

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

86

ELLEN P. SURLAK,

Plaintiff,

-against-

JOSEPH E. SURLAK,

Defendant.

NOTICE OF MOTION FOR
SUMMARY JUDGMENT

INDEX NO. 19283/78

SIRS:

PLEASE TAKE NOTICE that upon the affidavit of MORTON N. WEKSTEIN, ANDREW O'ROURKE, Esq., the summons, complaint and answer heretofore served herein, a motion pursuant to CPLR §3212 will be made at Special Term Part V of this Court to be held at the Courthouse thereof located at 11 Grove Street, White Plains, New York, on the 22nd day of November, 1978, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order striking out the defendant's answer and defenses contained therein and directing the entry of summary judgment in favor of the plaintiff and against the defendant for the relief demanded in the complaint upon the grounds that there is no defenses to the cause of action alleged in the complaint and for such other and further relief as may be just, proper and equitable.

PLEASE TAKE FURTHER NOTICE, that pursuant to CPLR §2214 (b) answering affidavits if any, are required to be served upon the undersigned at least 5 days before the return date of this motion.

Dated: November 2, 1978

Yours, etc.,
Attorney

TO: THEODORE L. MALATESTA, ESQ.
Attorney for Defendant
P. O. Box 450
Dobbs Ferry, New York 10522

WEKSTEIN & FULFREE
Attorneys for Plaintiff
55 Pondfield Road
Bronxville, New York 10708

EX "O"

REPLY BY [unclear]

COMBIA DE MEMORANDUMS

from Mrs. Surlak, informing me that her husband would come to my office to discuss the matter and that they had arrived at an amicable settlement. She told me the details of this settlement which I incorporated into a draft Separation Agreement. I never negotiated any part of the Separation Agreement with Mr. Surlak but had merely reduced their own negotiated terms to writing.

In the second week of May 1973, both parties came to my office to discuss the Separation Agreement. During this conference, I specifically informed Mr. Surlak of his right to have counsel. My recollection is that he told me that he had an attorney who would look over whatever I had prepared. During this conference, the Separation Agreement was thoroughly explained to Mrs. Surlak and its legal implications discussed. Mr. Surlak did not sign the Agreement at that time, but took a copy with him to study, indicating to me that he would have it reviewed by an attorney.

Thereafter, I was contacted by Mrs. Surlak who told me that her husband was ready to sign the Agreement and set up an appointment for the execution thereof. The meeting was set for May 22, 1973, at which time both parties again came to my office.

At the meeting on the 22nd of May 1973, I asked Mr. Surlak if the contents were satisfactory to him and he indicated that they were. The parties then signed duplicate originals and left my office, each taking a signed copy.

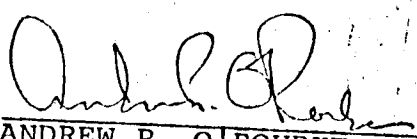
On the next day, May 23, 1973, Mr. Surlak called my office and spoke to my secretary, saying that he had lost his copy, and requesting another. A second copy was sent to him. I never heard from Mr. Surlak thereafter.

The original Separation Agreement was filed in the Office of the County Clerk, Westchester County, on May 23, 1973 under index number 6291/1973.

In summary, I respectfully point out to the Court that:

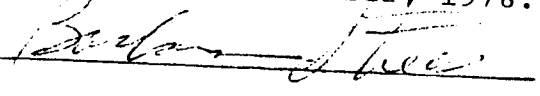
- (A) Mr. Surlak was advised of his rights to counsel;
- (B) Mr. Surlak had sufficient time to exercise that right;
- (C) That the terms of the Agreement were made by the parties themselves, based on their personal negotiations;
- (D) Neither Mr. Surlak, nor any attorney representing him, has ever contacted me, to date, to complain of the Separation Agreement or any terms therein.

It is my belief that, on the basis of my notes concerning Mr. Surlak's income and resources in 1973, the terms were fair and equitable.



 ANDREW P. O'ROURKE

Sworn to before me this
 1st day of November, 1978.



BARBARA S. FREES
 Notary Public, State of New York
 No. 4069680
 Qualified in Westchester County
 Term Expires March 30, 1980