JACQUELINE M. (RINKER) PACACHA,	:	IN THE COURT OF COMMON PLEAS OF
		: LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
		:
vs.		: NO: 94-20,571
		:
FRANKLIN O. RINKER, III,	:	
		: CIVIL ACTION - LAW
Defendant		: PETITION FOR SPECIAL RELIEF

OPINION AND ORDER

This matter is before the Court on the plaintiff, Jacqueline M. (Rinker) Pacacha=s Petition for Special Relief, filed June 8, 1998. The matter came to be heard before the Court on November 10, 1998, at which time a decision was deferred pending the submission of additional briefing by the parties.[1]

The Petitioner seeks an interpretation and enforcement of the provisions of a 1984 Marital Settlement Agreement entered into with the Respondent so as to allow Petitioner the right to claim the parties= youngest of two children as a deduction for federal income tax purposes. Initially the Agreement had provided that both children would be claimed for tax deduction purposes by Respondent. Subsequently, in 1987 the parties orally agreed that the oldest child would be claimed as a tax deduction by Petitioner. The oldest child is now age 21 and a senior in college. The youngest is now age 18 and a senior in high school. Petitioner asserts that under the current I.R.S. Code and regulations, since the youngest child

[1]The Court has received and considered the letter brief of Attorney T. Max Hall on behalf of the Plaintiff-Petitioner filed November 25, 1998 and the brief of Attorney Richard A. Gahr on behalf of Defendant-Respondent filed December 10, 1998.

lives with her she is entitled to the tax deduction attributable to the child, absent a prior (to 1987) written agreement to the contrary.[2]

The parties entered into the Property Settlement Agreement[3] on June 18, 1984. The Agreement provides that in consequence of disputes and differences between them and in contemplation of divorce, the parties committed to writing their agreement concerning living separate and apart, an intent to obtain a no-fault divorce, resolving issues relating to real estate and tangible personal property, medical insurance, alimony, school tuition, the husband=s business known as Dura-Clean Master Cleaners and the issue giving rise to the present dispute before the Court. Paragraph 10 of the Agreement provides:

> 10. CONCERNING FEDERAL INCOME TAX: Wife and husband agree that under the present circumstances, husband shall be entitled to take the two children as deductions on his Federal Income Tax Return.

[2]Petitioner asserts that the tax code recognizes the validity of the 1984 agreement allowing Respondent to claim both children as deductions because it was entered into prior to 1987.

[3]*See*, Exhibit (A) to Plaintiff=s Petition for Special Relief filed June 8, 1998.

In the Petitioner=s request for special relief, it is asserted that the parties= circumstances have changed substantially since the Agreement was originally entered into in 1984, and that as a result this Court should modify or rescind paragraph 10 and declare that (1) it is no longer valid and/or enforceable and (2) that the wife should hereafter be entitled to take the two children as deductions on her Federal Income Tax Return.[4] The Respondent argues that this Court is without jurisdiction to entertain a request for special relief. This Court agrees with the Respondent=s position.

[4]Evidence was introduced at the November 10, 1998 proceeding before this Court as to change in circumstances. Among those circumstances were the following: in 1985 Petitioner left the marital residence; in 1985 she remarried; in 1987 the Agreement was modified in writing as to payment of the children=s school tuition; in 1987 Petitioner started to claim the oldest child as a tax deduction with Respondent=s oral consent; in 1988 Petitioner became employed, part-time; she is now employed full-time.

On October 11, 1984, a final Decree in Divorce was entered in this case in which "the Court approve[d the Property Settlement Agreement], merging into the Decree any provision for child support and incorporating all other provisions." Thus, the paragraph of the Agreement now at issue, "10. Concerning Federal Income Tax," is not merged into the Decree. It is a fundamental and well-settled principle of law in this Commonwealth that when a property settlement agreement is incorporated but not merged with the final decree of court, it survives as an independent contract which is enforceable by traditional contract principles and is not subject to the court=s continuing jurisdiction for modification purposes.[5] ***Sorace v. Sorace***, 440 Pa. Super. 75, 655 A.2d 125 (1995), *appeal denied*, 542 Pa. 673, 668 A.2d 1135 (1995). It is thus clear that paragraph 10 may not be modified by the Court based on the parties= asserted change in circumstance; rather, it has the force and effect of a written contract between the parties, beyond the scope of the divorce decree. ***Nessa v. Nessa***, 399 Pa. Super. 59, 581 A.2d 674 (1990); ***Wareham by Trout v. Wareham***, ____ Pa. Super. ____, 716 A.2d 674 (1998). On this basis, therefore, it is necessary that the Court dismiss the Petition for Special Relief.[6]

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[5]The brief of both parties acknowledges this principle.

[6]Although not necessary to the Court=s holding in this matter, the Court would note for the benefit of the parties that the Court finds the well-reasoned and cogently-presented argument of the Respondent as set forth in the brief of December 10, 1998 to be extremely persuasive on the issue of the proper contract interpretation to be given in the instant matter, were the issue presented by way of a request for declaratory relief. Simply stated, the language of paragraph 10 on its face is not ambiguous. The parties agreed that Respondent was to have the benefit of the tax deduction because of the existing circumstances. The Agreement clearly does not provide that a change in circumstances nor what change of circumstances should or would effect either a change of or re-negotiation of this provision. Among the additional salient points to be noted in this regard is the fact that paragraph 12 of the Property Settlement Agreement concerning finality, merger and governing laws specifically provides that "no modification or waiver of the

terms hereof shall be valid unless in writing and signed by both parties, executed with the same formality of this agreement," followed by language of integration. Clearly, no evidence of such a written agreement has been presented or suggested in this case. Secondly, the Respondent correctly observes that there would be no independent basis upon which a court could rescind the contract, as there is no allegation of fraud, mistake or failure of consideration. *See*, ***New-Com Corp. v. the State of Gafney***, 72 B.R. 90 (1987). Thirdly, under the time-honored principle of *contra proferentem*, to the extent there is any arguable ambiguity in the language of paragraph 10, this ambiguity must be construed against the drafter (recognizing there may be a factual issue that Plaintiff=s then counsel represented "both" parties) and in favor of the other party if the latter=s interpretation is reasonable. *See*, ***State Public School Building Authority v. Quandel***, 137 Pa. Cmwlth. 252, 585 A.2d 1136 (1991); Restatement (Second) of Contracts, ' 206. This Court would specifically find that the Respondent=s interpretation is reasonable. Lastly, the Court is convinced the Respondent prevents a convincing argument that the Plaintiff in the circumstances should be equitably estopped from asserting paragraph 10 of the Agreement should be invalidated, inasmuch as the instant Petition is presented *fourteen years* after the Agreement was written and the Petitioner contended strongly at the evidentiary hearing the circumstances of the parties changed almost immediately following the execution of the Agreement. This is further buttressed by the parties in fact amending the Agreement by writing in 1987 as would relate to payment of the children=s private school tuition. Thus, it may be concluded the Plaintiff should be barred by her conduct of waiting so long (especially until a time when she most likely no longer will be able to claim the oldest child as a tax deduction) before seeking to modify or rescind the Agreement, if the Respondent can demonstrate harm as a result of the delay. The financial harm to Respondent is obvious. In summary, this Court is not inclined to effectively reform the parties= Agreement by adding a provision sought by Petitioner to the effect that if circumstances change after signing the Agreement paragraph 10 is void.

O R D E R

AND NOW, this 20th day of January 1999, for the reasons set forth in the foregoing Opinion, the Plaintiff=s Petition for Special Relief filed June 8, 1998 is hereby DENIED and DISMISSED.

BY THE COURT,

WILLIAM S. KIESER, JUDGE

cc: Court Administrator
T. Max Hall, Esquire
Richard A. Gahr, Esquire
Judges
Leo F. Klementovich, Esquire
Gary L. Weber, Esquire, Lycoming Reporter