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## Enforcing Divorce Agreements: What Is the Statute of Limitations?

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All legal practitioners are aware (or they should be) that an action for a breach of contract is subject to a six-year statute of limitations pursuant to the CPLR.<sup>1</sup> Similarly, an action based upon mistake is also subject to a six-year statute of limitations.<sup>2</sup>

That said, one would think that if one of the parties in a divorce action were to breach a separation agreement or a stipulation of settlement subsequent to the parties' divorce, that such a proceeding would similarly be governed by the six-year statute of limitations applicable to breach of contract actions.

After all, the Court of Appeals has treated separation agreements and stipulations of settlement as contracts, stating in the seminal case of *Boden v. Boden* that "the terms [contained in a separation agreement or stipulation of settlement], like other contract clauses, are binding on the parties to the agreement."<sup>3</sup>

Despite this, however, the Appellate Division, Second Department has issued three decisions, all within the past year, which held that motions to enforce a divorce agreement (either a stipulation of settlement or separation agreement) are not subject to the six-year statute of limitations that controls breach of contract actions.<sup>4</sup>

### Making Distinctions

In the initial case decided in January, 2011,<sup>5</sup> the former wife was seeking to enforce the parties' separation agreement which was executed in 1995, and was incorporated by reference, but not merged into the judgment of divorce. The former husband alleged that her action was time barred under the six-year statute of limitations applicable to breach of contract actions. The Second Department disagreed with the former husband, concluding that "only actions are subject to a six year statute of limitations pursuant to CPLR Section 213 (2)."<sup>6</sup>

In the second case, decided one month later, 10 years after the agreement was signed, the former wife sought to enforce a provision contained in the parties' 1999 stipulation of settlement which was incorporated but not merged in the divorce judgment, which required the former husband to pay her a lump sum of money representing her interest in his retirement pension.<sup>7</sup>

The husband argued at the trial court level that the six-year statute of limitations applicable to actions based upon a mistake barred the former wife's claim. The lower court agreed, thereby dismissing her claim.<sup>8</sup>

In reversing, the Second Department held that while "an action to enforce a distributive award in a matrimonial action is governed by the six-year statute of limitations set forth in CPLR Section 213(1) and (2), motions to enforce the terms of a stipulation of settlement are not subject to statutes of limitations."<sup>9</sup>

In the final matter decided in May 2011 by the Second Department, the parties were divorced in 1997.<sup>10</sup> The parties' Stipulation and Agreement of Settlement which was also executed in 1997, was incorporated but not merged into the judgment of divorce.<sup>11</sup> Although the parties' agreement provided for the wife to receive a portion of the husband's retirement benefits pursuant to a

Qualified Domestic Relations Order which would be prepared as soon as practicable after the signing of the divorce judgment, no such QDRO was ever submitted until 2010 after the husband had already been retired for seven years.<sup>12</sup>

The former husband then sought the dismissal of the former wife's claim, contending that the statute of limitations barred the issuance of the QDRO.<sup>13</sup>

The Second Department disagreed with the former husband's argument and ruled that the issuance of the QDRO, albeit 14 years after it was to have been issued pursuant to the parties' agreement, was not time barred.<sup>14</sup>

In reaching this determination, the court cited both *Bayon v. Bayon*<sup>15</sup> and *Fragin v. Fragin*,<sup>16</sup> concluding that "motions to enforce the terms of a stipulation of settlement are not subject to statutes of limitation." "Because a QDRO is derived from the bargain struck by the parties at the time of the judgment of divorce, there is no need to commence a separate action in order for the Court to formalize the agreement between the parties in the form of a QDRO."<sup>17</sup>

Thus, these three decisions have all been based on the distinction between commencing a plenary action based upon an alleged breach of the parties' separation agreement/stipulation of settlement, which according to the Second Department would be subject to a six-year statute of limitations, and the submission of a post-divorce motion seeking enforcement, which the Court determined is not subject to any statute of limitations whatsoever.<sup>18</sup>

#### Matter of Semantics?

Does it make sense for a different result to inure depending on the semantics of whether the post-divorce proceeding was one for enforcement via a plenary action or one for enforcement via a motion? Either way, one former spouse is seeking relief from the court based upon the other's breach/alleged non-compliance with the parties' agreement.

Essentially, these cases have determined that a former spouse can obviate the statute of limitations by simply filing a post-divorce application with the court rather than commencing a plenary action. This seems to be a matter of semantics, and goes beyond the spirit of the law set forth by the New York State Legislature when it promulgated the six-year statute of limitations pursuant to CPLR Section 213. The plain language of the statute indicates that when a litigant is seeking redress for the breach of a contract, such an action must be commenced within six years from the breach.<sup>19</sup>

Under the Second Department's determinations, the Court of Appeals' interpretation of a separation agreement and a stipulation of settlement as a contract<sup>20</sup> was apparently overlooked. In addition, under the courts' interpretation, there is apparently no time limit imposed on the submission of a post-divorce application. Thus, a party to a divorce action is apparently not precluded from filing a post-divorce application seeking enforcement of the terms of an agreement at any point in time, no matter how far into the future such an application is made.

Being that one of the purposes of a statute of limitations is to bar stale claims,<sup>21</sup> the Second Department's rulings set forth above appear to be ignoring this important policy.

#### Time for Legislative Action?

It seems to make sense that there should be some time limit imposed by law. Perhaps it is time for the New York State Legislature to adopt a provision to account for this dichotomy in which a six-year statute of limitations is imposed when a plenary action is commenced to enforce an agreement while no time limitation is imposed for motions seeking to enforce an agreement of the parties.

After all, the Court of Appeals has held that a post-divorce plenary action seeking to enforce an agreement, incorporated by reference but not merged into the parties' judgment of divorce, is subject to a six-year statute of limitations.<sup>22</sup>

Moreover, at minimum, one would think that a post-divorce motion to enforce the provisions of an agreement of the parties would be subject to a six-year limitations period given that the CPLR provides for a six-year limitations period for actions in which no limitation is specifically prescribed by law.<sup>23</sup>

Finally, given that enforcement of money judgments is subject to a 20-year statute of limitations,<sup>24</sup> and the New York State Legislature has imposed a three-year time limitation on the enforcement of prenuptial agreements (subject to a tolling during the marriage),<sup>25</sup> it seems to defy logic and common sense for there to be no time limitation whatsoever on the bringing of a post-divorce motion seeking enforcement of a stipulation of settlement or separation agreement.

This is especially the case in light of the fact that pursuant to the CPLR, all civil judicial proceedings shall be prosecuted in the form of an action, except where prosecution in the form of a special proceeding is authorized.<sup>26</sup> Thus, one would think that a post-divorce motion would fall under the definition of an action, whereby some statute of limitations period would be applicable—at minimum, the six-year time limit imposed for actions in which no limitation is specifically prescribed by law.<sup>27</sup>

Moreover, under the three rulings discussed in this article, there is no mention or consideration of the doctrine of laches which bars claims that are delayed to the point of prejudicing the opposing party.<sup>28</sup>

One is left to wonder whether there could ever be such a lengthy delay in seeking to enforce the terms of a separation agreement or stipulation of settlement via a post-trial motion wherein the Second Department would dismiss such claim based upon the unreasonable delay in asserting the claim under the doctrine of laches. At what point would a claim be filed so late as to be considered prejudicial to the opposing party under the rationale of these recent cases?

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**Endnotes:**

1. See CPLR Section 213 which provides that the following actions must be commenced within six years:  
(2) an action upon a contractual obligation or liability, express or implied,...
2. CPLR Section 213 (6).
3. *Boden v. Boden*, 42 N.Y.2d 210, 397 N.Y.S.2d 701 (Ct. App. 1977).
4. *Denaro v. Denaro*, 84 A.D.3d 1148, 924 N.Y.S.2d 453 (2d Dept. 2011); *Fragin v. Fragin*, 80 A.D.3d 725, 916 N.Y.S.2d 783 (2d Dept. 2011).; *Bayen v. Bayen*, 81 A.D.3d 865, 917 N.Y.S.2d 269 (2d Dept. 2011).
5. *Fragin v. Fragin*, 80 A.D.3d 725, 916 N.Y.S.2d 783 (2d Dept. 2011).
6. Id.
7. *Bayen v. Bayen*, 81 A.D.3d 865, 917 N.Y.S.2d 269 (2d Dept. 2011).
8. Id.
9. Id.
10. *Denaro v. Denaro*, 84 A.D.3d 1148, 924 N.Y.S.2d 453 (2d Dept. 2011).
11. Id.
12. Id.
13. Id.
14. Id.
15. *Bayen v. Bayen*, 81 A.D.3d 865, 917 N.Y.S.2d 269 (2d Dept. 2011).
16. *Fragin v. Fragin*, 80 A.D.3d 725, 916 N.Y.S.2d 783 (2d Dept. 2011).
17. *Denaro v. Denaro*, 84 A.D.3d 1148, 924 N.Y.S.2d 453 (2d Dept. 2011).
18. *Denaro v. Denaro*, 84 A.D.3d 1148, 924 N.Y.S.2d 453 (2d Dept. 2011); *Fragin v. Fragin*, 80 A.D.3d 725, 916 N.Y.S.2d 783 (2d Dept. 2011).; *Bayen v. Bayen*, 81 A.D.3d 865, 917 N.Y.S.2d 269 (2d Dept. 2011).
19. CPLR Section 213.
20. *Boden v. Boden*, 42 N.Y.2d 210, 397 N.Y.S.2d 701 (Ct. App. 1977).
21. *Zumpano v. Quinn*, 6 N.Y. 3d 666, 816 N.Y.S.2d 703 (Ct. App. 2006).
22. *Tauber v. Lebow*, 65 N.Y.2d 596, 493 N.Y.S.2d 1008 (Ct. App. 1985).
23. CPLR Section 213 (1).
24. CPLR Section 211 (b).
25. DRL Section 250 which provides that the statute of limitations for commencing an action or proceeding or for claiming a defense that arises from a prenuptial agreement shall be three years, tolled until process has been served in such matrimonial action or proceeding.
26. CPLR Section 103.
27. CPLR Section 213 (1).
28. *Schutz v. State*, 81 N.Y. 2d 336, 599 N.Y.S.2d 469 (Ct. App. 1993); *Burns v. Egan*, 117 A.D.2d 38, 501 N.Y.S.2d 742 (3d Dept. 1986).