

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CA 2081

KRISTINE H. MORALES

VERSUS

RANDY J. MORALES



Judgment Rendered: June 8, 2012

APPEALED FROM THE EIGHTEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF IBERVILLE
STATE OF LOUISIANA
DOCKET NUMBER 48036, DIVISION "B"

THE HONORABLE J. ROBIN FREE, JUDGE

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BEFORE: GAIDRY, McDONALD, AND HUGHES, JJ.

Hughes, J., dissents with reasons.

McDONALD, J.

This case involves a dispute over a community property partition. Kristine H. Morales and Randy J. Morales were married on July 23, 1977, had two children together, and were divorced on January 21, 1998. Their community was terminated effective from the date of the filing of the petition for divorce, October 4, 1996. Mr. Morales and Ms. Morales partitioned their community property on December 22, 1999.

The sole issue on appeal is whether Ms. Morales is entitled to 50% of Mr. Morales' Salaried Employees Retirement Plan (SERP) from Georgia Gulf. The district court found that Ms. Morales is not entitled to 50% of Mr. Morales' SERP, based upon the language of the community property partition. Ms. Morales is appealing that judgment.

Ms. Morales asserts that the district court erred in applying the rules of contract interpretation by failing to examine the entire document in order to ascertain the common intent of the parties at the time it was executed; erred in excluding parol evidence under the general rule that it is inadmissible, without applying the exceptions to the rule which would have allowed its introduction; and erred in its conclusion that the parties did not intend for the non-participant spouse to receive her community interest in the pension plan of her spouse.¹

ANALYSIS

A compromise is a written contract. La. C.C. art. 3071; La. C.C. art. 3072. As such, the compromise instrument is the law between the parties, which must be interpreted according to the parties' true intent, and is governed by the same general rules of construction applicable to contracts. Louisiana Civil Code article 2046 sets forth a general rule of construction, providing, "When the words of a

¹ Mr. Morales filed a Motion for Leave of Court to attach an exhibit, consisting of the parties' community property partition, to his brief. This exhibit was entered into evidence at trial, thus the motion is moot.

contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." **Drapcho v. Drapcho**, 2005-0003 (La. App. 1 Cir. 2/10/06) 928 So.2d 559, 562, writ denied, 2006-0580 (La. 5/5/06) 927 So.2d 324.

The parties' community property partition provides that:

The parties desire to settle and liquidate the community that formerly existed between them, and have agreed to do so as set forth herein. Each party has had the benefit of legal counsel, and other expert assistance, and makes this settlement and exchange agreeing that the properties and rights exchanged, transferred and relinquished are an equal and proportionate division of property. The parties declare themselves satisfied with the accounting that has been made between the parties, and waive any rights to further accounting from either the community or their respective separate estates.

On the dates and at the places set forth hereinafter, the undersigned parties have voluntarily entered into this Partition of Community Property Agreement to divide their community of acq[ui]sitions and gains under the provisions of Louisiana Civil Code Article 2336, as follows:

3. TRANSFER OF PROPERTY TO RANDY J. MORALES

KRISTINE H. MORALES does hereby set over, grant, bargain, exchange, assign, deliver, convey and transfer unto RANDY J. MORALES, with full substitution and subrogation and all lawful warranties, all of her right, title and interest in and to all properties described below, to have and to hold for himself, his heirs or assigns forever:

- A. All personal possessions and furniture currently in his possession;
- B. Seventy-one point five percent (71.5%) of his retirement with INVESCO through Georgia Gulf;
- C. One-half (1/2) ownership interest of any other employment benefits accrued between July 23, 1977 and October 4, 1996, the date that the Petition of Divorce was filed in accordance with Louisiana law;

4. TRANSFER OF PROPERTY TO KRISTINE H. MORALES

RANDY J. MORALES does hereby set over, grant, bargain, exchange, assign, deliver, convey and transfer unto KRISTINE H. MORALES, with full substitution and subrogation and all lawful warranties, all of his right, title and interest in and to all properties described below, to have and to hold for herself, her heirs or assigns forever:

- A. All personal possessions and furniture currently in her possession;
- B. THAT portion of ground, together with all the buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, appurtenances and advantages thereunto belonging in anywise, appertaining, situated in the Desobry Subdivision of the Town of Plaquemine, Parish of Iberville, Louisiana, and designated on map of said subdivision recorded in Conveyance Book 55, Entry 417 as Lot Number Thirteen (13) of Square Number Three (3), which is bounded on the north by Lot Number Seven (7) of Square Number Three (3), on the east by Lot Number Fourteen (14) of Square Number Three (3), and the south by Desobry Street, and on the west by Lots Numbers Ten (10), Eleven (11), and Twelve (12) of Square Three (3) by a depth of One Hundred Twenty-Five (125) feet, more or less. This property was acquired by Clifton E. Smith from Joseph Canova, Jr. on January 3, 1950, by act of sale recorded in Conveyance Book 96, Entry 271. Being a portion of the same property acquired by Sprague Pugh from Clinton E. Smith by act of sale dated May 4, 1985, of record in Conveyance Book 99, Entry 137. See also Conveyance Book 380, Entry 97 for acquisition.
- C. One hundred percent (100%) of her retirement fund with Municipal Employees' Retirement Systems through the City of Plaquemine.
- D. Twenty-eight point five percent (28.5%) of the retirement benefits from INVESCO through Georgia Gulf.
- E. Fifty percent (50%) of any other Georgia Gulf employment benefit other than retirement, acquired during the period of the matrimonial regime, July 23, 1977 through October 4, 1996, in accordance with Louisiana law.

After a thorough review, we do not find it necessary to consider the parol evidence, as the words of the contract are clear and lead to no absurd consequences. We find that the words "other than retirement," taken in the context of the entire document, meant that Ms. Morales did not get an interest in Mr. Morales' Georgia Gulf SERP. The district court found that the language of the community property partition was "clear" and found "no conflicting language" in the document, in determining that Ms. Morales was not entitled to 50% of Mr. Morales' SERP from Georgia Gulf. We find no legal error by the trial court in its judgment.

Thus, for the forgoing reasons, the district court judgment is affirmed. Costs are assessed against Kristine H. Morales.

**JUDGMENT AFFIRMED; MOTION FOR LEAVE OF COURT
RENDERED MOOT.**

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HUGHES, J., dissenting.

I respectfully dissent.

The Georgia Gulf Salaried Employees Retirement Plan (“SERP”), is a community asset not addressed in the partition that should now be allocated.

I must respectfully disagree with the rationale of the trial court, which in my opinion is internally inconsistent. When Kristine transferred to Randy “One-half (1/2) ownership interest of any other employment benefits” she intended to convey only half and keep half, not transfer all, as she did when she transferred “All personal possessions and furniture” in Randy’s possession. (Emphasis added.)

These transfers, as well as that of the INVESCO account, are consistently of interests in the whole of undivided community assets, not just Kristine’s one-half interest.

The provision in Randy’s transfer to Kristine of any other employment benefits “other than retirement” is also not dispositive. While the unnamed SERP might be considered excluded from this transfer, that simply means that Randy did

not transfer any interest in the SERP to Kristine. This does not constitute a partition.

If there was to be a meeting of the minds on the SERP, it should have been specified in the writing. I cannot conclude that there was and would remand for disposition of this asset.