WBASNY

The Women's Bar Association of the State of New York

presents

Convention 2019
Continuing Legal Education Series

Legal Implications of Religious Divorce

May 31, 2019
9:45 am - 11:15 am

Presenter: Jacqueline Harounian, Esq.

The Westin Savannah Harbor Golf Resort and Spa
Savannah, Georgia

HANDOUTS FOR THE PRESENTATION

Legal Implications of Religious Divorce
Presented by: Jacqueline Harounian Esq.

WBASNY Annual Convention
May 31, 2019

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1. Introduction: The Importance of Understanding and Respecting Cultural and Religious Differences
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7. Abuse of Religious Marriage Contracts and Correlations with Domestic Violence

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New York
Domestic Relations Law 253
DRL 253: Removal of Barriers to Remarriage

Domestic Relations Law 253
Removal of barriers to remarriage

1. This section applies only to a marriage solemnized in this state or in any other jurisdiction by a person specified in subdivision one of section eleven of this chapter.

2. Any party to a marriage defined in subdivision one of this section who commences a proceeding to annul the marriage or for a divorce must allege, in his or her verified complaint: (i) that, to the best of his or her knowledge, that he or she has taken or that he or she will take, prior to the entry of final judgment, all steps solely within his or her power to remove any barrier to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

3. No final judgment of annulment or divorce shall thereafter be entered unless the plaintiff shall have filed and served a sworn statement: (i) that, to the best of his or her knowledge, he or she has, prior to the entry of such final judgment, taken all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

4. In any action for divorce based on subdivisions five and six of section one hundred seventy of this chapter in which the defendant enters a general appearance and does not contest the requested relief, no final judgment of annulment or divorce shall be entered unless both parties shall have filed and served sworn statements: (i) that he or she has, to the best of his or her knowledge, taken all steps solely within his or her power to remove all barriers to the other party's remarriage following the annulment or divorce; or (ii) that the other party has waived in writing the requirements of this subdivision.

5. The writing attesting to any waiver of the requirements of subdivision two, three or four of this section shall be filed with the court prior to the entry of a final judgment of annulment or divorce.

6. As used in the sworn statements prescribed by this section "barrier to remarriage" includes, without limitation, any religious or conscientious restraint or inhibition, of which the party required to make the verified statement is aware, that is imposed on a party to a marriage, under the principles held by the clergyman or minister who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act. Nothing in this section shall be construed to require any party to consult with any clergyman or minister to determine whether there exists any such religious or conscientious restraint or inhibition. It shall not be deemed a "barrier to remarriage" within the meaning of this section if the restraint or inhibition cannot be removed by the party's voluntary act. Nor shall it be deemed a "barrier to remarriage" if the party must incur expenses in connection with removal of the restraint or inhibition and the other party refuses to provide reasonable reimbursement for such expenses. "All steps solely within his or her power" shall not be construed to include application to a marriage tribunal or other similar organization or agency of a religious denomination which has authority to annul or dissolve a marriage under the rules of such denomination.

7. No final judgment of annulment or divorce shall be entered, notwithstanding the filing of the

plaintiff's sworn statement prescribed by this section, if the clergyman or minister who has solemnized the marriage certifies, in a sworn statement, that he or she has solemnized the marriage and that, to his or her knowledge, the plaintiff has failed to take all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce, provided that the said clergyman or minister is alive and available and competent to testify at the time when final judgment would be entered.

8. Any person who knowingly submits a false sworn statement under this section shall be guilty of making an apparently sworn false statement in the first degree and shall be punished in accordance with section 210.40 of the penal law.

9. Nothing in this section shall be construed to authorize any court to inquire into or determine any ecclesiastical or religious issue. The truth of any statement submitted pursuant to this section shall not be the subject of any judicial inquiry, except as provided in subdivision eight of this section.

SAMPLE LANGUAGE IN DIVORCE AGREEMENT

"Each party acknowledges that he/she has taken or will take all steps necessary within his/her power to arrange for a Gett (Jewish divorce) to remove any and all barriers to the re-marriage of the other party to this marriage. Accordingly, both parties hereby agree and consent to make all arrangements necessary to procure a Gett (Jewish divorce) within thirty (30) days of the execution of this Agreement.

The parties agree and consent to cooperate in said arrangements and personally appear at the appointed time before the Beth Din of America, with a current address at 305 Seventh Avenue, New York, New York, and current telephone number (212) 807-9042, or its approved nominee, or other Beth Din agreed to by the parties in writing. They further agree to contribute equally to the cost of procuring said Gett.

Both parties hereby agree and consent that the other terms of this Agreement shall not become final before the Gett has been obtained."

SAMPLE LANGUAGE IN PLAINTIFF'S AFFIDAVIT

1. The Plaintiff's address is _____, New York 11797, Social Security number _____. The Defendant's address is _____, New York 11797, Social Security number _____.

2. The Plaintiff and Defendant have lived in New York State for a continuous period in excess of two years immediately preceding the commencement of this action.

3. I married Defendant on _____, in the County of New York, State of New York. The marriage was performed by a clergyman, minister or by a leader of the Society for Ethical Culture. To the best of my knowledge I have taken all steps solely within my power to remove any barrier to the Defendant's remarriage.

2008 NY Slip Op 50981(U)

ALEXANDER TSIRLIN, Plaintiff,
v.
ALLA TSIRLIN, Defendant.

20542/06.

Supreme Court of the State of New York, Kings County.

Decided May 14, 2008.

JEFFREY S. SUNSHINE, J.

The seminal issue before this court is whether or not the deliverance of an Orthodox Jewish divorce (a "Get") to a wife which was obtained from a religious tribunal in Brooklyn, New York can be registered in the State of Israel and then act as a bar to litigating a divorce in the State of New York. Defendant Alla Tsirlin moves for an order, pursuant to CPLR 3211 and the doctrines of comity and judicial estoppel, directing that a judgment be entered dismissing the complaint of plaintiff Alexander Tsirlin, in which he seeks a judgment of divorce, and affirming the judgment of divorce obtained from an Israeli court.

Procedural Background

Plaintiff husband commenced this action on July 11, 2006, seeking to obtain a judgment of divorce on the ground of abandonment and an order granting the parties joint custody of their son, Jonathan, with physical custody to the wife; setting a visitation schedule; and awarding child support in accordance with the Child Support Standards Act. In her answer, the wife denies that she abandoned the husband and interposes an affirmative defense in which she claims that the parties were already divorced at the time that the instant action was commenced.

Facts

Plaintiff and defendant were married on September 5, 1995, in Jerusalem, Israel, in a Jewish ceremony, at a time when both were Israeli citizens. On February 23, 1996, a son was born in Jerusalem.

Sometime in 1998, defendant's father, who was a United States citizen, filed a petition to bring his daughter and her family to the United States. The petition was approved and thereafter, an immigration interview was scheduled for August 2003 at the United States Consulate in Jerusalem; the family accordingly left the United States to attend. At the interview, the wife and the parties son were approved for green cards, but the husband was not, allegedly because his fingerprints had not yet cleared. The couple then returned to the United States, with the husband's stay being limited to one month. Accordingly, in October 2003, the husband left the United States to await the issuance of a green card.

On December 9, 2003, the husband delivered to his wife a "Get", or a Jewish divorce, in Kings County. As is relevant herein, the "Get" provides that the husband divorced his wife and:

"In accordance with Jewish Religious Law, he is free to remarry provided he is also civilly divorced.
"This certificate applies only to [the husband] and is not to be taken as evidence regarding the status of his wife."

On the same day, the wife received a similar document that additionally provided that she is free to remarry "provided she waits 3 months until doing so".

Thereafter nearly two years later, on November 30, 2005, the Rabbinical Court, Jerusalem District, issued a decision stating that "[w]e herewith endorse that the applicants divorced on legal ground on December 9, 2003, and the Ministry of Internal Affairs is instructed to insert amendments into the Identity certificates of the applicants and to register them as divorced' instead of married'" (the Decision). The December 9, 2003 date refers to the "Get" plaintiff commenced this action for divorce in Kings County Supreme Court on July 11, 2006.

During oral argument of the motion on January 9, 2008, the parties represented that this Decision was in Israel obtained after the husband's father presented the "Get" received from the Brooklyn Rabbis to the court in Israel to be "endorsed." Both parties also denied ever appearing before the Israeli court in connection with the issuance of the endorsement.

The Parties' Contentions

In support of her motion, defendant argues that the Decision of the Rabbinical Court in Israel establishes that the parties were divorced there as of November 30, 2005. Defendant further relies upon a registration extract from the Population Registry issued on July 1, 2007 by the Israeli Minister of the Interior, which indicates that her status is "divorced." She also relies upon a reference issued by the Consulate General of the State of Israel in New York that indicates that she is divorced.

In opposition, plaintiff argues that in December 2003, he received a telephone call from his wife, during which she demanded that he grant her a "Get", or she would never allow him to see his son. He accordingly returned to the United States. Prior to appearing before the Rabbinate, however, the husband alleges that he consulted with an attorney, who advised him that the issuance of a "Get" would "not amount to a valid civil divorce." The husband accordingly gave the wife a "Get".

The husband further avers that thereafter, he returned to Israel to await his second interview with the American Consulate, which was held sometime in August 2004. As part of the process, the wife called the Consulate to confirm that she was his wife, or his papers would not be approved. The husband then returned to the United States with Jonathan, who had spent the summer with his grandparents in Israel. The parties separated sometime after the husband arrived in New York and have lived in separate residences since.

The Law

Clearly, "[t]his divorce action may lie in New York only if the parties are still married" (*Gotlib v. Ratsutsky*, 83 NY2d 696, 699 [1994]). Hence, if the decision issued by the Rabbinical Court in Israel is given effect, the husband cannot maintain the instant action for divorce. In deciding whether that decision should be given recognized by the courts of this State, it must be noted that:

"It is well settled that [a]lthough not required to do so, the courts of this State generally will accord recognition to the judgments rendered in a foreign country under the doctrine of comity which is the equivalent of full faith and credit given by the courts to judgments of our sister States' (*Greschler v. Greschler*, 51 NY2d 368, 376). However, in order for a divorce decree of a foreign court to be accorded recognition in this State, the foreign court must have had in personam jurisdiction over both spouses (*see*, *Greschler v. Greschler, supra*, at 376)."

(*Aranoff v. Aranoff*, 226 AD2d 657, 658 [1996]; *see also Azim v. Saidazimova*, 280 AD2d 566, 567 [2001] [comity should be extended to uphold the validity of a foreign divorce decree absent some showing of fraud in the procurement or that recognition of the judgment would do violence to some strong public policy of the State]; *In re Estate of Lovick*, 201 AD2d 736, 737 [1994] [New York courts will generally accord recognition to bilateral foreign

judgments of divorce under the doctrine of comity]). Further, the court is not obligated to extend comity to a judgment of divorce that is the result of the fraud, duress, and deceit (*see e.g.* *Schaeffer v. Schaeffer*, 294 AD2d 420, 421 [2002]).

As is also relevant to the resolution of the dispute now before the court, CPLR 4511(b) provides that:

"Every court may take judicial notice without request of private acts and resolutions of the congress of the United States and of the legislature of the state; ordinances and regulations of officers, agencies or governmental subdivisions of the state or of the United States; and the laws of foreign countries or their political subdivisions. Judicial notice shall be taken of matters specified in this subdivision if a party requests it, furnishes the court sufficient information to enable it to comply with the request, and has given each adverse party notice of his intention to request it. Notice shall be given in the pleadings or prior to the presentation of any evidence at the trial, but a court may require or permit other notice."

As is also relevant, CPLR 3016(e) provides that "[w]here a cause of action or defense is based upon the law of a foreign country or its political subdivision, the substance of the foreign law relied upon shall be stated." "Where, as here, the record reveals a total failure' to prove foreign law, the parties have consented that the forum law be applied to the controversy'" (*Bank of New York v. Nickel*, 14 AD3d 140, 149 [2004], *lv dismissed* 4 NY3d 846 [2005], quoting *Watts v. Swiss Bank*, 27 NY2d 270, 276 [1970]; *see also* *Storozynski v. Storozynski*, 10 AD3d 419, 420 [2004] [since the parties neither invoked Polish law nor supplied applicable citations to it as is required pursuant to CPLR 4511(b), they were presumed to agree that the law of New York controlled the interpretation of the agreement at issue]).

Finally, the court notes that in the case of *Chertok v. Chertok* (208 AppDiv 161 [1 Dept., 1924]), which the court addressed the issue of whether a rabbinical divorce procured in New York in accordance with Jewish law, that was then consummated in Russia, according to the rabbinical laws recognized by Russia, was binding in this State. After noting that the Constitution of the State of New York provides at Article 1, Section 9, that no divorce shall be granted otherwise than by due judicial proceedings, the First Department held that:

"In view of this and of the inhibition contained in section 1450 of the Penal Law, we must hold that the writing, purporting to be a divorce obtained from a rabbi in Brooklyn cannot be recognized as having any effect in this State or as having been validated by what was done in Russia. . . .
"The rabbinical divorce must be regarded as having had its inception in the paper issued by the Brooklyn rabbi, and although the Russian government may recognize it, the divorce is void in its inception under our law."

(*id.* at 162-163).

Discussion

Herein, both the husband and wife allege that they obtained a "Get" from a Rabbinical court in New York City on December 9, 2003. The parties represent that neither of them appeared before the Israeli court and that the Decision from the Israeli court that the wife relies upon to argue that the parties are already divorced "endorsed" the "Get" granted by the Rabbis in New York. No evidentiary proof of the proceedings underlying the issuance of the Decision was ever presented to this court.

Accordingly, applying the holding of *Chertok* to the facts of this case, although the Israeli government may recognize the divorce granted in New York City, it is void in its inception under our law (*id.*). Moreover, the court cannot reach any other decision by applying the laws of Israel, since the wife's failure to prove that the laws of Israel would require a contrary result compels the conclusion that the laws of New York be applied to the instant dispute (*Bank of New York*, 14 AD3d at 149).

In New York State, the legislature in 1983 enacted Domestic Relations Law section 253, which addresses the removal of barriers to remarriage, which provides, in pertinent part, that:

"2. Any party to a marriage defined in subdivision one of this section who commences a proceeding to annul the marriage or for a divorce must allege, in his or her verified complaint: (i) that, to the best of his or her knowledge, that he or she has taken or that he or she will take, prior to the entry of final judgment, all steps solely within his or her power to remove any barrier to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.
"3. No final judgment of annulment or divorce shall thereafter be entered unless the plaintiff shall have filed and served a sworn statement: (i) that, to the best of his or her knowledge, he or she has, prior to the entry of such final judgment, taken all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.
. . .
"8. Any person who knowingly submits a false sworn statement under this section shall be guilty of making an apparently sworn false statement in the first degree and shall be punished in accordance with section 210.40 of the penal law.
"9. Nothing in this section shall be construed to authorize any court to inquire into or determine any ecclesiastical or religious issue. The truth of any statement submitted pursuant to this section shall not be the subject of any judicial inquiry, except as provided in subdivision eight of this section."

In approving the bill enacting Domestic Relations Law 253, the Governor wrote:

"The requirement of a get is used by unscrupulous spouses who avail themselves of our civil courts and simultaneously use their denial of a get vindictively or as a form of economic coercion.
"Conceitedly this use of our civil courts unfairly imposes upon one spouse, usually the wife, enormous anguish. (McKinney's Session Laws 1983 ch. 979, 2818, 2819; emphasis added.)"

If this court were to sanction the utilization of a "Get" to circumvent the constitutional requirement that only the Supreme Court can grant a civil divorce, then a party who obtains a "Get" in New York could register it in a foreign jurisdiction and potentially, later on, rely on the"Get" to obtain a civil divorce in New York thereby rendering New York Stae's Constitutional scheme as to a civil divorce ineffectual (New York State Constitution, Article 1 Section 9 . . . nor shall any divorce be granted otherwise by judicial proceedings). It would have the practical effect of amending the Domestic Relations Law section 170 to provide a new grounds for divorce.

As a matter of public policy the State of New York requires a party seeking a divorce to remove all barriers to remarriage prior to the entry of the judgement. Here the plaintiff removed the barriers immediately upon the wife's request. To now allow a party to deny a spouse their day in court on the issue of divorce based upon compliance with New York's Statutory scheme (Domestic Relations Law section 253) would act as a deterrence for spouses who find themselves in a similar situation from voluntarily removing barriers to a spouse's remarriage

Conclusion

For the above stated reasons, the divorce obtained by the parties in an Israeli court which was predicated on a religious divorce ("Get") is void under the laws of New York and will not be recognized in New York. Accordingly, since the parties are still married, the instant action in which the husband seeks to obtain a judgment of divorce is properly instituted and the wife's motion to dismiss is denied.

The foregoing constitutes the order and decision of this court.

Schwartz v Schwartz

Schwartz v Schwartz 2010 NY Slip Op 09497 [79 AD3d 1006] December 21, 2010 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. As corrected through Wednesday, February 16, 2011

David Schwartz, Respondent-Appellant, v. Melanie Schwartz, Appellant-Respondent.

—[*1] Mazur & Bocketti, New York, N.Y. (Wayne J. Mazur of counsel), for appellant-respondent.

Marvin L. Schwartz, Monsey, N.Y., for respondent-appellant.

In an action for a divorce and ancillary relief, the defendant appeals, as limited by her notice of appeal and brief, from stated portions of an order of the Supreme Court, Queens County (Lebowitz, J.), dated July 20, 2009, which, inter alia, denied that branch of her motion which was, in effect, to hold the plaintiff in contempt of court for failure to comply with a "so-ordered stipulation" dated March 20, 2008, and a prior order of the same court dated November 3, 2008, directing him, among other things, to cooperate in all phases of obtaining a Get on behalf of the defendant, denied that branch of her motion which was for an award of attorney's fees, and, sua sponte, struck the action from the active trial calendar, and the plaintiff cross-appeals, as limited by his brief, from so much of the same order as granted the defendant's separate motion to permanently stay his demand for arbitration before a religious tribunal.

Ordered that on the Court's own motion, the defendant's notice of appeal from so much of the order as, sua sponte, struck the action from the active trial calendar is deemed to be an application for leave to appeal from that portion of the order, and leave to appeal is granted (see CPLR 5701 [c]); and it is further,

Ordered that the order is modified, on the law, the facts, and in the exercise of discretion, (1) by deleting the provision thereof denying that branch of the defendant's motion which was, in effect, to hold the plaintiff in contempt of court for failure to comply with a "so-ordered stipulation" dated March 20, 2008, and a prior order of the same court dated November 3, 2008, directing him, among other things, to cooperate in all phases of obtaining a Get on behalf of the defendant and substituting therefor a provision granting that branch of the motion, (2) deleting the provision thereof denying that branch of the defendant's motion which was for an award of attorney's fees and substituting therefor a provision granting that branch of the motion, and (3) deleting the provision thereof, sua sponte, striking the action from the active trial calendar; as so modified, the order is affirmed insofar as appealed and cross-appealed from, with costs to the defendant, and the matter is remitted to the Supreme Court, Queens County, for further proceedings consistent herewith. [*2]

The plaintiff David Schwartz (hereinafter the husband) and the defendant Melanie Schwartz (hereinafter the wife) are Orthodox Jews who were married in a civil ceremony in May 2006 and, thereafter, married in a religious ceremony in August 2007. In November 2007 the husband commenced this action for a divorce and ancillary relief.

On March 20, 2008, the parties appeared before the Supreme Court, and the husband advised the court that he was not asking for maintenance, had taken every step within his power to remove any barrier to the wife's remarriage, and would take any other steps necessary to remove any barrier to the wife's remarriage. On that date, the parties entered into a written stipulation (hereinafter the stipulation), "so-ordered" by the court, which provided, inter alia, that the husband would be granted a divorce on the ground of constructive abandonment

and that there would be no claims by either party for maintenance or equitable distribution. The stipulation also provided that, prior to the wife's return to England on March 31, 2008, the parties would appear at the Beth Din Beth Joseph in Brooklyn (hereinafter the Beth Din) "for the purpose of a 'Get' " and that "the parties may opt for a Zabla" (a "Get" is a Jewish divorce decree, without which the wife may not remarry within her faith, and a Beth Din is "a rabbinical tribunal having authority to advise and pass upon matters of traditional Jewish law" [Avitzur v Avitzur, 58 NY2d 108, 112 (1983), cert denied 464 US 817 (1983); see Fischer v Fischer, 237 AD2d 559, 560 (1997)]).

The husband failed to appear at the Beth Din by March 31, 2008, and the wife moved to hold him in contempt of court for his failure to comply with the stipulation and for an award of attorney's fees incurred in making that motion. In an order dated November 3, 2008 (hereinafter the November 2008 order), the Supreme Court granted the wife's motion to the extent of directing the husband to "cooperate in all phases of obtaining a Get" on behalf of the wife. The court directed that "the process of obtaining the Get" was to be commenced within 20 days after service upon the husband of the November 2008 order with the notice of entry "and shall be completed no later than 30 days thereafter," and that the husband's failure to comply with the November 2008 order within the specified time frame "will result in his being found guilty of contempt and subject to imprisonment." In addition, although the Supreme Court denied that branch of the wife's motion which was for an award of attorney's fees, it permitted her to renew that branch of her motion upon the submission of necessary documentation as to such fees.

The husband appealed from the November 2008 order and, on or about December 10, 2008, made an unsuccessful motion in this Court to stay its enforcement. Ultimately, the husband's appeal from the November 2008 order was dismissed by decision and order on motion of this Court for failure to perfect in accordance with the rules of this Court (see 22 NYCRR 670.8 [h]).

The husband appeared before the Beth Din on December 14, 2008. However, by letter dated December 15, 2008, the Beth Din declined his "request" that it "supervise the execution of the [G]et" based upon its conclusion that the husband would be executing the Get under duress resulting from the terms of the November 2008 order. Thereafter, in a demand for arbitration dated January 1, 2009, the husband demanded, "pursuant to the Stipulation executed on March 20, 2008," that the wife present herself for arbitration before the Beth Din.

In January 2009 the wife moved, inter alia, in effect, to hold the husband in contempt of court for failure to comply with the stipulation and the November 2008 order and for an award of attorney's fees related to both the instant motion and her motion determined by the November 2008 order. Separately, she moved to permanently stay the husband's demand for arbitration. In an order dated July 20, 2009, the Supreme Court, among other things, in effect, denied those branches of the wife's motion which were to hold the husband in contempt of court and for an award of attorney's fees, but granted her separate motion to permanently stay the husband's demand for arbitration. Additionally, the court, sua sponte, struck the action from the active trial calendar "until the parties have resolved their outstanding differences." The wife appeals and the husband cross-appeals from that order. We modify.

The Supreme Court improvidently exercised its discretion in denying that branch of the wife's motion which was, in effect, to hold the husband in contempt of court for failure to [*3]comply with the Stipulation and the November 2008 order. We note that this matter can be decided solely upon the application of neutral principles of law, without reference to any religious principles or doctrine (see Jones v Wolf, 443 US 595, 602-603 [1979]; Avitzur v Avitzur, 58 NY2d at 114-115). " 'A so-ordered stipulation is a contract between the parties thereto and as such, is binding on them and will be construed in accordance with contract principles and the parties' intent' " (Tutt v Tutt, 61 AD3d 967, 968 [2009], quoting Aivaliotis v Continental Broker-Dealer Corp., 30 AD3d 446, 447 [2006]; see Orra Realty Corp. v Gillen, 76 AD3d 1056, 1058 [2010]). With regard to that branch of the wife's motion which was to hold the husband in contempt of court, "the relief sought by [the wife]

. . . is simply to compel [the husband] to perform a secular obligation to which he contractually bound himself" (Avitzur v Avitzur, 58 NY2d at 115), and "[t]he New York courts have enforced precisely the type of stipulation which the parties entered into in the present case, by compelling the breaching party to comply by use of fines or by the withholding of civil economic relief" (Fischer v Fischer, 237 AD2d at 560; see Kaplinsky v Kaplinsky, 198 AD2d 212, 212-213 [1993]; Margulies v Margulies, 42 AD2d 517 [1973]).

A motion to punish a party for civil contempt is addressed to the sound discretion of the motion court (see Chambers v Old Stone Hill Rd. Assoc., 66 AD3d 944, 946 [2009]). To sustain a finding of civil contempt based upon a violation of a court order, it is necessary to establish that a lawful court order clearly expressing an unequivocal mandate was in effect and the person alleged to have violated the order had actual knowledge of its terms (see Judiciary Law § 753; Delijani v Delijani, 73 AD3d 972, 973 [2010]; Dankner v Steefel, 41 AD3d 526, 527-528 [2007]). The moving party bears the burden of proving contempt by clear and convincing evidence (see Dankner v Steefel, 41 AD3d at 528; Vujovic v Vujovic, 16 AD3d 490, 491 [2005]).

Here, the record demonstrates, by clear and convincing evidence, that the husband knowingly and willfully disobeyed both the clear and unequivocal provisions of the stipulation which required him, inter alia, to appear at the Beth Din prior to March 31, 2008, "for the purpose of a 'Get'," and the clear and unequivocal provisions of the November 2008 order, which required him, inter alia, to cooperate in all phases of obtaining a Get on behalf of the wife and to complete the process of obtaining a Get within a specified time (see Dankner v Steefel, 41 AD3d at 528). The husband failed to appear before the Beth Din until approximately nine months after he contractually bound himself to do so through his entry into the stipulation. Moreover, before he appeared at the Beth Din on December 14, 2008, he moved in this Court to stay enforcement of the November 2008 order, and shortly after his December 2008 appearance at the Beth Din, he served the wife with a demand to appear for arbitration before the Beth Din. In short, the record clearly supports a finding of civil contempt based upon the husband's failure to appear before the Beth Din prior to March 31, 2008, as required by the stipulation, and further failure to cooperate in all phases of obtaining a Get, as required under the terms of the November 2008 order (see Fischer v Fischer, 237 AD2d at 561; Kaplinsky v Kaplinsky, 198 AD2d at 212-213).

Moreover, the Supreme Court should have granted that branch of the wife's motion which was for an award of attorney's fees. "Judiciary Law § 773 permits recovery of attorney's fees from the offending party by a party aggrieved by the contemptuous conduct" (Children's Vil. v Greenburgh Eleven Teachers' Union Fedn. of Teachers, Local 1532, AFT, AFL-CIO, 249 AD2d 435, 435 [1998]; see Bell v White, 77 AD3d 1241, 1244-1245 [3d Dept 2010]; Quantum Heating Servs. v Austern, 121 AD2d 437, 438 [1986]). In this case, the attorney's fees incurred by the wife in connection with her motion determined by the November 2008 order, and in connection with her motion determined by the order appealed from, are directly related to the husband's contemptuous conduct (see Bell v White, 77 AD3d 1241, 1244-1245 [2010]). Moreover, in accordance with the November 2008 order, the wife's instant motion was supported by documentation concerning the attorney's fees associated with her motion determined by that order. Accordingly, we grant that branch of the wife's motion which was for an award of attorney's fees and remit this matter to the Supreme Court, Queens County, for a determination of the amount of attorney's fees to which she is entitled (see Children's Vil. v Greenburgh Eleven Teachers' Union Fedn. of Teachers, Local 1532, AFT, AFL-CIO, 249 AD2d 435 [1998]).

The trial court has the inherent authority to manage its calendar in balancing the litigants' rights against the demands of the calendar (see Tirado v Miller, 75 AD3d 153, 161 [2010]; Zeitlin v Greenberg, Margolis, Ziegler, Schwartz, Dratch, Fishman, Franzblau & Falkin, 262 AD2d 406 [1999]). [*4]Nevertheless, under the particular circumstances of this case, the Supreme Court improvidently exercised its discretion by, sua sponte, striking this action from the active trial calendar until the parties resolved their outstanding differences (cf. Tirado v Miller, 75 AD3d at 161). Accordingly, we delete that provision of the order appealed from.

Finally, the Supreme Court properly granted the wife's separate motion to permanently stay the husband's demand for arbitration before the Beth Din. "An agreement to arbitrate must be clear, explicit and unequivocal, and must not depend upon implication or subtlety" (Messiah's Covenant Community Church v Weinbaum, 74 AD3d 916, 918 [2010]; see God's Battalion of Prayer Pentecostal Church, Inc. v Miele Assoc., LLP, 6 NY3d 371, 374 [2006]; Matter of Waldron [Goddess], 61 NY2d 181, 183-184 [1984]). Here, contrary to the husband's contention, the stipulation does not contain a clear, explicit and unequivocal agreement or mandate to arbitrate (see Messiah's Covenant Community Church v Weinbaum, 74 AD3d at 918; Sieger v Sieger, 297 AD2d 33, 36-37 [2002]).

The wife's remaining contentions either are without merit or need not be reached in light of our determination. Covello, J.P., Angiolillo, Dickerson and Belen, JJ., concur.

ADDITIONAL RESOURCES:

Legal Implications of Religious Divorce

Jewish Gett

There are many organizations that provide information and help to arrange *Gett* procedures. One such resource is KAYAMA at (718) 692-1876.

For an internationally recognized Beth Din (Rabbinic Court), contact the Beth Din of America at (212) 807-9042 or http://www.bethdin.org.

Islamic Marriage Contracts

aboutIslam.net.

guidedoc.com/muslim-marriage-beliefs-rules-customs

A local mosque in Nassau County is Hillside Islamic Center: 300 Hillside Avenue, New Hyde Park, NY 11040. Phone: (516) 488-6440

WH&A
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Jacqueline Harounian is a Partner of the Law Firm of Wisselman, Harounian & Associates, P.C., established in 1976, and a recognized leader in the field of matrimonial and family law. She has demonstrated outstanding legal acumen and a commitment to giving back to the community. Her unique multidisciplinary background, including a graduate degree in Behavioral Forensic Psychology and Family Systems Therapy, enables her to adeptly handle complex divorce, custody and support matters in the Family and Supreme Courts on Long Island and New York City. An accomplished litigator and appellate advocate, Harounian nevertheless believes that a negotiated settlement is often the best strategy, especially if there are minor children and co-parenting is desired. Her approach is straightforward, collaborative, and client focused. She emphasizes respect and compassion during the divorce process, and guides her clients towards a holistic and cost effective resolution of their matter that is in their best interest.

Harounian has performed extensive *pro bono* work for The Safe Center, and has raised awareness and funds for a range of social and legal causes on Long Island. Among her many accolades over 20+ years of practice, she was chosen to the Super Lawyers list for 7 consecutive years, and also repeatedly selected to its most prestigious list -- "*Top 50 Women Lawyers*", as the only Long Island matrimonial lawyer. In 2019, she was nominated to the Nassau County Legal Marijuana Task Force by Laura Curran. She was is also on the Board of Directors for the Nassau County Women's Bar Association and the Chair of its Matrimonial Committee. Harounian served as an Instructor of Family Law at Hofstra Law School for over ten years. She lectures regularly to attorneys, mental health professionals, accountants, and women's groups, and is a sought after speaker for a range of topics including financial empowerment, religious divorce, sexual harassment, parenting, negotiating skills, and mental health / addiction issues. Her book, Divorce Reality Check, published in 2016, is available on Amazon (print and Kindle) and other major booksellers.

Practice Areas

Matrimonial and Family Law
Mediation, Negotiated Settlements
Litigation and Appeals
Family Conflict Counseling
Cyberbullying / Social Media Law
Special Education Law

Education

Columbia College
B.A. *cum laude*, English Literature
Hofstra School of Law J.D., *with honors*
SUNY Oswego Post Baccalaureate
Certificate in Behavioral Forensic Psychology
Certified Rape Crisis Counselor
Certified Opioid Overdose Prevention, NYSDOH

Court Admissions

1995 New York State, 2nd Department
2013 United States Supreme Court

Leadership / Volunteer Work

2019 NCWBA Board of Directors
NCWBA Chair of Matrimonial Committee
2019 Legal Marijuana Task Force, Nassau County
2019 Board of Directors, Long Island Crisis Center
SAFER Rape Crisis Counselor, The Safe Center
Member, Brandeis Lawyers Association of Queens
Columbia College Alumni Interview Committee
UJA Hope Against Domestic Violence Committee
Member, Iranian American Bar Association, IABA
Yashar Hadassah Lawyers and Judges (Former Pres.)
Advisory Board, JCRC-LI
Board of Trustees, Temple Israel of GN
Staff Writer, *The Great Neck Record*
Chair, UJA Federation LI Biz and Professional Council
Hadassah National Attorneys Council

Recent Awards

2018 Nominated Top Female Lawyer- Client Satisfaction
2017 Access to Justice Champion / Pro Bono
2016 Outstanding Woman in Law by Hofstra Law
2010-2016 Super Lawyers New York
2012-2017 "AV -Preeminent", Martindale Hubbell