⁷ The parties are also free to contract that support obligations survive the death of either of them, that the estate of the obligor, for example, shall be liable for the obligation or that the estate of the recipient, shall continue to receive the payments.⁸

Total Context

In *Cohen v. Cronin* ⁹ the Court of Appeals found that the support payments under a separation agreement were a charge against the husband's estate, where the agreement provided for support payments to the wife "until she shall remarry or expire," without any qualifying language. The court implied an intention to have the obligation survive the husband's death from the surrounding circumstances, including the wife's waiver of all other rights in her husband's estate and her assumption of the expenses for maintenance of the family home.

Cohen held that in order to bind the estate, the agreement must evince, from the terms of the agreement read as a whole, a clear intention that support payments continue, notwithstanding the husband's death. The court must read the document as a whole in its total context and examine each of its provisions in order to ascertain the overriding intention of the parties.

In *Riconda v. Riconda*, recently decided by the Court of Appeals, the issue was whether the former wife was entitled to maintenance payable out of the estate of her deceased former spouse, during her lifetime or until her remarriage. The parties' separation agreement, which was incorporated but not merged into the parties' 1989 judgment of divorce, required the husband to make maintenance payments of \$1,468 per month "until the death or remarriage of the Wife." The agreement provided that its provisions were to be "binding upon the heirs, legal representatives and assigns of both parties."

The parties also agreed to release each other from any claims not arising from the agreement and waived their respective rights to share in one another's estates. Under the terms of the agreement, the wife received \$120,000 from the sale of two businesses, the proceeds from a \$60,000 life insurance policy that named her as irrevocable beneficiary, half of the former husband's pension and an IRA distribution of \$16,461 upon the former husband's death.

In 1994 the former husband died, and the parties' son, who was his executor, petitioned the Surrogate to determine the validity of his mother's claim.

The Surrogate's Court rejected the claim. The Surrogate considered the agreement as a whole to ascertain decedent's intent and concluded that there was no express provision in the separation agreement specifically binding the decedent's estate to continue maintenance obligations after his death. Moreover, in examining the terms of the agreement as a whole, the court was "persuaded that not only was there no intent to continue those payments after his death but the whole tenor of the agreement evidenced an intent to amply provide for the claimant by other means after decedent's death * * * ."

The Appellate Division reversed and held that the "Surrogate erred in looking to the separation agreement as a whole to determine the intent of the parties." It limited its inquiry to the terms of the maintenance and binder provisions and determined that the separation agreement provided that the "husband's obligation to pay maintenance shall continue until the death or remarriage of the wife."

The Court of Appeals modified the judgment as to all contestants and remitted for further proceedings. It noted that generally the obligation to make maintenance payments terminates on the death of either party and that the parties may, however, modify or extend the duration of maintenance by contract.¹⁰ It pointed out that the legislative goal in the legal recognition and protection of maintenance is rehabilitative to permit the recipient spouse an opportunity to achieve independence.

Clear Expression

Thus, a separation agreement need not always make provision for maintenance should the circumstances and wishes of the parties indicate

otherwise. It held that the intent to vary the statutory and precedential preference of an end to maintenance payments upon the death of the payor must be expressed clearly. It noted that a specific, affirmative expression is required for an estate to become liable to make continued maintenance payments to the recipient spouse upon the death of the payor spouse.¹¹ The court did not find that key expression in the Riconda's agreement. The Court of Appeals held that absent a specific statement of intent referring to maintenance, all provisions of a document should be considered together and in the context of surrounding circumstances to determine whether the payor spouse actually intended that an estate be charged with the obligation to continue maintenance payments to a recipient spouse after the death of the payor spouse.

Extrapolation of the particularized intent may not usually be by merely culling distinct provisions out of an entire agreement. The sounder approach is to consider the entirety of the agreement in the context of the parties' relationship and circumstances.

The Court of Appeals established the rule that "when the four corners of the agreement contain no unequivocal direction to pay after death, and when discernible manifestations of intent reflect that support for the recipient spouse after the death of the payor spouse is otherwise provided for, the statutory and precedential preference that maintenance obligations terminate upon the death of the payor should ordinarily prevail."

The Court referred to its decision in *Cohen v. Cronin*,¹² where it applied these rubrics and established a reasonable standard for holding that a maintenance payment provision in a separation agreement carried beyond the payor's death. In *Cohen*, the agreement lacked an explicit commitment for the continuation of maintenance payments beyond the payor's death, but unlike the *Riconda* agreement, the parties expressly articulated their expectation that maintenance payments would constitute the unemployed wife's sole source of income and would be applied to the upkeep of the marital home to which she had been given title.

The Court therefore held that "the parties intended that the source be continuously available as the charges were continually recurring." It pointed out that distinguishable intent indicators were noted in *Cohen*, such as, for example, when provision is made for the distribution of other resources after the payor spouse's death.

Independent sources of support, from which might result an intent not to allow post-death continuance of maintenance payments, may include the designation of a former spouse as irrevocable beneficiary on a life insurance policy and other distributions accruing upon the death of the payor spouse or a lump-sum transfer in discharge of claims against the estate.

The court emphasized that the judicial search is for specific, relevant contractual intent of the parties, and the inquiry ought to eschew a virtual pro rata accounting of the ultimate fairness or adequacy of the property

divisions made by the parties in their agreements. It cautioned that this type of proceeding is not an equitable distribution substitute, "nor is it governed by the criteria of that specialized universe."

The Missing Piece

Here, the Riconda's separation agreement simply provided for maintenance payments until the former wife's death or remarriage. It was silent as to the eventuality and consequence of his predeceasing her. The court stated that the completion of the puzzle was elusive when that key piece was missing from the agreement. Nor should the fit be forced by rearrangement of or undue exclusive reliance on two clauses, the maintenance and binder clauses, in isolation from everything else. The Court held that the principles of contract interpretation supported a more discerning search for the parties' intent derived from the whole document and set of their particularized circumstances. It directed that upon remittal, the legal intent and effect behind the controverted portion of the agreement, derived from the expression of the parties' meaning at the time they made the agreement, should be judged within the parameters fixed by settled guideposts of contract interpretation and evidentiary admissibility.

The Court noted that some consideration may have to be given to the question of the legal representation surrounding the preparation of this separation agreement, which may have relevance on the parties' expressions or failure to denote their specific intent because of inferences ordinarily attributable against drafters of documents. It was significant that the controversy arose in part because the claimant's lawyer drafted the separation agreement and the decedent had no lawyer of his own.

The Court found that the omission of the recommended and customary explicit termination clause, providing for the circumstance of the death of the payor of maintenance, should not be deemed, as a matter of law for summary judgment purposes, as a complete or reliable manifestation of intent for both contracting parties.

We point out that the Court of Appeals recommended that to avoid these and other problems for their clients, "practitioners would do well to use recommended form clauses providing expressly that maintenance payments will continue or not upon the death of either spouse or the remarriage of the recipient spouse . . ."

Notes

- (1) *Rainbow v. Swisher* 72 NY2d 106 (1988).
- (2) *Clayburgh v. Clayburgh*, 261 NY 464 (1933).
- (3) *Krieger v. Krieger*, 162 Misc. 930 (1937), 296 NYS 261.
- (4) See *Nichols v. Nichols*, 306 NY 440, 119 NE2d 351.

- (5) *Re Estate of Maruccia* (1981) 54 NY2d 196.
- (6) Domestic Relations Law §248.
- (7) In *Sacks v. Sacks* (1990, 3d Dept.) 168 AD2d 733. The parties' settlement provided that the husband agreed to pay maintenance of \$200 to the wife "until the earliest happening of one of the following events: (i) the death of either parties hereto; (ii) Five years from the date of the signing of the agreement." The Appellate Division held that, based on its reading of the agreement as a whole, the duration of the husband's maintenance obligation was limited only by the qualifying events specified in the agreement and, therefore, the wife's remarriage did not terminate the husband's obligation to pay maintenance. In *Jung v. Jung* (1991, 3d Dept.) 171 AD2d 993, the parties' stipulation of settlement provided that the husband would pay the wife maintenance of \$1,200 per month for one year and \$1,000 per month for the next four succeeding years. The Appellate Division held that the parties' stipulation clearly evinced the intent of the parties that the maintenance obligation would continue unconditionally for a five-year period.
- (8) *Wilson v. Hinman* (1905) 182 NY 408, held that the husband's alimony obligation terminated upon his death and that his estate was not liable for it.
- (9) (1976) 39 NY2d 42.
- (10) Citing, among others, 2 Foster, Freed and Brandes, *Law and the Family New York* 2:35, at 238 [2d ed].
- (11) Citing, among others, *id.*, 12:58, at 1003.
- (12) *Supra*.
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