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NEWS

Lawyer Must Pay Palimony to Ex, as Court Applies Ruling Retroactively

"To ignore *Moynihan* by declining to apply it here would run contrary to the parties' conduct and frustrate their bargain, precisely the harm the court intended to prevent," Appellate Division Judge Hany Mawla wrote.

May 06, 2022 at 04:08 PM

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Family Law

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- The Appellate Division said the March 8 Supreme Court ruling in
- The appeals court said attorney Michael Harrison must abide by a 2011 palimony agreement with Sharyn Primmer, even though he claims he was unrepresented when he signed it.
- The appeals court agreed with the trial judge, who said Harrison's six years of compliance with the agreement supported enforcement of the agreement.

A debt-collection lawyer must abide by a palimony agreement even after claiming the contract was invalid because he signed it without independent advice of counsel, a New Jersey appeals court has ruled.

The appeals court said the palimony agreement was valid after finding that a recent Supreme Court opinion concerning palimony agreements applies retroactively to cases in the pipeline when the ruling was issued, the appeals court said.

The appeals court said the March 8 decision in *Moynihan v. Lynch*, which invalidated a statute requiring both sides in a palimony agreement have representation of counsel, applies retroactively to cases on appeal.



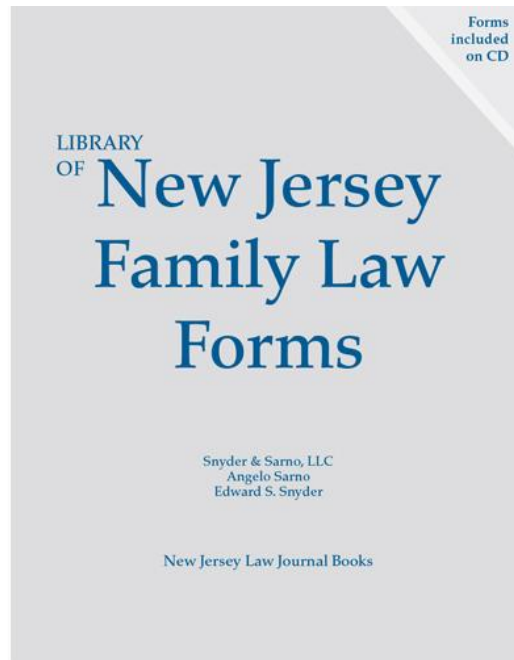
The appeals court upheld a Somerset County judge's ruling that Michael Harrison of Denville was obligated to abide by a palimony agreement with Sharyn Primmer.

The parties negotiated an agreement with help from Ira A. Cohen, whose role in the case came under dispute.

Harrison and Primmer began living together in 1988, and in 2011 they ended their relationship and signed an agreement calling for him to pay her mortgage and cellphone bill and provide her \$1,500 a month, among other terms.

At the time, Primmer earned roughly \$50,000 per year at a medical billing job.

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The parties formulated the agreement with help from Cohen, an attorney and longtime friend of Harrison, the appeals court ruling said.

Cohen practiced family law but never served as a mediator, and he did not open a mediation file, hold a mediation session, bill the parties for mediation services or ask the parties to sign a mediation agreement, the appeals court said.

But at some point, Cohen advised Primmer that he was representing Harrison.

The parties largely complied with the terms until 2017, when Harrison stopped paying the \$1,500 per month, the appeals court said.

Another attorney for Harrison wrote to Primmer to say the agreement was null and void, because Harrison was not represented by counsel when he signed it, in violation of New Jersey statutory law.

In February 2018, Primmer filed a complaint seeking damages for Harrison's breach of the agreement. He replied in court papers that the agreement was void because he did not have advice of counsel when he signed, in violation of a state statute.

At trial, Harrison claimed Cohen did not represent him when the agreement was signed, calling him a "go-between" and a "mediator." Cohen also testified that he did not represent Harrison.



Randall Peach of Woolson
Anderson Peach. Courtesy
photo

The trial judge concluded that the agreement was enforceable, and not barred by the state statute because Harrison relied on its terms by making monthly support payments to Primmer for six years, which was “justifiable reliance” by Primmer to indicate an agreement was reached.

Harrison appealed.

While the appeal was pending, the Supreme Court issued its ruling in *Moynihan*.

At the Appellate Division, Judge Hany Mawla, Stephanie Ann Mitterhoff and Carmen Alvarez invited the parties to file supplemental briefs as to applicability of the Supreme Court ruling to the present case.

Mawla, writing for the court, affirmed for substantially the reasoning cited by the trial judge.

“The gravamen of *Moynihan* is that the statutory requirement to have counsel violated fundamental constitutional rights. It matters not that this was not a basis of either party’s claims at trial here because, in the end, defendant invoked the invalidated portion of the statute as a sword to attempt to avoid the parties’ agreement despite the fact they both viewed it as valid and honored its terms for many years,” Mawla wrote.

“To ignore *Moynihan* by declining to apply it here would run contrary to the parties’ conduct, and frustrate their bargain, precisely the harm the court intended to prevent,” Mawla wrote.

The lawyer for Harrison, Randall Peach of Woolson Anderson Peach in Somerville, said in an email about the ruling, “We respectfully believe the panel’s retroactive application of *Moynihan* is contrary to the Supreme Court’s intent. More importantly, the panel failed to address major issues in the case related to the plaintiff’s fraud and breach of the palimony agreement.”

The lawyer for Primmer, Alix Clips of Heymann & Fletcher in Randolph, said she was pleased by the ruling.

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