

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

D56855  
Q/htr

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Submitted - May 14, 2018

RUTH C. BALKIN, J.P.  
LEONARD B. AUSTIN  
SYLVIA O. HINDS-RADIX  
FRANCESCA E. CONNOLLY, JJ.

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2017-01617

DECISION & ORDER

Michael Kelly, appellant, v Debra Kelly, respondent.

(Index No. 2186/07)

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Michael Kelly, Pearl River, NY, appellant pro se.

In a matrimonial action, the plaintiff appeals from an order of the Supreme Court, Rockland County (Thomas E. Walsh II, J.), dated January 27, 2017. The order, insofar as appealed from, granted that branch of the defendant’s motion which was to enforce the provisions of the parties’ judgment of divorce pertaining to the disposition of the marital residence.

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

Contrary to the plaintiff’s contention, the defendant’s delay in seeking to enforce her rights under the provisions of the parties’ judgment of divorce pertaining to the disposition of the marital residence did not constitute a waiver. “Although a spouse may waive his or her rights under a judgment of divorce, [a] waiver must be an intentional relinquishment of a known legal right and will not be inferred from mere silence or inaction” (*Andrews v Dolan*, 158 AD2d 569, 570 [citation and internal quotation marks omitted]; see *Cervera v Bressler*, 85 AD3d 839, 842; *Chapin v Chapin*, 295 AD2d 389, 391).


We reject the plaintiff’s contention that language in the judgment of divorce providing that the marital residence “should” be immediately listed for sale indicates that the Supreme Court merely suggested that the residence be sold or, in effect, made such sale optional. The judgment also provides that the property be listed “immediately,” that the defendant “is entitled to” 25% of the equity in the house, and that the parties “shall cooperate” in effectuating the sale, which unambiguously express the court’s directive that the marital residence be sold and the proceeds distributed to the parties (see *Myers v Myers*, 242 AD2d 372, 373). Therefore, the only

reasonable construction of the judgment of divorce is that the marital residence was to be immediately sold (*see Levy-Sitomer v Sitomer*, 126 AD3d 511; *Matter of Labrovic v Labrovic*, 278 AD2d 419; *Pottala v Pottala*, 261 AD2d 806; *Matter of Christodoulou v Christodoulou*, 212 AD2d 607).

Accordingly, we agree with the Supreme Court's determination granting that branch of the defendant's motion which was to enforce the provisions of the judgment of divorce pertaining to the disposition of the marital residence.

BALKIN, J.P., AUSTIN, HINDS-RADIX and CONNOLLY, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court