

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HON. DARRELL L. GAVRIN MM PART 52  
Acting Justice

\_\_\_\_\_  
PHYLLIS GOODMAN

Plaintiff,

- against -

STEVEN GOODMAN

Defendant.

INDEX  
NUMBER ..17864/99

MOTION  
DATE ..December 3, 2003

CALENDAR  
NUMBER . .2

The following papers numbered 1 to 10 read on this motion:

	PAPERS NUMBERED
Order To Show Cause-Affid(s)-Exhibits-Service.....	1-4
Notice of Motion/Affid(s)-Exhibits.....	
Notice of Cross Motion/Affidavits in Opposition-Exhibits.....	5-7
Replying Affidavits-Exhibits.....	8-10
Other.....	

Plaintiff's motion for an order seeking, *inter alia*, that the defendant name his infant daughters as irrevocable beneficiaries with plaintiff as trustee of the Individual Retirement Account ("IRA") maintained by defendant, and for attorney's fees, and defendant's cross-motion seeking, *inter alia*, that the defendant may take his infant daughters as a deduction on his income tax returns and for attorney's fees are disposed of as follows:

As to the branch of the motion seeking defendant to name his daughters as irrevocable beneficiaries with plaintiff as trustee of the IRA with plaintiff as trustee; on July 9, 2001, the parties herein, in open court, entered an oral agreement stipulating to the terms of the settlement of their divorce proceeding concerning equitable distribution and child support. Pursuant to the terms of that stipulation, the parties agreed that, with respect to defendant's life insurance policy:

[Defendant] acknowledges that he currently has insurance on his life with a death benefit of \$300,000.00. He agrees that he will make the children parties irrevocable

beneficiaries of that \$300,000.00 policy and continue to pay for it until emancipated with the wife being designated as trustee.

Further pursuant to the terms of said stipulation, the parties agreed that, with respect to the IRA defendant inherited from his father:

the children of the parties equally will designate irrevocably as beneficiaries of that IRA so that there will be an extra \$400,000.00 paid out if that was to be paid out today for example. If however, the amount in that IRA ever is \$200,000.00 or less, then Mr. Goodman agrees he will forthwith notify Mrs. Goodman and immediately obtain an additional \$200,000.00 policy naming the children in the parties equally as beneficiaries until they are all emancipated.

Plaintiff avers that defendant has thus far failed to offer any documentary evidence that he has complied with these terms of the stipulation.

Defendant argues, essentially, that his interpretation of the above language requires only that he maintain a certain available balance and that the critical terms of the agreement relate to the actual dollar amount available to the children as opposed to his promise to designate them as beneficiaries of the IRA. Defendant further asserts that the actual manner in which he achieves that goal, through an increased life insurance policy or maintenance of the IRA, is secondary. Additionally, defendant asserts the stipulation does not require that he even maintain the IRA. Therefore, defendant contends that he has complied with the terms of the stipulation by increasing the value of his life insurance policy to \$200,000.00 when the IRA's value fell below \$200,000.00

The court is not persuaded by defendant's argument. It is well settled that a stipulation made in open court is the equivalent of a contract (*Goldbard v. Empire State Mut. Life Ins. Co.*, 5 A.D.2d 230) **whose provisions are binding and enforceable** (*Yonkers Fur Dressing Co. v. Royal Ins. Co.*, 247 N.Y. 435). **Further, contract interpretation is the province of the court, and an unambiguous contract is to be interpreted in accordance with its clear language** (*see, Snug Harbor Sq. Venture v. Never Home Laundry*, 252 A.D.2d 520). **There is no text in the July 9, 2001 agreement that would tend to make defendant's obligation to designate the children as irrevocable beneficiaries of the IRA contingent upon failure to increase his life insurance coverage. However, the language of the stipulation does not require that plaintiff make defendant the trustee of said IRA, but only of the**

life insurance policy.

Accordingly, plaintiff's motion to direct defendant to name his infant daughters as irrevocable beneficiaries with plaintiff as trustee of the IRA maintained by defendant is granted only to the extent that plaintiff is ordered to name his infant daughters as irrevocable beneficiaries of the IRA within 20 days of the date of this order.

As to that branch of plaintiff's motion for counsel fees; the stipulation entered between the parties on July 9, 2001 provides that:

With respect to counsel fees, upon default, both parties agree if either one of the defaults on any obligation set forth in this agreement and the other side brings an action to enforce the terms of this agreement and does so successfully . . .the party in default will pay all of the reasonable costs and expenses of that enforcement proceeding including reasonable counsel fees.

Accordingly, as defendant failed to comply with a significant term of the July 9, 2001 stipulation thus requiring plaintiff to move for the relief herein, defendant is ordered to pay counsel fees to plaintiff in the sum of \$2,000.00 within 30 days of the date of this order.

As to defendant's cross-motion for an order permitting him to take the infant issue as deductions on his income taxes; plaintiff opposes defendant's request for the above relief, arguing that, as the July 9, 2001 stipulation is silent to the issue of tax benefits, the Internal Revenue Code requires that the custodial parent be given the benefit of any available tax deduction.

\_\_\_\_\_The Internal Revenue Code, 26 U.S.C.A. § 152, states in pertinent part that:

- (1) Custodial parent gets exemption.--Except as otherwise provided in this subsection, if--
  - (A) a child (as defined in section 151(c)(3)) receives over half of his support during the calendar year from his parents--
    - (i) who are divorced or legally separated under a decree of divorce or separate maintenance,
    - (ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and  
(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year, such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year (hereinafter in this subsection referred to as the "custodial parent").

(2) Exception where custodial parent releases claim to exemption for the year.--A child of parents described in paragraph (1) shall be treated as having received over half of his support during a calendar year from the noncustodial parent if--  
(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and  
(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

The Internal Revenue Code is clearly controlling on this issue. As defendant has not provided evidence of the above referenced declaration, defendant's motion to permit him to take the infant children as a tax deduction is denied.

The branch of defendant's motion for counsel fees is denied.

The court need not address the balance of the motion and cross motion as those issues were resolved between the parties by a stipulation dated December 3, 2002.

A copy of this order has been mailed to the parties and/or their respective counsel.

Dated: January , 2003

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DARRELL L. GAVRIN, A.J.S.C.