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McQuade v Safian
2019 NY Slip Op 29160
Decided on May 21, 2019
District Court Of Suffolk County, Fourth District
Hackeling, J.
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Decided on May 21, 2019

District Court of Suffolk County, Fourth District

<p>Glenn McQuade, Plaintiff,</p> <p>against</p> <p>Aimee Safian, Defendant.</p>
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SC-28-19/SM

Glenn McQuade

Pro-Se Plaintiff

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C. Stephen Hackeling, J.

Glenn McAvode
and
Aimee Safon

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~~Please take notice that after a review of the testimony and evidence submitted and deliberating thereon, the Court's decision is that it is undisputed that: the parties were engaged to be married in 2012; the plaintiff gave the defendant an engagement ring that cost him \$6,650.00; no formal wedding ceremony was ever undertaken, although the parties lived together and had two children together. The decision to continually defer the wedding was allegedly for financial reasons and for most of the six year cohabitation time appeared consensual. The parties broke up their relationship and separated on May 1, 2018 and the plaintiff requested the return of his engagement ring in November 2019, after a custody battle.~~

~~The defendant asserts three defenses to the plaintiff's argument that the engagement ring was a gift conditioned upon marriage; i.e. (1) the parties mutually decided to defer the wedding; (2) the parties resided together for over six years either as common law spouses or as domestic partners; (3) the action is untimely. It is argued that such actions met the condition of a gift, and that it would be inequitable to require a replevin of the chattel after such a long period of time.~~

The Law

The 1965 enactment of the New York Civil Rights Law Sec. 80 (b) (hereafter "80 (b)") abrogated the prior "Heart Balm" prohibition statute enacted in 1935 concerning the tender of real and personal property in contemplation of marriage; and which authorized recovery of chattels under a unjust enrichment cause of action. See, **Goldstein v. Rosenthal**, 56 Misc 2d 311 (NYC Civ. Ct. 1968) citing to "The Heart Balm Act and Anti

Nuptial Gifts", 13 Brooklyn L. Rev. 174 (1947). It was replaced with a "no-fault" cause of action which requires the return of all gifts given in contemplation of marriage, regardless of the cause of the non marriage. ^[FN1] See, ~~Lipschutz v. Kiderman~~, 76 AD3d 178 (NYAD 2nd Dept. 2010), citing to ~~Gaden v. Gaden~~, 29 NY 80 2d (NY 1971). See also, ~~Gagliardo v. Clemente~~, 180 AD2d 551 (NYAD 1st Dept. 1992). ~~Ripley v. Rutten~~, 60 Misc 3d 1227 (A) (Sp. Ct. NY Co. 2018). Under the 80(b) statute, the marriage can not be equitably/retroactively validated by reasons of estoppel, mutual agreement, or the parties conduct. ~~Lipschutz v. Kiderman~~, cite supra, citing to ~~Schmidt v. Schmidt~~, 195 Misc. 366 (NYC Fam. Ct. 1948); ~~Brownell v. Brownell~~, 74 NYS 2d 136 (Sp. Ct. NY, 1947); and ~~People v. Kay~~, 141 Misc. 574 (NYC 1931). This statute is in essence a strict liability cause of action.

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The defendant next argues that her status as a common law wife and her registration of her paramour as a domestic partner for the purpose of obtaining family health benefits with her school district employer satisfied the engagement condition in contemplation of marriage. This defense is also unavailable as New York common law marriages were abolished many years ago, (~~In-re Catapano~~, 17 AD3d 672 (NYAD 2d Dept. 2005)) and even the formal registration as a "domestic partner" does not grant the status of a lawful marriage. ~~Lennon v. Charney~~, 8 Misc 3d 846 (Sp. Ct. West. Co. 2005). ^[FN2]

The issue of whether this action is equitably "timely" shall be addressed by reviewing the statute of limitations implications of the delay in requesting a return of the ring. The demand for a return of an engagement ring under an 80(b) theory has been found by the 2nd Department to be an action in replevin. ~~Lipschutz v. Kiderman~~, supra at page 180. Section 214 (3) of the New York CPLR applies a three year statute of limitations to a personal property replevin cause of action which accrues for a "good faith" possession of property (as in this case). The three year limitation period begins to run on the date that the demand for a return of the ring is made and refused. See, ~~Swain v. Brown~~, 135 AD3d 629 (NYAD 1st Dept. 2016). The plaintiff requested the return of the ring sometime between the couples breakup in May and/or November 2018. In either event, the statute of limitations had yet to run by the February 7, 2019 filing of the subject complaint.

Accordingly, the Court is legally compelled to grant judgment directing the defendant to [*3] return of the subject engagement ring to the plaintiff. In the event said

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replevin is not accomplished by August 1, 2019; the ~~plaintiff may file an affidavit of the defendant's default and enter judgment against the defendant~~ for \$5,000.00 plus interest from the complaint date and costs.

The Court will

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Dated: May 21, 2019

Hon. C. Stephen Hackeling, J.D.C.

Footnotes

Footnote 1: The only defense is the inability to marry i.e one party was already married.

Footnote 2: It is also doubted that the "application for health insurance" by itself is sufficient to be considered a formally registered "domestic partner".

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