

Legislation Report

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

REPORT NO. 72

August 2, 2001

A. 1588

By: M of A. Matusow

Assembly Committee: Codes

Effective Date: Immediately

AN ACT to amend the civil practice law and rules, in relation to time limits for the commencement of causes of action relating to antenuptial and postnuptial agreements

LAW AND SECTIONS REFERRED TO: CPLR 206(e)

REPORT PREPARED BY THE COMMITTEE ON CIVIL PRACTICE LAW & RULES (#21)

THIS BILL IS APPROVED

This bill would amend CPLR 206 by adding a new subdivision (e) which would toll the statute of limitations on challenges to the validity of antenuptial and postnuptial agreements until the marital relationship has collapsed or ended. It provides that the time within which such a causes of action must be commenced shall be computed from the following, whichever occurs first: 1) the time the parties no longer reside together, 2) the time an action for divorce or separation is commenced or 3) the death of one of the parties. The act would take effect immediately and would apply to actions pending on or after the effective date of the act.

Currently, there is a split between the Second and First Departments as to whether a claim challenging the validity of an antenuptial agreement is tolled during marriage. In Pacchiana v. Pacchiana, 94 A.D.2d 721, 462 N.Y.S.2d 256 (2nd Dep't, 1983), the Second Department held that since an antenuptial agreement is a contract, normal rules for determining when a cause of action accrues applies. The action must be brought within six years of execution. This has been consistently followed in that department. See, e.g., Anonymous v. Anonymous, 233 A.D.2d 350, 650 N.Y.S.2d 589 (2nd Dep't 1996); Freiman v. Freiman, - Misc.2d -, 680 N.Y.S.2d 797 (Sup. Ct., Nassau Co., 1998) (Freiman, however, held that challenges to the conscionability of maintenance established by an agreement is tolled during marriage pursuant to D.R.L. §236(B)(3)).

The First Department, in dealing with a request for a constructive trust over marital assets, which also has a six year statute of limitations, held that requiring a spouse to bring an affirmative action to preserve claims during marriage "flies in the face of logic and would be against public policy." It "would critically undermine the underlying purpose of the equitable distribution statute and the vitality of marriage generally." Zuch v. Zuch, 117 A.D.2d 397, 404-05, 503 N.Y.S.2d 343, 349. The court in Lieberman v. Liberman, 154 Misc.2d 749, 587 N.Y.S.2d 107 (Sup.Ct., 1992) followed this reasoning to a logical conclusion in holding that the statute of limitations on challenges to prenuptial agreements are tolled while the marital relationship still exists.

The reasoning in the First Department is the most consistent with real life and the state's policy of encouraging marriage. It would be unjust to require a spouse, in an apparently happy marriage, to bring a preemptive lawsuit during the marriage just to preserve her rights. If the spouse is not working, it is impractical to expect her to obtain the money to make the challenge without having to demand attorney's fees from the other spouse. If anything is designed to break up a marriage, this would be it. The law also applies to the much rarer postnuptial agreements. The reasons to toll the statute of limitations for antenuptial agreements is also applicable to those agreements.

A version of this bill has already been adopted by a majority of the states and by the Uniform Premarital Agreement Act. It would not only make the law consistent throughout the state but would also prevent the premature breakup of marriages.

For the foregoing reasons, this bill is **APPROVED**.

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