

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D23169  
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Argued - March 23, 2009

REINALDO E. RIVERA, J.P.  
RUTH C. BALKIN  
JOHN M. LEVENTHAL  
PLUMMER E. LOTT, JJ.

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2008-02359

DECISION & ORDER

Everett DeWitt, appellant, v Antoinette DeWitt,  
a/k/a Antoinette Giampietro, respondent.

(Index No. 13860/94)

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David A. Gabay, Holbrook, N.Y., for appellant.

Antoinette DeWitt Giampietro, Lake Grove, N.Y., respondent pro se.

In a matrimonial action in which the parties were divorced by judgment dated December 5, 1997, the plaintiff appeals from stated portions of an order of the Supreme Court, Suffolk County (McNulty, J.), dated February 15, 2008, which, inter alia, denied that branch of his motion which was to terminate certain pension payments made to the defendant pursuant to a qualified domestic relations order of the same court entered December 10, 1997.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The plaintiff former husband and the defendant former wife were divorced in 1997, after approximately nine years of marriage. On January 30, 1997, the parties entered into a stipulation of settlement which provided, inter alia, that the defendant was “entitled to a 50% share of the marital portion” of the plaintiff’s pension with the New York State Firemen and Policemen’s Retirement System. The stipulation also contained a general provision relating to the equitable distribution of property, wherein the defendant waived “any and all claims, legal or equitable, to any interest, value or equity” of the plaintiff and assigned to the plaintiff “all claims . . . in his pension.” On December 10, 1997, a qualified domestic relations order was entered upon the stipulation. In 2007 the plaintiff moved, inter alia, to terminate certain pension payments made to the defendant

May 12, 2009

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pursuant to the qualified domestic relations order, arguing, among other things, that the clauses in the stipulation relating to the pension were contradictory and “should be deemed invalid.” In the order appealed from, the Supreme Court denied that branch of his motion. We affirm the order insofar as appealed from.

A settlement agreement is a contract subject to principles of contract interpretation (see *Rainbow v Swisher*, 72 NY2d 106, 109). “Where there is an inconsistency between a specific provision and a general provision of a contract, the specific provision controls” (*Aguirre v City of New York*, 214 AD2d 692, 693). Here, the specific provision relating to the defendant's entitlement to a “50% share of the marital portion” of the pension is controlling.

The plaintiff's remaining contentions either are without merit or cannot be determined on this record.

RIVERA, J.P., BALKIN, LEVENTHAL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive style with a large initial "J".

James Edward Pelzer  
Clerk of the Court