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Couple's Rent Pact for Grown Children Found Unenforceable

Andrew Keshner, New York Law Journal

October 20, 2015

An agreement between a husband and wife that obliged the man to help pay the rent of their grown and gainfully employed children is an unenforceable contract, a judge ruled.

Nassau County Supreme Court [Justice Sharon Gianelli](#) said the pact that the parties entered into three years before starting divorce proceedings lacked an essential contract ingredient of consideration.

In [J.L. v. J.L.](#), 201429/2014, Gianelli said the agreement, while binding on the husband, did not obligate the wife "to do or give up anything. ... Moreover, the terms of the agreement fail to identify any value to be conferred upon defendant/husband as the quid pro quo for his undertaking the payment obligation."

The husband and wife married in 1981 and now have a 28-year-old daughter and a 26-year-old son, both with jobs and Ivy League college degrees.

The husband, a pharmacy owner, began subsidizing their rent expenses in 2010 to help them become financially independent. He and his wife started separation and divorce talks in 2013.

Although they were in the process of negotiating a post-nuptial agreement through their lawyers, the couple came up with a rental agreement instead in the hope of resolving the marital difficulties. The March 2014 agreement said the husband had to pay each child \$1,900 every month to be put solely toward rent for their Manhattan apartments.

The payments would end with whatever happened first: the children's marriage; his or her cohabitation "with a romantic partner" for six months; or their 30th birthday.

The agreement's preamble said the parties believed the contract would "enhance and encourage a harmonious marital relationship" and parties did not "presently intend to separate or divorce."

Two months after the agreement was executed, in May 2014, the wife filed for divorce on no fault grounds.

Around February, the husband cut \$10,000 checks to each child and said those lump sums represented his last payment to them.

The wife moved to compel the husband to comply with the terms of the rental agreement. The husband asked that it be declared null and void; he contended the payments were essentially a gift without consideration, and he had no legal obligation on his part to make the payments.

In her decision, Gianelli said the husband's arguments about the payments as a gift were "in part misguided."

It goes without saying, she contended, that parties in an agreement "may legally obligate themselves to perform acts which they otherwise would not be legally required to perform."

Yet Gianelli found the contract was still unenforceable. She noted that one key part of a valid contract was consideration—an element she said was "conspicuously absent" from the "one-sided" agreement at issue. A contract, Gianelli continued, required action and/or forbearance as well as a bargained-for exchange of value and benefit from each side.

"Not only is the articulated value or benefit to defendant/husband plainly absent from the terms of the agreement, it also cannot be clearly discerned from the surrounding language" of the preamble, she said.

The wife contended she executed the agreement instead of filing for divorce. Gianelli, however, said despite the woman's forbearance claims she still filed for divorce about two months later.

Evan Schein, a partner at Berkman Bottger Newman & Rodd, and Kelly Fissell, an associate, represented the husband.

"The court's decision shows that the principle of consideration cannot be taken for granted," Schein said. "The decision reaffirms what every first-year law student is taught in contracts 101—a valid contract requires the essential element of consideration and this holds true in the matrimonial context as well."

Nina Epstein, a partner at Goldweber Epstein in Manhattan, represented the wife.

In an interview, Epstein said she would be appealing the ruling, which, she said, "calls into play all post-nuptial agreements that have a quantum of consideration."

Andrew Keshner can be reached [via email](mailto:andrew.keshner@nylj.com) or on Twitter [@AndrewKeshner](https://twitter.com/AndrewKeshner).

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