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An Effect of the Revision to the New York Mental Hygiene Law on General Contract Law

by

Winston Spencer Waters*

INTRODUCTION

This article examines the common law doctrine of contracts involving persons deemed to be adjudicated and non-adjudicated mentally incompetent. It reviews the current case law in New York as it relates to contracts of persons deemed to be "incapacitated" pursuant to Article 81 of the Mental Hygiene Law. The article attempts to outline the similarities and differences between general contract law and the Mental Hygiene Law as they relate to contracts of the "incompetent person" and the "incapacitated person." The burden of proof required to establish "incapacity" pursuant to the Mental Hygiene Law and mental capacity required to enter into a contract is also discussed.

I. TRADITIONAL CONTRACT LAW

Early New York Court of Appeals cases clearly established the contract rules regarding adjudicated and non-adjudicated incompetents. A contract made with a person duly adjudged incompetent and for whom a committee has been appointed is void and a contract of a non-adjudicated

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incompetent is voidable. In an early decision, the New York Court of Appeals held in Blinn v. Schwartz, that a deed of a person actually insane, but never so adjudged, is not void, in the sense of being a nullity. It is voidable at his election upon recovering his reason, and may then be ratified or avoided at his pleasure. The deed has force and effect until the option to declare it void is exercised. This privilege is denied to the party with whom the mental incompetent contracted.

There are different tests to determine if the requisite mental capacity to contract existed.

Test 1

In New York State, the requisite mental capacity to enter a contract has been measured by what is largely a cognitive test. This test examines whether the contracting party was capable of understanding and appreciating the nature and consequences of the particular transaction. The level of "insanity" to avoid the contract must be an absolute incapacity to understand the effect of the act. Therefore, mere weakness of mind, or partial insanity or monomania, unconnected with the subject matter of the contract, is not sufficient. A moderate degree of incapacity may be sufficient where the transaction is accompanied by fraud, imposition or duress. Persons suffering from a disease such as Alzheimer's are not presumed incompetent.

Test 2

The second test is the motivational test. This test does not examine whether or not the contractual party understood the transaction. It focuses on whether the act of entering into the agreement was the result of mental illness. The motivational test is subjective. It applies when there is evidence that, even though understanding was complete, the nature of a particular mental disease was such that the capacity of a contracting party to control his acts was eliminated and he was induced to enter the contract. This test recognizes the ability of mental disease such as manic depressive psychosis to control a person's actions despite the individual having an understanding of the transaction. In Ortelere v. Teachers Retirement Bd., the New York Court of Appeals, held that a modern understanding of mental illness, suggests that incapacity to contract or exercise contractual rights may exist, because of volitional and affective impediments or disruptions in the personality, despite the intellectual or cognitive ability to understand. Grace Ortelere, an elementary school teacher since 1924, suffered a "nervous breakdown" in March, 1964 and went on a leave of absence which expired on February 5, 1965. She was then 60 years old. On July 1, 1964, she came under the care of Dr. D'Angelo, a psychiatrist who diagnosed her breakdown as involutional psychosis, melancholia type. Dr. D'Angelo prescribed six weeks of tranquilizers and shock therapy. Dr. D'Angelo continued to see her monthly until March, 1965. On March 28, 1965, she was hospitalized after collapsing at home from an aneurysm and died ten days later.

As a teacher she had been a member of the Teachers' Retirement System of the City of New York. This entitled her to certain annuity and pension rights, pre-retirement death benefits, and allowed her to exercise various options concerning the payment of her retirement allowance. On June 28, 1958, she had executed a "Selection of Benefits under Option One" naming her husband as beneficiary of the unexhausted reserve. Under this option, upon retirement her allowance would be lower retirement allowances, but if she died before receipt of her full reserve, the balance would be payable to her husband. On June 16, 1960, she designated her husband as beneficiary of her service death benefits in the
event she died prior to retirement. On February 11, 1965, when her leave of absence had just expired and while she was still being treated, she executed a retirement application, selecting the maximum retirement allowance payable during her lifetime with nothing payable on or after death. Three days earlier she had written the Teacher's Retirement Board of the City of New York, stating that she intended to retire on February 12 or 15 or as soon as she received the information I need in order to decide whether to take an option or maximum allowance.” She asked eight specific questions, which demonstrated an understanding of the retirement system concerning the various alternatives available. An extremely detailed reply was sent, by letter of February 15, 1965, although by that date it was technically impossible for her to change her selection of how retirement benefits would be paid. The board’s chief clerk, before whom Mrs. Ortelere executed the application, testified that the questions were answered verbally on February 11, 1965. Her retirement reserve totaled $62,165. Following her leave of absence, Mrs. Ortelere became very depressed and was unable to care for herself. Her husband brought an action to set aside his wife’s retirement application by reason of her mental incompetency. The Supreme Court entered judgment declaring that the retirement application of decedent was null and void. Her husband recovered judgment for full amount of the reserve credited to her at the time of her death and the Retirement Board appealed. The Supreme Court, Appellate Division reversed and dismissed the complaint and the husband appealed. The New York Court of Appeals held that the Retirement Board of the Teacher’s Retirement System of the City of New York was, or should have been, fully aware of Mrs. Ortelere’s condition. They, or the Board of Education, knew of her leave of absence for medical reasons and her use of staff psychiatrists. “The avoidance of duties under an agreement entered into by those who have done so by reason of mental illness, but who have understanding, depends on balancing competing policy considerations. There must be stability in contractual relations and protection of the expectations of parties who bargain in good faith. On the other hand, it is also desirable to protect persons who may understand the nature of the transaction but who, due to mental illness, cannot control their conduct.”

Incompetency to contract may exist, despite the presence of cognition, when a contract is made under the compulsion of manic depressive psychosis.

The law presumes the competence of a contractual party. In the case of an adjudicated incompetent, all that is necessary is the production of a certified copy of the judgment declaring the person to be “incompetent.” In the case of a non-adjudicated incompetent, the burden of proving one’s incompetency is on the party alleging it. The later must demonstrate that, because of the affliction, the person was incompetent at the time of the transaction. In Ortelere, the court held that a showing of medically classified psychosis is required otherwise few contracts would be invulnerable to a psychological attack. According to the court, it was apparent the plaintiff’s evidence was sufficient to sustain a finding that, when she acted on February 11, she did so as a result of serious mental illness, namely, psychosis. Grace Ortelere’s psychiatrist testified that, as an involutional melancholic in depression, she was incapable of making a voluntary “rational” decision. Lay witnesses cannot properly give an opinion as to party’s mental capacity as to rationality or irrationality, even when such opinion might be based upon specific acts and conversations, or personal observations. The lay witness could state the acts and conversations of which he had personal knowledge, and then be permitted to say whether, in his judgment, such acts and conversations were rational or irrational.
II. THE MENTAL HYGIENE LAW

Article 81 of the Mental Hygiene Law was enacted in 1992 after an extensive study of the statutes governing fiduciary appointments for incapacitated persons by the New York State Law Revision Commission. Although its initial purpose was to revise former Article 77 (conservatorship) and former Article 78 (committeehip) of the Mental Hygiene Law, the Commission ultimately found it necessary to establish a new statutory system to provide for the needs of disabled persons. The Commission concluded that former Articles 77 and 78 of the Mental Hygiene Law failed to provide relief sufficient to meet the needs of persons who, while neither incompetent nor substantially impaired are functionally limited in providing for the activities of daily life. Rather than amending the existing committeehip and conservatorship statutes, the Commission proposed the adoption of a new statutory system of guardianship to be set forth in Article 81 of the Mental Hygiene Law. In 1992, the Legislature complied by repealing former Articles 77 and 78 and enacting the proposed guardianship statute as Article 81 of the Mental Hygiene Law. The primary objective of Article 81 is to provide a system of fiduciary appointments for persons who are unable to provide for the activities of daily living. In a proceeding brought pursuant to Article 81, however, the court is not called upon to determine whether an individual is competent or incompetent. A finding of incapacity by the court conducting the hearing does not establish that a person is incompetent. Article 81 specifically provides that the appointment of a guardian shall not be conclusive evidence that the person lacks capacity for any other purpose, including the capacity to dispose of property by will except those powers and rights which the guardian is granted.

The protocol for the proceedings are defined by the statute. Any party has the right to (1) present evidence; (2) call witnesses, including expert witnesses; (3) cross examine witnesses, including witnesses called by the court; (4) be represented by counsel of his or her choice. The hearing must be conducted in the presence of the person alleged to be incapacitated, either at the courthouse or where the person resides, to permit the court to obtain its own impression of the person’s capacity. If the person alleged to be incapacitated physically cannot come or be brought to the courthouse, the hearing must be conducted where the person resides unless: (1) the person is not present in the state; or (2) all the information before the court clearly establishes that (i) the person alleged to be incapacitated is completely unable to participate in the hearing or (ii) no meaningful participation will result from the person’s presence at the hearing.

Article 81 defines the required burden and quantum of proof necessary in a guardianship proceeding. The standard of proof must demonstrate that a person is incapacitated based upon clear and convincing evidence. The statute permits a court for “good cause shown” to waive the rules of evidence. It permits hearsay evidence to be admitted into the proceedings through the testimony of a court evaluator and allows a court evaluator to testify about his report which usually contains hearsay evidence if the court deems such information to be reliable. The law requires a hearing with witnesses. There is no requirement expert witnesses, such as a psychiatrist, psychologist be called. The court can take testimony from a nurse or social worker. In some cases, the court has ruled that testimony of lay witnesses is suffice for a finding of a person being “incapacitated.”
The finding of a "substantial impairment" under former Article 77 concerning conservatorships did not establish incompetence allowing a court to declare a contract "void." In an Article 77 proceeding, a psychiatrist was required to testify concerning the ability or inability of the alleged conservatee to manage business matters only. The determination that a person was in need of a "committee" under former article 78 concerning committeeships did establish incompetence allowing a court to declare a contract "void." In an Article 78 proceeding, a psychiatrist was required to testify concerning the ability or inability of the alleged incompetent to manage both person and property. The finding of "incapacity" pursuant to article 81 gives the court the power to declare contracts of the "incapacitated" to be void. The Article 81 court is given the power, if it determines that the person is incapacitated and appoints a guardian: to modify, amend, or revoke any previously executed appointment, power, or delegation or any contract, conveyance, or disposition during lifetime or to take effect upon death, made by the incapacitated person prior to the appointment of the guardian.33 Article 81 courts have held that (1) a marriage contract constitutes a contract within the meaning of the Mental Hygiene Law.34 As such, it is subject to revocation by the court on the ground that a party thereto for whom a guardian has been appointed was "incapacitated" at the time it was contracted rendering such party incapable of consenting thereto by reason of want of understanding.35 Health care proxies, durable powers of attorney, amended and restated certificates of trusts, and Last Will and Testaments have also been invalidated.36 The Appellate Division in affirming the Surrogate Court held that mental incapacity invalidated an individual's durable powers of attorney, health care proxy, and amended and restated certificate of trust, executed prior to appointment of guardian upon a showing of clear and convincing evidence the incapacitated person executed the documents at a time when she was incapacitated.37 Moreover, in modifying the Surrogate's decision, the Appellate Division stated the Last Will and Testament that was signed and witnessed at approximately the same time should have also been declared void.38

CONCLUSION

It is the view of the author that the repealed Articles 77 and 78 worked well. The standard for a conservatorship proceeding pursuant to Article 77 of the Mental Hygiene Law required an evaluation and testimony from a psychiatrist that the alleged conservatee was unable to manage his business affairs. The standard for a committeeship proceeding pursuant to Article 78 of the Mental Hygiene Law required an evaluation and testimony from a psychiatrist that the alleged incompetent could not manage both his financial affairs and person necessitating the appointment of a committee. The burden of proof was similar to that required in a breach of contract action seeking to have a contract rescinded on the basis of mental incompetence. In such proceedings there is a requirement that a psychiatrist testify.

Article 81 does not require testimony from a psychiatrist to have a person declared "incapacitated." Moreover, in a special proceeding, contracts can be declared voidable without the need for an actual finding of a mental illness. The burden of proof in an Article 81 proceeding have been relaxed. A contract can easily be avoided by filing an Order to Show Cause, attending a hearing within thirty days and having a nurse, social worker, psychologist, or doctor testify about behavior of the alleged incapacitated person. This type of testimonial evidence is dramatically different than that required previously pursuant to the repealed Articles 77 and 78 respectively and in an action in Supreme Court to have a contract avoided due to mental incapacity.
Endnotes

3Blinn, 177 N.Y. at 263.
4Id., at 262.
6Blinn, 177 N.Y. at 262.
10Id., 25 N.Y. 2d at 205.
12Feiden, 542 N.Y.S.2d at 862; Matter of Gebauer, 361 N.Y.S.2d at 544.
13Feiden, 542 N.Y.S.2d at 862.
14Ortelere, 25 N.Y. 2d at 206.
15Id.
16Id.
17Paine v. Aldrich, 133 N.Y. 544, 547 (1892).
18Id.

20N.Y. Mental Hyg. Law § 81.01(McKinney 2007).

Legislative findings and purpose.
The legislature hereby finds that the needs of persons with incapacities are as diverse and complex as they are unique to the individual. The current system of conservatorship and committee does not provide the necessary flexibility to meet these needs. Conservatorship which traditionally compromises a person's rights only with respect to property frequently is insufficient to provide necessary relief. On the other hand, a committee, with its judicial finding of incompetence and the accompanying stigma and loss of civil rights, traditionally involves a deprivation that is often excessive and unnecessary. Moreover, certain persons require some form of assistance in meeting their personal and property management needs but do not require either of these drastic remedies. The legislature finds that it is desirable for and beneficial to persons with incapacities to make available to them the least restrictive form of intervention which assists them in meeting their needs but, at the same time, permits them to exercise the independence and self-determination of which they are capable. The legislature declares that it is the purpose of this act to promote the public welfare by establishing a guardianship system which is appropriate to satisfy either personal or property management needs of an incapacitated person in a manner tailored to the individual needs of that person, which takes in account the personal wishes, preferences and desires of the person, and which affords the person the greatest amount of independence and self-determination and participation in all the decisions affecting such person's life.

21N.Y. Mental Hyg. Law § 81.01(b)(McKinney 2007).
22N.Y. Mental Hyg. Law § 81.29(b)(McKinney 2007).

23N.Y. Mental Hyg. Law § 81.29(b)(McKinney 2007). Effect of the appointment on the incapacitated person
(a) An incapacitated person for whom a guardian has been appointed retains all powers and rights except those powers and rights which the guardian is granted.
(b) Subject to subdivision (a) of this section, the appointment of a guardian shall not be conclusive evidence that the person lacks capacity for any other
purpose, including the capacity to dispose of property by will.

c) The title to all property of the incapacitated person shall be in such person and not in the guardian. The property shall be subject to the possession of the guardian and to the control of the court for the purposes of administration, sale or other disposition only to the extent directed by the court order appointing the guardian.

d) If the court determines that the person is incapacitated and appoints a guardian, the court may modify, amend, or revoke any previously executed appointment, power, or delegation under section 5-1501, [fig 1] 5-1505, or 5-1506 of the general obligations law or section two thousand nine hundred sixty-five of the public health law, or section two thousand nine hundred eighty-one of the public health law notwithstanding section two thousand nine hundred ninety-two of the public health law, or any contract, conveyance, or disposition during lifetime or to take effect upon death, made by the incapacitated person prior to the appointment of the guardian if the court finds that the previously executed appointment, power, delegation, contract, conveyance, or disposition during lifetime or to take effect upon death, was made while the person was incapacitated or if the court determines that there has been a breach of fiduciary duty by the previously appointed agent. In such event, the court shall require that the agent account to the guardian.

e) Nothing in this article shall be construed either to prohibit a court from granting, or to authorize a court to grant, to any person the power to give consent for the withholding or withdrawal of life sustaining treatment, including artificial nutrition and hydration. When used in this article, life sustaining treatment means medical treatment which is sustaining life functions and without which, according to reasonable medical judgment, that patient will die within a relatively short time period.

25N.Y. Mental Hyg. Law § 81.11(McKinney 2007).
26Id.
27N.Y. Mental Hyg. Law§ 81.12(McKinney 2007).

Burdan and quantum of proof

(a) A determination that a person is incapacitated under the provisions of this article must be based on clear and convincing evidence. The burden of proof shall be on the petitioner.

(b) The court may, for good cause shown, waive the rules of evidence. The report of the court evaluator may be admitted in evidence if the court

28Id.
29Id.
30Id.
31N.Y. Mental Hyg. Law § 81.11(McKinney 2007).
32This is not the same standard required to declare a contractual party incapacitated within the meaning general contract law. In Paine v. Aldrich, supra, the Court of Appeals held in an action to set aside a deed on the ground that the grantor was at the time of its execution, non compos mentis. that the opinion of a witness not an expert was inadmissible evidence.

33N.Y. Mental Hyg. Law §81.29 (d)(McKinney 2007).
34Matter of Jayne Johnson, 658 N.Y.S.2d 780, 785 (Supreme Court, Suffolk County 1997).
35Id.
37Id.
38Id.