Buffalo Law Review

Volume 15 | Number 3 Article 14

4-1-1966

Conflict of Laws—New York Law Applied to Bank Account of Married Foreign Domiciliaries

Robert M. Kornreich

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview

 Part of the Conflict of Laws Commons

Recommended Citation

Robert M. Kornreich, *Conflict of Laws—New York Law Applied to Bank Account of Married Foreign Domiciliaries*, 15 Buff. L. Rev. 702 (1966).
Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol15/iss3/14

This Recent Case is brought to you for free and open access by the Law Journals at Digital Commons @ University at Buffalo School of Law. It has been accepted for inclusion in Buffalo Law Review by an authorized editor of Digital Commons @ University at Buffalo School of Law. For more information, please contact lawscholar@buffalo.edu.

of credit. But using a better approach, the court has reached a result in line with commercial practice. Often the bank and the beneficiary are geographically distant. The bank, draftsman of its own obligation, undertook to make payment upon demand unless it received *notice* to the contrary from its customer that the beneficiary had not fulfilled its underlying obligation. It would be too much to ask that the bank investigate to determine if the beneficiary had, in fact, failed to perform each condition of its obligation. Distance and expense would make such a requirement prohibitive. Furthermore, the problem in this case might, in all likelihood, have been caused by carelessness on the part of plaintiff or its lawyer in failing to note the difference between the condition as expressed in the sales contract and in the letter of credit. If plaintiff had been aware of the existence of the discrepancy, it ought to have insisted that it be rectified. Since the bank performed exactly what it had promised to do, it would appear that the court was correct in holding for the bank in this situation.

CHARLES E. MILCH

CONFLICT OF LAWS—NEW YORK LAW APPLIED TO BANK ACCOUNT OF MARRIED FOREIGN DOMICILIARIES

The Duke and Duchess of Arion, nationals and domiciliaries of Spain, sent cash and securities to New York for safekeeping and investment during the years of Spanish political uncertainty from 1919 to the end of the Civil War. In establishing joint custodial accounts with several New York banks, the husband and wife signed standard bank survivorship agreement forms valid under New York law,[1] but void under the community property law of Spain.[2] In one account, the agreement expressly provided that the rights of all parties would be governed by New York law. The husband died in 1957, the wife in 1959. Neither had ever been in New York. After the husband's death, the wife assumed control of the property (nearly 2 million dollars) in New York and undertook to dispose of it by a will executed according to New York law.[3] Plaintiff, as the husband's ancillary administrator in New York, sued defendant, individually and as executor of the wife's will, to establish title to one-half the property in New York, which, plaintiff claimed, became part of the husband's estate under the community property law of Spain.[4] After trial, the complaint was dismissed on the merits.[5] The Appellate Division unanimously affirmed without opinion.[6] The Court of Appeals affirmed 4 to 3. *Held*, that when married foreigners place property in New York for safekeeping and

1. N.Y. Banking Law § 134(3).
2. See Spanish Civil Code arts. 1334, 1394.
3. N.Y. Deced. Est. Law § 47.
4. See Spanish Civil Code arts. 1424, 1426.
5. Wyatt v. Fulrath, 38 Misc. 2d 1012, 239 N.Y.S.2d 486 (Sup. Ct. 1963).
6. Wyatt v. Fulrath, 22 A.D.2d 853, 254 N.Y.S.2d 216 (1st Dep't 1964).

investment with the intention that New York law apply to govern their rights, their physical and legal submission of the property to that jurisdiction will be recognized even though their rights would be determined differently in the country of matrimonial domicile where the property was acquired. *Wyatt v. Fulrath*, 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

The traditional choice of law rule holds that rights in real property are governed by the law of the *situs*, while rights in movables are controlled by the law of the domicile of the owner.[7] This rule is applied to transfers by will[8] or upon intestacy;[9] but in *inter vivos* transfers of tangible movables the validity of the transfer is usually determined by the law of the place where the movable is situated at time of transfer.[10] *Inter vivos* trusts of movables have, until recently, been governed by the traditional rule.[11] However, that rule is changing in many jurisdictions.[12] Rather than apply an inflexible norm, courts will consider various factors in making the choice of law. These factors are: 1) the place of administration of the trust; 2) the *situs* of the corpus; and 3) the law intended to be applied as well as the domicile of the settlor.[13]

The marital property rights *inter se* of spouses in real property acquired during coverture is often said to be governed by the law of the *situs* of the land.[14] However, the majority of cases concerning the purchase of immovables located in a non-domiciliary state have held that the character of the funds exchanged for the immovable determined the marital rights in the latter.[15] Marital property interests in movables acquired during coverture by gift,[16] devise,[17] or purchase[18] are traditionally controlled by the law of the marital

7. Story, Conflicts § 379 (6th ed. 1865).

8. A leading case is Cross v. United States Trust Co., 131 N.Y. 330, 30 N.E. 125, 15 L.R.A. 606 (1892) (Testamentary disposition of personal property which would have violated New York's Rule against Perpetuities held valid under law of Rhode Island, the testator's domicile).

9. For a list of authorities, see Goodrich, Conflict of Laws § 165 (4th ed. 1964).

10. See, *e.g.*, Weissman v. Banque de Bruxelles, 254 N.Y. 488, 173 N.E. 835 (1930) (validity of transfer of endorsed check).

11. Sullivan v. Babcock, 63 How. Pr. 120 (N.Y. 1882) (*inter vivos* trust of real and personal property governed by law of New Jersey, the place of execution of the trust deed and the settlor's domicile).

12. *E.g.*, Wilmington Trust Co. v. Wilmington Trust Co., 26 Del. Ch. 397, 24 A.2d 309 (1942). (The court stated that the settlor's designation of the law to be applied will be honored if the trust has a substantial connection with the jurisdiction.)

13. For excellent discussion of the choice of law approaches taken by the courts, see Faulkner, *Polyjurisdictional Inter Vivos Trusts of Movables*, 39 Conn. Bar. J. 81 (1965); Cavers, *Trusts Inter Vivos and the Conflict of Laws*, 44 Harv. L. Rev. 161 (1930).

14. See Restatement, Conflict of Laws § 238 (1934).

15. *E.g.*, Brookman v. Durkee, 46 Wash. 578, 90 Pac. 914 (1907).

16. Meyer v. McCabe, 73 Mo. 236 (1880) (law of domicile at time of acquisition governed ownership of gift later brought into new domicile).

17. Muus v. Muus, 29 Minn. 115, 12 N.W. 343 (1882) (wife's inheritance from father who lived in Norway was governed by law of Minnesota, the matrimonial domicile).

18. Birmingham Waterworks Co. v. Hume, 121 Ala. 168, 25 So. 806 (1899) (husband's ability to transfer stock originally acquired by his wife was governed by law of the marital domicile at the time of her acquisition); see Restatement, Conflict of Laws § 290 (1934).

domicile at the time of acquisition. Removal of assets into a new jurisdiction,[19] even if accompanied by change of domicile,[20] will not affect pre-existing interests. But movables acquired after a change of domicile by both husband and wife,[21] or by the husband alone, will usually be determined by the law of the new domicile.[22]

In New York, there is a dearth of case-law squarely defining the rights *inter se* of spouses in marital property removed from the domicile. In an 1861 case,[23] the Court of Appeals allowed a French wife to recover from her husband's estate the value of her property taken with him to New York without her consent. The Court reasoned that the law of France should apply because the husband should not have the power to affect his wife's matrimonial rights by moving to another jurisdiction.[24] However, the strength of this case as authority is weak since no marital property issue was actually involved.[25] The question of marital property rights in movables did arise in several transfer tax cases. In one case,[26] a husband and wife married in France but shortly thereafter moved to New York and lived there for twenty years. The Court of Appeals held that, in the absence of an express ante-nuptial contract, New York's transfer tax applied to all property acquired after the change in domicile, and that the wife was not entitled to a one-half exemption on the ground that she owned half her deceased husband's personal property under French community property law.[27] In another case,[28] a husband, while maintaining residence with his wife in Cuba, deposited money in New York banks during brief visits to the United States. A unanimous Appellate Division applied

19. Jones v. Weaver, 123 F.2d 403 (9th Cir. 1941) (community ownership in automobile purchased in California, the matrimonial domicile, did not change when car was driven into Arizona); King v. Bruce, 145 Tex. 647, 201 S.W.2d 803 (1947) *cert. denied*, 332 U.S. 769 (1947) (The community property status of funds in the marital domicile was not changed when funds were sent to N.Y. and shortly thereafter returned to the domicile as the wife's separate property under a New York contract); see Restatement, Conflict of Laws §§ 291, 292 (1934).

20. Doss v. Campbell, 19 Ala. 590, 54 Am. Dec. 198 (1851) (wife's separate property under the law of the first domicile did not become husband's property upon being brought into the new marital domicile); see Restatement (Second), Conflict of Laws §§ 291, 292 (Tent. Draft No. 5, 1959).

21. Matter of Majot, 199 N.Y. 29, 92 N.E. 402 (1910).

22. Beemer v. Roher, 137 Cal. App. 293, 30 P.2d 547 (1934) (husband's deposits in joint tenancy account with his brother held to be community property under California law when the money was earned by the husband while domiciled in California; wife lived in Kansas). *But see*, Bonati v. Welsch, 24 N.Y. 157 (1861). For a compromise rule, see Restatement, Conflict of Laws § 290, comment e (1934), which states that "If the spouses have separate domiciles at the time of the acquisition of movables, the law of the domicil of that spouse who acquires the movables determines the extent of the interest of the other spouse therein."

23. Bonati v. Welsch, 24 N.Y. 157 (1861).

24. *Id.* at 163.

25. The husband owed the wife a debt under French law independent of her marital property rights in his acquisition during coverture.

26. Matter of Majot, 199 N.Y. 29, 92 N.E. 402 (1910).

27. *Id.* at 32, 92 N.E. at 403.

28. Matter of Mesa y Hernandez, 172 App. Div. 467, 159 N.Y. Supp. 59 (1st Dep't 1916).

the Cuban community property law in recognizing the wife's claim to one-half the estate and hence exempted that portion from taxation. The court stated:

> . . . there was no express contract between the parties, and therefore the law of matrimonial domicile governed, not only as to all the rights of the parties to their property in that place, but also as to all personal property everywhere, upon the principle that movables have no situs, or rather that they accompany the person everywhere, while as to immovable property the law rei sitae prevails.[29]

This decision was later affirmed without opinion by the Court of Appeals.[30] However, a lower court[31] recently applied New York law in a case where the representatives of the estates of a deceased mother and son asserted conflicting claims to the ownership of a joint bank account located in New York. The mother's estate had argued that the establishment of the joint account was a testamentary disposition in violation of Dutch law, the law of their domicile.[32] However, the court viewed the facts as raising only a question of the validity of an ordinary contract. The court concluded that "the law which determines the validity of a contract . . . is the law which the parties intended to apply, provided the transaction has some reasonable connection with the place where such law operates."[33]

Although the Court of Appeals, in the instant case, said that the law of the domicile would usually govern marital property rights arising out of agreements made by foreign domiciliaries outside of New York,[34] it went on to hold that

> New York has a right to say as a matter of public policy whether it will apply its own rules to property in New York of foreigners who choose to place it here for custody or investment, and to honor or not the formal agreements or suggestions of such owners by which New York law would apply to property they place here.[35]

The Court stated that it was "preferable" to recognize the owner's physical and legal submission to New York law when the property is actually brought to New York and a request is made that New York law apply in determining rights.[36] The Court would thus "honor their intentional resort to the protection of our laws and their recognition of the general stability of our Government which may well be deemed inter-related things."[37] The Court found this approach suggested by the case of *Hutchison v. Ross*.[38] In *Hutchison*, the Court had applied New York law to uphold the validity of an *inter vivos* trust

29. *Id.* at 477, 159 N.Y. Supp. at 67.
30. Matter of Mesa y Hernandez, 219 N.Y. 566, 114 N.E. 1069 (1916) (Mem.).
31. In re Rosenbergers' Estates, 131 N.Y.S.2d 59 (Surr. Ct. 1954).
32. *Id.* at 66.
33. *Id.* at 66.
34. Instant case at 172, 211 N.E.2d at 638, 264 N.Y.S.2d at 235.
35. *Id.* at 173, 211 N.E.2d at 639, 264 N.Y.S.2d at 235-36.
36. *Id.* at 173, 211 N.E.2d at 639, 264 N.Y.S.2d at 236.
37. *Ibid.*
38. 262 N.Y. 381, 187 N.E. 65, 89 A.L.R. 1007 (1933).

of movable property established by a husband for his wife which was invalid under the law of Quebec, the jurisdiction of the domicile. There Judge Lehman, speaking for the Court, stated the rule

> . . . that the validity of a trust of personal property must be determined by the law of this State, when the property is situated here and the parties intended that it should be administered here in accordance with the laws of this State.[39]

The majority, in the instant case, quoted with approval Judge Lehman's view that "Physical presence in one jurisdiction is a fact, the maxim [*mobilia sequuntur personam*] [movables follow the law of the person] is only a juristic formula which cannot destroy the fact."[40] The dissenters, speaking through Chief Judge Desmond, based their position on principles of international comity, legal precedent, and the absence of any public policy reason for departing from the traditional rule. The present time of "shrinking distances and enlarged wars" was said to be a poor time to change rules.[41] The "directly controlling"[42] case in New York, in their opinion, was *Matter of Mesa y Hernandez*[43] discussed above. Also quoted was the Restatement, Conflict of Laws, that "movables held by spouses in community continue to be held in community when taken into a state which does not create community interests."[44] The *Hutchison* case, where title passed to the trustee, was said to be limited to the area of trusts and conveyances.[45] It was also different because the rights of third parties were involved, and the intent of the parties clearly was to apply New York law.[46] The signing in Spain by the Duke and Duchess of "routine joint-account-for-custody agreements on forms supplied by the New York banks" was not regarded as substantial proof of the intent of the parties.[47]

In the instant case, the majority accepted, without discussion, the trial court's finding that the spouses intended to apply New York's law of survivorship to their property. The lower court had based its conclusion on the fact that the spouses opened the joint accounts under agreements repugnant to Spanish law and that one agreement had expressly specified that New York law govern.[48] Although the documentary evidence of their intent was conflicting,[49] the trial court's view is probably correct. It would seem unlikely that the Duke lacked the advice of counsel in placing these large sums in New York survivorship accounts. The dissent, however, found no substantial evidence

39. *Id.* at 395, 187 N.E. at 71, 89 A.L.R. at 1018.
40. Instant case at 174, 211 N.E.2d at 639, 264 N.Y.S.2d at 236.
41. *Id.* at 176, 211 N.E.2d at 640, 264 N.Y.S.2d at 238.
42. *Id.* at 177, 211 N.E.2d at 641, 264 N.Y.S.2d at 239.
43. 172 App. Div. 467, 159 N.Y. Supp. 59 (1st Dep't 1916) *aff'd mem.*, 219 N.Y. 566, 114 N.E. 1069 (1916).
44. Instant case at 178, 211 N.E.2d at 642, 264 N.Y.S.2d at 240.
45. *Id.* at 180, 211 N.E.2d at 643, 264 N.Y.S.2d at 241.
46. *Id.* at 180, 211 N.E.2d at 643, 264 N.Y.S.2d at 241, 242.
47. *Id.* at 180, 211 N.E.2d at 643, 264 N.Y.S.2d at 242.
48. Wyatt v. Fulrath, 38 Misc. 2d 1012, 1016, 239 N.Y.S.2d 486, 491 (Sup. Ct. 1963).
49. Brief for Plaintiff, app, pp. 509, 561, Wyatt v. Fulrath, 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

of *any* intent, and saw in the signing of the bank forms no more than a routine bank precaution to avoid liability upon payment to the surviving spouse. However, as the lower court pointed out, the Duke could just as easily have opened separate accounts.[50] Having accepted the trial court's crucial finding, the majority's opinion was mainly devoted to the support of a principle upholding the intent of foreigners to apply the forum law to property placed there for safekeeping or investment. The majority thought the *ratio decidendi* was suggested by the Hutchison case. There the Court of Appeals had stated that the intent of the settlor-husband to submit to the law of the *situs* jurisdiction was determinative of the choice of law question.[51] In upholding the legality of the trust under New York law notwithstanding an invalidating domiciliary community-property law, *Hutchison* seems to suggest similar treatment for bank accounts located in New York provided the spouses manifest their intent to have their rights governed by the forum law. In other words, the policy expressed in *Hutchison* that settlors be permitted flexibility in establishing *inter vivos* trusts in the forum should apply with equal force to other types of *inter vivos* financial transactions. The instant case, consistent with *Hutchison*, thus subordinated the policies embodied in the domicile's marital property law to a policy of allowing spouses freedom to order their own property relations. However, in cases where intent to apply the law of the forum jurisdiction is not present, the Court indicated that the law of the domicile would govern. The majority cited *Matter of Majot*[52] and *Matter of Mesa y Hernandez*[53] as supporting the principle that rights of married foreign domiciliaries in personal property arising out of agreements executed outside the forum would usually be governed by the law of the domicile. Neither case involved the mutual intention of the spouses to have the forum law apply.

The dissent objected to the majority's use of the *Hutchison* case as a justification for departing from the conventional choice of law rule for marital property. It distinguished that case as involving a situation where the parties' intent to apply New York law was clear, where title had passed to a trustee, and where the rights of third parties needed protection. It could have bolstered its argument considerably by pointing out that Spain, unlike New York, has a policy protecting the living heirs from disinheritance.[54] Since the Duke's

50. Wyatt v. Fulrath, 38 Misc. 2d 1012, 1017, 239 N.Y.S.2d 486, 492 (Supp. Ct. 1963).
51. Hutchison v. Ross, 262 N.Y. 381, 395, 187 N.E. 65, 71, 89 A.L.R. 1007, 1018 (1933).
52. 199 N.Y. 29, 92 N.E. 402 (1910).
53. 172 App. Div. 467, 159 N.Y. Supp. 59 (1st Dep't 1916), *aff'd mem.*, 219 N.Y. 566, 114 N.E. 1069 (1916).
54. See Spanish Civil Code arts. 806, 807, 808. The following is a translation of the text of these articles:

Art. 806. The legitime is that part of his property of which the testator can not dispose because the law has reserved it for certain heirs, called, on that account, forced heirs.

Art. 807. The following are forced heirs:

1. Legitimate children and descendants, with respect to their legitimate parents and ascendants;

2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;

Spanish heirs were alive, the dissent could have forcefully argued that the undesirability of undermining Spanish family policy required the application of domiciliary law. Instead it contented itself in finding no evidence of the spouses' intent to apply New York law. If the dissent had assumed, *arguendo*, the presence of intent, it is submitted that the *Hutchison* "intent rule" could still have been distinguished. In that case, the plaintiff had argued that *inter vivos* trusts should be governed by the same rules as testamentary trusts. In rejecting this contention, the Court of Appeals analogized the trust to an *inter vivos* conveyance of movables which is governed by the law of the *situs* of the movables at time of transfer. The marital property conflict rules were not considered. The decision, however, did protect the original plaintiff's wife who had relied on the validity of the trust for ten years, as well as the interest of the children as remaindermen. In the instant case, the majority's refusal to apply the law of the domicile had the effect of disinheriting the living heirs from the two-thirds indefeasible interest guaranteed to them under Spanish law.[55] Concern for the rights of third parties in *Hutchison* should have led the majority to show equal concern for the interested parties in the present case.

While a rule giving effect to the parties' intent to apply forum law often makes sense in determining the validity of a contract,[56] the finding of intent should not always dispose of the choice of law question. In the instant case, the majority thought that upholding the spouses' intent was proper, since they had sought the protection of the forum. However, this conclusion appears unwarranted. The application of Spain's community property law would have been equally consistent with the spouses' desire to safeguard their property. Although this decision should be criticized for failing to give adequate weight to the domiciliary provisions for family security, the rule probably will be limited to situations where recourse to the forum is motivated by economic or political instability at the foreign domicile. Different considerations of domestic comity will no doubt make the Court cautious in extending the present approach to funds sent to New York from community property jurisdictions in the United States.

ROBERT M. KORNREICH

3. The widower or widow, natural children legally acknowledged, and the father or the mother of the latter, in the manner and to the extent established by Articles 834, 835, 836, 837, 840, 841, 842, and 846.

Art. 808. The legitime of legitimate children and descendants consists of two-thirds of the hereditary estate of the father or of the mother.

Nevertheless, the latter may dispose of one of the two thirds forming the legitime in order to apply it as a betterment to their legitimate children or descendants.

They may freely dispose of the remaining third.

55. Spanish Civil Code arts. 806, 807, 808, *supra* note 54.

56. See Ehrenzweig, Conflict of Laws, §§ 176, 177, The Rule of Validation (1962). For critical discussion of Ehrenzweig's thesis, see Currie, *Ehrenzweig and the Statute of Frauds: An Inquiry into the "Rule of Validation,"* 18 Okla. L. Rev. 243 (1965).