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Reaffirm original terms when amending a marital settlement

FAMILY
LAW

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Clients may not think of family law attorneys as contract attorneys, but they are. The judgments entered in dissolution matters are very often based on a settlement agreement between the parties and attached to the judgment.

Usually, each term of the settlement agreement remains in effect until all the obligations have been met; however, it is not unusual for parties to modify and amend such an agreement. It is in this amendment process that the family law attorney should make perfectly clear what happens to the terms of the original agreement.

Illinois courts interpret contracts presuming that the contract "speak[s] the intention of the parties who signed it." *Western Illinois Oil Co. v. Thompson,* 26 Ill.2d 287, 291 (1962). There can be no argument that a settlement agreement is a contract or that an amendment to that agreement is also a contract.

Therefore, if the original agreement is to be amended, the parties should make very clear that the amendment only changes the terms enumerated in the amendment and no other terms in the original agreement.

American Jurisprudence Second and Corpus Juris Secundum support this rationale and provide the following:

- "The modification of a contract results in the establishment of a new agreement between the parties which *pro tanto* supplants the affected provisions of the original agreement, while leaving the balance of it intact. Although the effect of the modification is the production of a new contract, it consists not only of the new terms agreed upon but as many of the terms of the original contract as the parties have not abrogated by their modification agreement." 17A Am. Jur. 2nd Sec. (1991).
- "An agreement, when changed by the mutual consent of the parties, becomes a new agreement. Such new agreement takes the place of the old and determines the rights of the parties to the new agreement. In such case, the agreement between the parties consists of the new terms and as much of the old agreement as the parties have agreed will remain unchanged." 17A C.J.S. Section 408 (1999).

Although many legal authorities provide as set forth above, the 1st District Appellate Court of Illinois, in *Nebel, Inc. v. Mid City Nat. Bank of Chicago,* 329 Ill. App. 3d 957, 769 N.E.2d 45, 53-54 (1st Dist. 2002), a case not involving family law, opines that more may be necessary. Importantly, Illinois courts follow the four-corners doctrine when interpreting contracts. They look to the language of the contract to determine whether it is susceptible to more than one meaning. *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill.2d 457, 462 (1999).

Nebel Inc. involved an amendment to a 99-year real estate lease. The original lease provided rent be paid in gold coin.

(In 1933, Congress passed a resolution making all obligations requiring payment in gold unenforceable. An amendment to the resolution in 1977 made "obligations requiring payment in gold enforceable if issued after October 27, 1977." *Nebel, Inc.* at 47. The lease amendment in *Nebel, Inc*. was entered after Oct. 27, 1977, and based on the facts, the *Nebel* court found the amendment to be a new obligation and because "the gold clause was valid at the time the Lease was executed originally and, although it was rendered unenforceable after 1933, it remained as a term within the Lease." Id. at 53.)

The amendment in *Nebel*, Inc. made no reference to the payment provision of the original lease. After the amendment was executed, the lessor demanded that the rent be paid in gold coin. The lessee refused, and the lessor sued.

The Appellate Court noted that the integration clause in the amendment provided, "Except as otherwise expressly modified by this first Amendment, all the terms and provisions of the

Lease are reaffirmed and are not modified by this First Amendment." Id. at 49. The court found that the use of the word "reaffirmed" "was unambiguous and demonstrated that the defendant obligated itself anew" to the gold clause in the original lease. Id. at 53-54.

Although *Nebel, Inc.* does not involve family law, I believe it provides guidance for the family law attorney.

Let us assume a marital settlement agreement awarded the marital residence to the wife and required that the husband pay for lawn service and all repairs to that residence for a period of five years after the date of the entry of the judgment.

However, prior to the expiration of the five-year period, the parties decide to amend the agreement to provide that the husband no longer pay for the lawn service. If the amendment included an integration clause that provided all the terms of the original agreement were reaffirmed, it should be absolutely clear that although the husband is no longer obligated to pay for lawn service, he is still obligated to pay for all repairs for the remainder of the five-year period.

Therefore, to avoid further litigation, it may be best to use the word "reaffirmed" in an integration clause when drafting an amendment to a marital settlement agreement. According to Nebel, Inc., the use of "reaffirmed" would indicate that each party unambiguously and directly obligated themselves anew to all the terms of the original agreement that were not altered in the amendment.

Consequently, when amending marital settlement agreements, family law attorneys should make clear that the terms of the original agreement are not changed by the amendment and are still enforceable because they have been reaffirmed in the amendment.