

Valentin v New York City Police Pension Fund

2003 NY Slip Op 30204(U)

October 17, 2003

Supreme Court, New York County

Docket Number: 101628/03

Judge: Lewis Bart Stone

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

Justice Lewis Bart Stone

0101628/2003

PART 505

VALENTIN, DENISE

vs
N.Y.C. POLICE PENSION FUND

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

SEQ 1

ARTICLE 78

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

SCANNED

OCT 29 2003

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

*is decided in accordance with
attached decision & order*

MOTION/CASE IS RESPECTFULLY REFERRED TO
JUSTICE

Dated: 17 October 2003

Lewis Bart Stone

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50S

-----X
DENISE VALENTIN, :
As Administratrix of the Estate of :
SANTOS VALENTIN, JR. :

Petitioner, : DECISION AND
ORDER

-against-

Index Number
101628/03

NEW YORK CITY POLICE PENSION FUND and
MICHAEL WELSOME, in his official capacity as
Executive Director of the NEW YORK CITY
POLICE PENSION FUND and SELENA VALENTIN,
:
Respondents.
-----X

Hon. Lewis Bart Stone, J

Petitioner, Denise Valentin, Administratrix of the Estate of Santos Valentin (the "Estate") seeks through this proceeding brought under Article 78 of the Civil Practice Law and Rules to reverse and set aside a final determination of the New York City Police Pension Fund ("Pension Fund") which determined that certain retirement benefits of Santos Valentin were payable to his estranged wife, Selena Valentin and not to the Estate. The Pension Fund opposes this application on the grounds that Selena Valentin, although legally separated from Santos Valentin pursuant to a Separation Agreement which purported to relinquish the rights to such benefits, was still legally Santos Valentin's wife and therefore entitled to the benefits

at the time of his death. Selena Valentin opposes the petition on the same grounds asserted by the Pension Fund, and also seeks to dismiss the petition on procedural grounds.

FACTUAL BACKGROUND

Santos Valentin, Jr., was appointed to the New York City Police Department in 1984 and subsequently became a member of the Pension Fund. Membership in the fund provides for various retirement and death benefits. An officer's death in the line of duty entitles his surviving family members to accidental death benefits under the provisions of the General Municipal Law and the Administrative Code.

Specifically, Section 13-244(1) of the Administrative Code provides that upon the accidental death of a member of the Pension Fund in active service, the surviving spouse is entitled to a pension of one-half of the member's final compensation on the date of his death and to a lump sum payment of the reserve-for-increased-take-home pay. These payments are to continue for the rest of the surviving spouse's life. If the deceased member is not survived by a spouse, but is survived by children, then the one-half salary and the lump sum of the reserve-for-increased-take-home pay is paid to any surviving children until they attain age eighteen or twenty-three if they are in school. See Section 13-244(2). If the deceased member is not survived by either a

spouse or children, then these payments become payable to a dependent parent. See Section 13-244(3).

Section 13-244 of the Administrative Code further provides that the member's accumulated deductions are to be paid to the person nominated by the member as his designated beneficiary. Failing such a designation, these deductions are to be paid to the deceased member's estate.

Section 208-f of the General Municipal Law provides that upon the accidental death of a police officer, the widow or widower will receive the difference between the amount the surviving spouse has received pursuant to section 13-244 of the Code and decedent's yearly salary. This effectively amounts to one-half of the deceased police officer's final yearly salary, to be paid by the state. If there is no surviving spouse, this benefit is payable to the surviving children until they attain age eighteen or twenty-three if they are students. If there is no surviving spouse and there are no surviving children, this benefit is not payable to a dependent parent. On his original application to the Pension Fund on January 4, 1984, Santos Valentin nominated his mother to be the beneficiary of his accumulated deductions in the event of his death.

On June 27, 2000, Santos Valentin, Jr., and Selena Ann Forshaw were married in Nevada. On July 14, 2000, Santos changed the designated beneficiary of his accumulated deductions to Selena Valentin.

The couple remained married for a total of fourteen months, until August 24, 2001, when Santos and Selena Valentin entered into a Separation Agreement (the "Agreement"). In this eighteen-page document, both Selena and Santos agreed, among other things, not to interfere in each others life, to live apart, and agreed to "waive any and all rights, title or interest either held now or in the future to the others [sic] pension or retirement benefits and annuities. The rights to pension benefits shall include, but not limited to, any rights which may vest in the future." The Agreement also provided that each party "relinquishes, waives and releases any and all rights which either of us may now have, or may hereafter acquire, as to the others [sic] estate under the present or future laws of any jurisdiction or Will or other testamentary writing now in the existence" including the right "to share in the estate of the other party upon said parties [sic] death." The agreement also provided that the separating spouses "intend, by the above described waiver and release, to relinquish any and all rights in and to each other [sic] estate." The Agreement was to be incorporated and to survive any divorce decree.

On September 11, 2001, Santos died while in the performance of his duties as a police officer at the World Trade Center. As of September 11, 2001, three weeks after entering the Agreement, Selena Valentin remained the named beneficiary of the cash death benefit and accumulated deductions on the Pension Fund form.

The Estate, represented by Denise Valentin, Santos' sister, brought a declaratory judgment motion in Surrogate's Court, Queens County, seeking to have the Agreement between Santos and Selena declared valid and enforceable against Selena.

By letter dated September 30, 2002, the Pension Fund informed the Estate that Selena was entitled to the accidental death benefits under Administrative Code § 13-244(1) and § 208-f of the General Municipal Law, finding that the existence of the Agreement "did not alter the fact that Selena Valentin was the surviving spouse and widow of Officer Valentin."

On October 8, 2002, J. Robert L. Nahman, Surrogate of Queens County deemed the Agreement "a valid contract enforceable against [Selena Valentin] by the Estate."

On January 30, 2003, the Estate commenced this Article 78 proceeding.

DISCUSSION

The Estate originally brought this Article 78 proceeding against the Pension Fund; the Estate subsequently filed an amended petition which added Selena Valentin as a co-respondent. The position of the Pension Fund and Selena Valentin is that Selena is the surviving spouse and therefore entitled to the benefits. They both

maintain that the Agreement lacks the “required specificity” to be a waiver of such benefits. The Pension Fund further claims that they must, pursuant to Administrative Code §13-202(9), § 13-244 and General Municipal Law §208-F, pay the benefits to the surviving spouse. Having done so, the Pension Fund contends that their determination was not arbitrary or capricious and that the petition should be dismissed.

Selena Valentin also seeks dismissal of this proceeding on the procedural grounds that Selena Valentin was not named in the original petition and was included in the amended petition after the Statute of Limitations had run, and is therefore invalid; Selena Valentin also seeks dismissal on the grounds that the Estate lacks standing to bring this proceeding against the Pension Fund.

The original petition, dated January 29, 2003, was filed within the four months Statute of Limitations. Although she was not named as a respondent, Selena Valentin was named in this petition as a “person with an interest in the proceeding” and served with a copy of the petition. Shortly after receipt of the petition, Selena Valentin contacted the Estate regarding intervention. On March 3, 2003, Selena Valentin received a copy of the amended petition with her name as a co-respondent dated February 28, 2003. Selena Valentin accepted service but responded that the acceptance did not waive any rights to assert certain defenses.

The original petition, which was received by Selena, clearly identified Selena Valentin as a person with interest in the proceeding. Accordingly, under CPLR § 1001 and § 1003, these claims do not warrant a dismissal of the petition. She was not prejudiced in any way and she has failed to show what “adverse practical effect” it had, since she was both made aware of the action, added in the amended petition, and never precluded from participating in the proceeding and asserting her rights. The motion to dismiss on these grounds is denied.

Selena Valentin also contends that the Estate lacks standing to bring this petition because the Estate has no stake in the result and is therefore not an aggrieved party, and because the Estate would not be a recipient of any of Santos Valentin’s benefits if the Article 78 proceeding were granted by this Court. Selena Valentin contends it is Santos Valentin’s parents who should be parties to the action because certain benefits are payable to dependent parents if there is no “surviving spouse.” However, since the decedent Santos Valentin, was the person who executed the separation agreement and since it is his benefits which are in question, decedent’s estate has proper standing to bring this action. This Court therefore denies the motion to dismiss on these grounds as well.

The heart of this matter centers on the effect of the separation agreement on the right of Selena Valentin to receive the benefits of Santos Valentin, Jr.

In order to determine these questions, it is necessary to examine the circumstances and the context under which the Agreement was signed, to examine the legal effect of the Agreement, and to construe the words of the Agreement, as the parties are in disagreement as to their meaning.

A separation agreement entered into by parties in a divorce proceeding constitutes a contract between them which will be enforced according to its terms unless there is proof of fraud, duress, overreaching, or unconscionability. Fetner v. Fetner 293 AD2d 645 (2nd Dept. 2002); Gagstetter v. Gagstetter, 283 AD2d 393 (2nd Dept. 2001). There have been no such allegations here and therefore the terms of the Agreement should be construed so as to arrive at a “construction which will give fair meaning to all the language employed by the parties to reach a practical interpretation of the expressions of the parties so that their reasonable expectations will be realized.” Fetner, supra, citing Joseph v. Creed & Pines, 217 AD2d 534 (2nd Dept. 1995). Furthermore, a separation agreement must be sparingly scrutinized by the judiciary with a “persisting view to the encouragement of parties settling their own differences.” Christian v. Christian, 42 NY2d 63, 71 (1977). Where, under the circumstances, there has been discussion and consent between the parties, and there is no inequitable conduct, the courts “should not intrude so as to re-design the bargain arrived at by the parties on the grounds that judicial wisdom in retrospect would view

one or more of the specific provisions as improvident or one-sided.” Christian, supra at 72; Bronfman v. Bronfman, 229 AD2d 314,(1st Dept. 1996).

The marriage of Selena and Santos Valentin was fourteen months old and was childless at the time of the Separation Agreement. This Agreement was in the form frequently referred to in matrimonial law parlance as a “walk-away” agreement, a typical result when the parties separate after a short, childless marriage.

The parties agree that the controlling case on the validity of a waiver contained in separations agreements is Silber v. Silber, 99 NY2d 395 (2003). Selena Valentin’s waiver of retirement pension and other benefits relating to her marital status can be deemed valid provided that the waiver was made voluntarily and in good faith, and is sufficiently explicit with regard to the waived benefits. Silber, supra at 404. The central argument of Selena Valentin and the Pension Fund is that the Agreement lacked the “explicitness” requirement. As the parties do not contend the voluntariness and good faith of the Agreement, and since the Surrogate Court of Queens County, a Court of competent jurisdiction, has found the Agreement valid, this Court finds that these two issues are not in dispute.

In this case, Santos and Selena agreed to waive any interest in the other’s pension, but the Agreement did not “explicitly” waive accidental death benefits, payable as a result of a death in the line of duty prior to a divorce judgment. The

Agreement also made no reference to “pre-retirement” benefits. On these grounds, Selena Valentin and the Pension Fund contend that the Agreement lacks “explicitness.”

Therefore, the Pension Fund and Selena Valentin contend that the language used in the Agreement was not intended to include pre-retirement or death benefits. The Estate contends that the language used in the Agreement must be liberally construed and would include the subject benefits if such construction is used.

The general rule of construction of contracts, also applicable to separation agreements, is to ascertain and effectuate the intent of the parties. Trolf v. Trolf, 143 Misc.2d 26 (Nassau ~~Cty~~, District Court, 1989) citing Skandia American Reinsurance Corp. V. Schenk, 441 F. Supp. 715 (SDNY, 1997). The intentions of Selena and Santos Valentin may not have been as clearly expressed as one would have hoped, possibly due to faulty draftsmanship. The parties’ lack of a comprehensive detailed understanding of Santos’ pension and survivorship rights also may not have allowed them to alert the draftsman as to how to phrase the agreement language. This Court must construe the language of the agreement to accord what would have been the intention and honorable agreement of the parties at the time. Herbert Rosenfeld Jewelry Corp. V. St. Paul Fires, 21 AD2d 160 (1st Dept. 1964).

This Court disagrees with the analysis of the Pension Fund and Selena Valentin as to the explicitness of the Agreement. In looking at the entire Agreement, executed after one year and two months of a marriage, the numerous waivers agreed to by Selena Valentin evince a clear intent to relinquish all ties to her husband and to waive all rights to benefits in his life or death. Santos Valentin's waivers are explicitly clear. The Agreement contained waiver of pension benefits, (now or in the future), rights to any "recovery, settlement or other compensation received by the party...in connection with any...claim for personal injury or other damages..." and "relinquished...any and all rights which either had...as to other's estate..." Selena Valentin's waiver clearly indicated her intent to waive any benefits that Santos Valentin may have acquired in death.

This Court finds no basis for drawing a distinction of using the words "pre-retirement," or "accidental," under these circumstances. The Court finds that the Agreement makes clear that each party's death would be "irrelevant" to the other's financial life, and that it embodied a desire of both parties to end the conjugal as well as economic relationship with one another. The premature and tragic death of Santos Valentin and his failure to change the designated beneficiary three weeks later, does not change the intention of the parties pursuant to the Agreement, nor does the fact that the parties were not yet divorced. The Pension Fund places great importance on

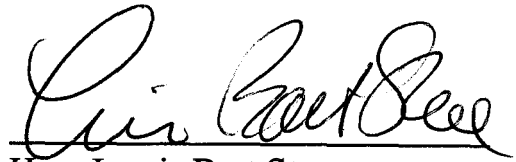
the fact that Santos Valentin failed to change the beneficiary designation, calling it a “deliberate decision” to retain Selena Valentin as his designated beneficiary. However, the Pension Fund provides no evidence whatsoever in support of its declaration. The cases that the Pension Fund cites are those where a designated beneficiary has not been changed many years after a separation agreement has been signed. Here, Santos’ death in the September 11 tragedy only three weeks later was immediately and wholly unexpected.

The construction of a contract, such as the Separation of Agreement, is a matter of law, absent the need to resort to pool evidence, which is not at issue in this case. Thus the analysis to be applied by this Court in this Article 78 proceeding is whether the Pension Fund acted in accordance with law. This Court finds that the Pension Fund’s decision to grant benefits pursuant to Administrative Code §13-244(1) and General Municipal Law §208-F to Selena Valentin as a surviving spouse to Santos Valentin to be affected by error of law. The Pension Fund’s determination is reversed and the Court directs this matter to be remanded to the Pension Fund to disburse said benefits in a manner consistent with this decision.

The application for attorney’s fees and other costs and disbursements is denied.

This constitutes the Decision and Order of the Court.

DATED: OCTOBER 17, 2003
NEW YORK, NEW YORK

A handwritten signature in black ink, appearing to read "Lewis Bart Stone", written in a cursive style.

Hon. Lewis Bart Stone
Justice of the Supreme Court