

Dom. Rel. Law § 240: Children Can Enforce Their Rights Under Separation Agreement

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§ 1513—since no change in substance was intended by the draftsmen.

DOMESTIC RELATIONS LAW

Dom. Rel. Law § 240. Children can enforce their rights under separation agreement.

Under Section 240 of the Domestic Relations Law, the court must give direction for the custody, care, education, and maintenance of the children in any proceeding brought for separation. In *Forman v. Forman*,¹²² the wife breached a separation agreement, which provided for the support of the children, thus relieving the husband of his obligation under the agreement. However, in a subsequent action, the husband was ordered to pay the wife pursuant to the Uniform Support of Dependents Law¹²³ the amount the agreement had originally provided for. The children then sought a declaratory judgment embracing parts of the separation agreement which were purported to have been made for them as third-party beneficiaries.

As a general rule only the mother can enforce the agreement directly against the father.¹²⁴ However, in the instant case, the Court of Appeals held that where the mother's violation of the agreement makes her incapable of enforcing it on behalf of the infants, a procedural facility must be provided for the enforcement of the rights of the infants. Therefore, in such a case, children may enforce, as third-party beneficiaries, their rights under separation agreements.

NEW YORK CITY CIVIL COURT ACT

CCA § 212. Court can grant stay of execution in proceeding to recover possession of commercial realty.

In *Pepsi-Cola Metropolitan Bottling Co. v. Miller*,¹²⁵ the question was raised as to whether the Civil Court could grant a stay of execution in a proceeding to recover possession of commercial real property. Under Sections 751, 753, and 755 of the RPAPL, courts are given explicit power to grant stays with respect to residential property. However, there is no specific grant

¹²² 17 N.Y.2d 274, 217 N.E.2d 645, 270 N.Y.S.2d 586 (1966).

¹²³ N.Y. DOM. REL. LAW §§ 30-43. The purpose of this law is to secure support for dependents from persons legally responsible for their support.

¹²⁴ *Kendall v. Kendall*, 200 App. Div. 702, 193 N.Y. Supp. 658 (1st Dep't. 1922).

¹²⁵ 50 Misc. 2d 40, 269 N.Y.S.2d 471 (Civil Ct. Bronx County 1966).