intends the entire statute to be effective and certain"; 1 Pa. C.S.A. 1903(a), 1921(a), 1922(2). We can visualize no reason for applying different standards of interpretation to the Rules of Civil Procedure promulgated by the Supreme Court of Pennsylvania. Since both the Legislature and our highest court have chosen to use the words "upon application granted" in Section 103 of the Divorce Code and Pa. R.C.P. 1920.92, we are compelled to the conclusion that where the legal propriety of transferring an action in divorce commenced under the prior divorce code to the new code is properly put in issue there is vested in the judiciary a duty to exercise discretion on an ad hoc basis. In the exercise of that discretion the court must balance the competing interests and equities of the parties and the policy of the Commonwealth as enunciated in Section 102(a) must weigh heavily in favor of the transfer.

In the case at bar the record discloses:

1. The filing of the complaint on December 1, 1977;

2. Reinstatement of the complaint on January 4, 1978 and service on January 5, 1978;

3. The filing of defendant's petition for alimony pendente lite, counsel fees and expenses on January 24, 1978 (20 days after service);

4. The filing of the plaintiff's motion for appointment of an examiner to hear the evidence on the defendant's petition of January 24, 1978 on December 20, 1979 (approximately 23 months after filing of the defendant's petition);

5. The testimony of the parties was received by the examiner on January 21, 1980 (1 month after appointment);

6. The transcript of the parties' testimony was certified and filed on February 20, 1980 (1 month after hearing);

7. The parties and their counsel settled the alimony pendente lite, counsel fees and expense issues by stipulation dated June 25, 1980 (5 months after hearing and 4 months after certification and filing of the transcript);

8. A master was appointed on motion of the plaintiff on June 26, 1980, and the master qualified for his appointment on July 16, 1980;

9. All proceedings were stayed by order dated July 28, 1980 on defendant's petition to bring the action under the Divorce

Code of 1980;

10. No hearings on the merits of plaintiff's complaint have been held;

11. Arguments on defendant's petition were heard July 2, 1981 (3 years 7 months from the date of filing of complaint).

While the plaintiff has alleged in his answer to defendant's petition of July 28, 1980, that the divorce proceeding has been delayed and protracted by the delaying tractics of defendant (Par. 8.A), the record demonstrates that the plaintiff did nothing to dispose of the defendant's petition for alimony pendente lite, counsel fees and expenses for 23 months and after hearing before the examiner did nothing for another 5 months to either settle those issues or present them to the court for disposition. Presumably the plaintiff desired a divorce since he filed the complaint; he is the moving party; he permitted this action to repose in a legal limbo for extended periods rather than pursuing the relief initially demanded on December 1, 1977.

The foregoing circumstances coupled with the enunciated policy of the Commonwealth requires us to conclude that the defendant is entitled to the protection of the new and valuable rights provided by the Divorce Code of 1980.

ORDER OF COURT

NOW, this 29th day of July, 1981, the Rule is made absolute.

Exceptions are granted the plaintiff.

KAGAN v. ELLENVILLE NATIONAL BANK, et al., C.P. Franklin County Branch, A.D. 1979 - 177

Assumpsit - Satisfaction of Judgment - Assignment of Judgment - Act of April 13, 1791, 3 Sm.L. 28, Sec.14, 12 P.S. 3971.

1. Where a judgment is transferred from New York to Pennsylvania under the Uniform Enforcement of Foreign Judgments Act, the judgment entered in Pennsylvania is based entirely on the New York Judgment and satisfaction of the New York judgment constitutes satisfaction of the Pennsylvania Judgment.

2. Where two judgments have been obtained for the same debt, satisfaction of one operates as satisfaction of the other, except for costs.

3. The assignor of a judgment has no power to enter satisfaction after the assignment.

4. In order to be effective against a judgment debtor, the assignment of a judgment need not be recorded so long as the debtor has notice of the assignment.

Kenneth F. Lee, Esq., Attorney for Plaintiff

Joel R. Zullinger, Esq., Attorney for Defendant

Gary P. Hunt, Esq., Attorney for Additional Defendant

OPINION AND ORDER

EPPINGER, P.J., July 15, 1981:

July 25, 1977, the defendant, Ellenville National Bank (bank) obtained a $118,255.25 judgment against plaintiffs Harold M. and Pearl A. Kagan in Ulster County, New York, and the judgment was entered in Franklin County, Pennsylvania four days later. August 8, 1977 the bank obtained another judgment against the Kagans in Ulster County, New York, this time for $17,729.14, and entered it in Franklin County on September 1, 1977.

The bank by an assignment recorded in Ulster County but not in Franklin County assigned both judgments to Laurels Sullivan County Estates Corporations (Laurels). Laurels satisfied both judgments in Ulster County on April 10, 1978 but never in Franklin County. On July 9, 1979, the Kagans requested the bank to satisfy the Franklin County judgments, but the bank replied by letter to the plaintiffs that its interests had been assigned to Laurels, giving Kagans Laurels' address.

This is a suit against the bank under the Act of April 13, 1791, 3 Sm.L. 28, Sec. 14, 12 P. S. Sec. 971, which provides that where a judgment is not satisifed by the holder after payment within eighty days after demand for satisfaction, the holder shall forfeit and pay to plaintiffs a sum not to exceed one-half of the debt.

The bank filed a complaint joining Laurels as an additional defendant and then filed preliminary objections. Laurels also filed preliminary objections. The bank's preliminary objections include a motion to dismiss for lack of jurisdiction, a motion

for a more specific complaint and a demurrer. We will discuss the demurrer first.

For sustaining the demurrer the bank argues (1) that the Franklin County judgments could have been satisfied by filing an exemplified copy of the New York satisifaction in Franklin County, and (2) that the assignee is the only one that could satisfy the Franklin County judgment because after the assignment, the bank had no power to satisfy it. We agree.

The Pennsylvania judgments were not separate judgments independent of the New York ones. Rather they were derivative, based entirely on the New York judgments, and satisfaction of the New York judgment constituted satisfaction of the Pennsylvania judgment. All that was required was to clear up the record by noting the satisfaction in Franklin County. It is a general principle that where two judgments have been obtained for the same debt, the satisfaction of one operates as a satisfaction of the other (except as to costs). See 2 Freeman on Judgments Sec. 1126 (Fifth Ed.): *Chilton v. Cady*, 250 S. W. 403 (Mo., 1923).

Further, we believe that when the bank assigned its interest in the judgment in New York, it had no power thereafter to enter any satisfactions because the assignment of the judgment to Laurels divested the bank of all interest in it. 46 Am Jur 2d, Judgments, Sec. 886. The fact that the bank's assignment to Laurels was unrecorded in Pennsylvania makes no difference. What is essential is that the judgment-debtor have notice of the assignment and it is clear they did here. Such notice need not be in any particular form as long as it sufficiently informs the debtor that the judgment creditor no longer owns the judgment.

The Kagans were notified of the bank's assignment when they inquired about satisfaction of the Franklin County judgment and it was suggested they write to Laurels and were furnished Laurels' address. This occurred only a week after Kagans requested the bank to satisfy the Franklin County judgments. Two weeks later Kagans' Pennsylvania counsel was mailed a copy of the assignment. The court finds it difficult to understand why the Kagans did not either contact Laurels and ask them to satisfy the judgment in Franklin County or obtain exemplified copies of the New York satisfactions and record them in the Franklin County Prothonotary's office. Their New York counsel had been forwarded the original satisfactions by Laurels some months prior to Kagans' bringing this suit.

The Kagans have argued that satisfaction upon presenta-

tion of exemplified copies is not permitted, citing the Act of 1856, April 11, P. L. 304, Sec. 1, 12 P.S. Sec. 976, the Act of 1856, March 27, P. L. 52, Sec. 1, 12 P.S. Sec. 977 and the Act of 1876, March 14, P. L. 7, Sec. 1, 12 P.S. Sec. 978. All that can be said about those sections is that satisfaction by presentation of an exemplified satisfaction in the parent jurisdiction is not mentioned in them. We don't consider the cited methods to be exclusive.

The Uniform Enforcement of Foreign Judgments Act permits the filing of the judgment and "docket entries incidental thereto" and requires that the prothonotary treat it in the same manner as a judgment of a Pennsylvania common pleas court. Act of 1976, July 9, P. L. 586, No. 142, Sec. 2, 42 Pa. C.S.A. Sec. 4306. Our courts regard exemplified records as legal evidence in all matters in which the document itself would be competent testimony. Act of 1976, July 9, P. L. 586, No. 142, Sec. 2, 42 Pa. C.S.A. Sec. 6106.

It was a simple matter for the Kagans to arrange for the satisfaction of the Franklin County judgment. Instead they did nothing and chose to sue the bank. This is sufficient for us to grant the demurrer. In addition damages cannot be recovered under the act for failing to satisfy a judgment on the record unless the refusal was willful and wanton. *Miller v. Linnwood Building and Loan Association*, 40 Del. 25 (1953). Here the bank referred the Kagans to Laurels and informed them they did not have power to satisfy the Franklin County judgment. This is not a willful and wanton refusal to enter the satisfaction.

We need not discuss the bank's remaining preliminary objections and the action as to the bank will be dismissed.

As to Laurels, [1] the Kagans neither requested it to enter satisfaction nor tendered costs of satisfaction, as required by the Act of April 13, 1791, 3 Sm.L. 28, Sec. 14 (12 P.S. Sec. 971) (re-enacted with changes not applicable here in the Judicial Code, Act of 1976, July 9, P.L. 586, No. 142, Sec. 2, 42 Pa. C.S.A. Sec. 8104). The Kagans did not conform with the terms of the statute under which they brought suit and therefore have not properly stated a claim. Accordingly, Laurels' demurrer to

---

[1] As Additional Defendant, Laurels is subject to the allegations in Plaintiff's Complaint, as well as to the allegations in the bank's complaint against it, even though no pleading was filed by Plaintiffs against Laurels. *Pushnik v. Winky's Drive in Restaurants*, 242 Pa. Super. 323, 363 A.2d 1291 (1976); *Sheriff v. Eisele*, 381 Pa. 33, 35, 112 A.2d 165, 166 (1955).

the complaint on this ground is sustained and the action against it dismissed. Laurels' remaining Preliminary Objections need not be discussed.

ORDER OF COURT

July 15, 1981, the demurrers of the defendants are sustained and the suits against the defendant Ellenville National Bank and the additional defendant Laurels Sullivan County Estates Corporation are dismissed and the costs are placed on the plaintiffs, Harold M. and Pearl A. Kagan.

SHEFFLER v. SHEFFLER, C.P. Franklin County Branch, F.R. 1978-216-S

Nonsupport - Petition to Modify - Prior Agreement Between Parties

1. Private support agreements must be enforced in assumpsit and not under the support laws.

2. A separation agreement dealing with support may have some evidentiary value as to what the parties feel the children require or the parent can pay but it does not oust the jurisdiction of the court nor preclude the court from entering an order differing in amount from that agreed upon.

Thomas M. Painter, Esq., Attorney for Barrie E. Sheffler

Thomas J. Finucane, Esq., Attorney for Marcella V. Sheffler

OPINION AND ORDER

EPPINGER, P.J., July 31, 1981:

Barrie and Marcella Sheffler were married. After they separated they entered into an agreement, one of the terms of which was that the husband would pay $100 every two weeks to the wife for the support of each of their three children who were under 18 years old. It was said that this "basic obligation shall operate independent of any Support Order." The husband also agreed not to attempt to reduce any Support Order based on the wife's earnings or earning capacity or the remarriage of either party.

However, the husband did file a Petition for Modification of a support order made June 7, 1978 which was itself a modifi-