

Matter of Baekeland v Baekeland

2006 NY Slip Op 30004(U)

November 16, 2006

Supreme Court, New York County

Docket Number: 0113873/2006

Judge: Joan A. Madden

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: MADDEN
Justice

PART 4

FREDERICK BAUKELAND

INDEX NO. 113873/06

- v -

ELIZABETH BAUKELAND

MOTION DATE _____

MOTION SEQ. NO. 2

MOTION CAL. NO. _____

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

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this ~~motion~~ Article 15 proceeding is determined in accordance with the annexed decision, order and judgment.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or the party's representative must appear in person at the County Clerk's Desk (Room 41B).

Dated: November 16, 2006

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 11

-----X

In the Matter of the Application of FREDERICK
BAEKELAND,

INDEX NO. 113873/06

Petitioner,

for an order pursuant to CPLR 7503(b) staying a
certain Arbitration proceeding commenced by

ELIZABETH BAEKELAND,

Respondent.

-----X

JOAN A. MADDEN, J.:

In this Article 75 proceeding, petitioner seeks a stay of the arbitration initiated by respondent. The issue presented for this Court's determination is whether the subject matter of the dispute for which respondent is pursuing arbitration falls within the scope of the parties' arbitration agreement.¹

The following facts are not disputed. Plaintiff and defendant are former spouses. On November 26, 1968, they executed a separation agreement which survived the judgment of divorce. The separation agreement includes the following arbitration provision in Article Fifteenth (f)(4):

(4) The right to arbitrate under this Agreement is limited to a dispute with respect either to the reduction of the monthly payments as outlined in the above provisions of this Section (f) *or to the increase of the monthly payments as outlined in Section (g) immediately below*. No other dispute which may arise under this agreement shall be subject to arbitration unless, at the time of the dispute, the parties mutually agree to submit it to arbitration; in the absence of such written submission agreement with respect to any other dispute, the parties may pursue their rights in court with respect to any dispute other than with respect to such a reduction or increase of the monthly payments. [emphasis added]

¹In the answer to the petition, respondent raised an objection as to service of the Notice of Petition and Petition. That issue has been resolved and the objection has been withdrawn.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be given until the County Clerk appears in person at the County Clerk's Office to obtain entry, court of the County of New York, Westchester County, New York, 10590-1000.

Section (g) as referenced above, provides in pertinent part, as follows:

(g) If at any time after two years from the date hercof and during the period that the Husband [pctitioner Frederick Baekeland] is required to make monthly payments to the Wife [respondent Elizabeth Baekeland] under this Article FIFTEENTH, the official Consumers Price Index for New York City (all items) published by the Bureau of Labor Statistics of the U.S. Department of Labor . . . (hereinafter referred to as the "BLS Index") for the month of January in any year shall exceed 209.1 (which represents 16% of the BLS Index of 125.2 for the month of August, 1968), and the Wife is of the opinion that her resources and the monthly payments heretofore provided are or will become inadequate for her support because the monetary inflation has impaired the purchasing power of the dollar, then the Wife may request that the Husband attend a conference with her with a view to increasing on some equitable basis the amount of the monthly payments which the Husband is to pay the Wife for the period specified at the outset of this Article, or for such shorter period, as the parties may agree. If the Husband fails to attend such a conference within thirty (30) days after the mailing of a request therefor by the Wife or if the parties, having conferred in accordance with the Wife's request, cannot agree upon an increase satisfactory to the Wife and the Wife desires to pursue the matter further, then in either of the foregoing events the Wife may submit the matter of increasing the said monthly payments to arbitration under the auspices and rules of the American Arbitration Association and the amount of increase, if any, of the monthly payments shall be determined by the arbitrator appointed by the American Arbitration Association in accordance with its rules. . .

On or about August 30, 2006, respondent filed a Demand for Arbitration with the American Arbitration Association, which describes the "nature of the dispute" as "[i]ncrease in maintenancce/support pursuant to marital separation agreement," and lists the "dollar amount of the claim" as \$299,000. Respondent subsequently amended the demand by adding to the description of the dispute, "[i]ncrease to \$6000 per month is sought." Pctitioner responded by commencing the instant proceeding to stay the arbitration, asserting that respondent's arbitration is "a mere pretense," as she is "really" seeking a "lump sum payment" based on Article Twenty-First of the Agreement of Separation, which is outside the scope of the arbitration. Respondent answered the petition and opposes any stay of the arbitration.

It is well settled that arbitration is strongly favored under New York law and that any question as to whether a dispute is arbitrable should be resolved in favor of arbitration. See State of New York v. Philip Morris Inc., 30 AD3d 26, 31 (1st Dept 2006). “It is of course for the court in the first instance to determine whether parties have agreed to submit their disputes to arbitration and, if so, whether the disputes generally come within the scope of their arbitration agreement. The court’s inquiry ends, however, where the requisite relationship is established between the subject matter of the dispute and the subject matter of the underlying agreement to arbitrate.” Sisters of Saint John the Baptist, Providence Rest Convent v. Phillips R. Geraghty Constructor, Inc., 67 NY2d 997, 998 (1986).

Here, the subject matter of the dispute falls within the ambit of the arbitration agreement in the parties’ separation agreement. While petitioner is correct that the arbitration clause is narrow, as opposed to broad, respondent’s request for an increase in maintenance is clearly covered under the limited scope of the clause, which explicitly provides that “[t]he right to arbitrate . . . is limited to a dispute with respect . . . to the increase of the monthly payments as outlined in Section (g).” Section (g) specifically provides that if respondent believes “that her resources and the monthly payments heretofore provided are or will become inadequate for her support because the monetary inflation has impaired the purchasing power of the dollar,” she may first confer with petitioner, and if they cannot agree on a increase “satisfactory” to her, she has the right to “submit the matter of increasing the said monthly payments to arbitration.”

Respondent’s original and amended demands for arbitration describe the nature of the dispute as an “[i]ncrease in maintenance/support pursuant to marital separation agreement.” In her verified answer and supplemental affidavit in opposition, respondent confirms that her claim

is for an increase in the monthly maintenance amount from \$3,000 to \$6,000 and “has nothing to do with any payments due under a will.” She specifically explains that she is 87 years old and due to her physical condition, can no longer live on her own and is looking to move to an assisted living facility where the monthly fee is \$3,138.00. Respondent states that she is “unable to afford this amount as my only income is the \$3000 monthly maintenance and \$200 per month from social security.” She explains that “[e]ven without the assisted living expenses my current maintenance is insufficient to cover my expenses which include rent, food, medication, utilities and other expenses.” Respondent also explains that her maintenance was last increased in 1989, from \$1,800 to the current \$3,000 amount, as the result of a previous arbitration. She states that since the separation agreement was signed in 1968, the Consumer Price Index has increased approximately 600%, so if her maintenance were adjusted for inflation alone, it would be raised from \$1,500 to \$9,000. Respondent also addresses petitioner’s allegations regarding the “lump sum” payment, by explaining that she and petitioner had originally agreed that instead of her seeking a maintenance increase, he would post “fully-refundable bond of \$152,900,” which would have reduced the monthly fee at the assisted living facility to \$1,623, which she would have been able to pay from her present maintenance.

Based on the foregoing, respondent sufficiently establishes the requisite relationship between the subject matter of the dispute and the subject matter of the underlying agreement to arbitration, as she is seeking an increase in maintenance, which is expressly and unequivocally encompassed within the scope of the arbitration clause in the parties’ separation agreement. See Sisters of Saint John the Baptist, Providence Rest Convent v. Phillips R. Geraghty Constructor, Inc., supra. Thus, the court’s inquiry necessarily ends, and any issues raised by petitioner as to

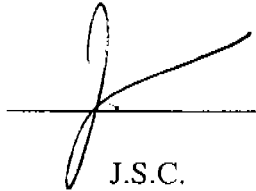
whether respondent is actually seeking something other than what she has plainly stated in her demand for arbitration, and whether she can sustain her burden at the arbitration by demonstrating an adequate basis for increasing the maintenance in accordance with the conditions set forth in the separation agreement, are for the arbitrator to determine. See id.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition is denied and dismissed.

DATED: November 16, 2006

ENTER:



J.S.C.

his judgment and notice of entry of judgment shall be entered on the docket and a copy of the judgment shall be filed with the clerk of the court. The party who fails to appear in person at the hearing shall be deemed to have waived the right to be heard and shall be liable for the costs of the proceedings (\$1B).