

**JUSTICE MAIMON, JERUSALEM FAMILY COURT
CASE 022061/07 (MOTION 054445/08)**

(TRANSLATED INTO ENGLISH)

BEFORE THE HONORABLE JUDGE NILI MAIMON, DEPUTY PRESIDENT OF THE
FAMILY COURT, DISTRICT OF JERUSALEM

In the matter of

A. Doe

B. Doe

C. Doe

D. Doe

Represented by attorney Ari Bahiri

Petitioners

v.

Jane Doe

Represented by attorney Susan Weiss

Respondent

Decision Summary

This is an interim decision in a motion to dismiss a case for damages for get-refusal brought against family members for "aiding and abetting" a husband in his refusal to divorce his wife.

In this case, a 40-year-old modern Orthodox woman sued her husband for damages for refusing to give her a get for 5 years. In addition to suing her husband who had in the interim disappeared and could not be found, the wife sued her mother-in-law, two brothers-in-law, and sister-in-law who she claimed, in various ways, enabled and encouraged the husband's refusal.

Judge Maimon denied the defendants' motion to dismiss and held that a claim could be made against persons for aiding and abetting get-refusal and that it was a question of fact to be decided at trial.

The case went to trial against the in-laws. After the parties submitted written summation, the husband surfaced and agreed to give the get in exchange for the wife's waiver of her claim for damages.

1. DECISION

This is a Motion to Dismiss – with or without prejudice – the Plaintiff-Respondent's claim for damages against her husband, the Defendant 1 (from herein: "the Husband") for *get* refusal, [as well as against the] Petitioners for aiding and abetting the Husband to that end.

The petitioners, along with the Husband, are the defendants in the primary suit; they are the Husband's mother, two brothers, and sister.

The Petitioners argue that the primary suit fails to state any claim against them, whether in tort or otherwise, for which relief could be granted; that at best, they gave advice or material support to the Husband, and that they cannot be held liable for damages simply for helping another person. As they see it, the Court should encourage family members to support one another emotionally and financially. It is inconceivable that such support could amount to grounds for legal action against them.

The Husband is an adult, and has not been declared legally incompetent. Thus, he should, according to the Petitioners, bear full legal responsibility for his actions, while the Petitioners should bear none.

The Petitioners further argue that the Respondent cannot sue them for encouraging the Husband not to grant a *get* when the Beit Din has not yet ordered him to do so, but has merely directed the parties to reach a divorce agreement. Therefore, for that reason also, the Respondent has no cause of action against them.

The Respondent objects to the motion to dismiss.

According to her, anyone who aids, advises, or encourages an act or omission, or who commands, permits, or authorizes such act or omission, is liable along with the actor for such malfeasance, in accordance with §12 of the Torts Ordinance of the State of Israel [New Version] (*Pekudat Nezikin*). And it is from this standpoint that [the Respondent] argues that there are grounds, according to *Pekudat Nezikin*, for a claim against the Petitioners, who assisted the Husband in his refusal to grant a *get* to the Respondent.

The Respondent argues that she can prove a causal relationship between the actions of the Petitioners and those of the Husband and his misdeeds. According to the Respondent, the awarding of damages in the circumstances in question is appropriate even when the Beit Din has not obligated the husband to grant a *get*.

2. DISCUSSION

The Respondent is correct.

First, it should be noted that summary dismissal of a complaint – with or without prejudice – should be severely restricted and implemented only in exceptional circumstances. Each person deserves the opportunity to exercise her legal rights to sue, and should not be constrained, except in extreme instances, from implementing such right to come before the court and be heard. She should be given her day in court.

With regard to the claim that advice, support, and assistance to a family member in trouble cannot constitute grounds for damages; as well as with regard to the claim that there is no causal connection between the Petitioners' alleged behaviors – even if in fact they did in occur – and the [legal liability of the Plaintiffs for the] acts or omissions of the Husband: These claims of the Petitioners must be clarified and explored in depth in a courtroom. The parameters of legal responsibility attributable to one who aids or abets another to commit an act or omission that causes compensable harm are to be found in the law – i.e., *Pekudat Nezikin*. Thus, the question at hand is whether, under the circumstances of this particular case, events occurred that would render the Petitioners legally liable for their advice to, or

support for, the Husband in withholding a *get*, if indeed it was withheld. These are questions of fact to be examined at trial.

To all this, we must add that we are dealing here with family members who have a special “close relationship” one to the another with respect to “negligence” torts. Such relationship is underscored by the fact that [Israeli law] acknowledges that “parents-, brothers-, or sisters-in-law” are family members for purpose of giving Family Courts the jurisdiction to decide cases filed by a party against the parents, brothers, or sisters of his or her spouse.

This is also the case with respect to the question of whether a causal relationship exists between the actions of the Petitioners and the acts or omissions of the Husband: This question too is, at least in part, an issue of fact, and will be explored in depth, at such place and time that the trial is heard.

As to the question of damages for refusal to grant a *get* (if it is so established) in the absence of a Rabbinic court order do so: This, too, is insufficient reason to reject the original complaint summarily, or out of hand.

Indeed, there are some scholars who adopt a “policy of pragmatism.” They think that that even though a cause of action exists in tort – negligence – vis-à-vis a spouse who refuses to give a requested *get*, it is incumbent to be “pragmatic” in order to accommodate, as much as possible, the different approaches of the courts, and in our case that of the Rabbinic court presiding over the *get* with that of the civil court presiding over the suit for damages. This [pragmatic approach is crucial, according to those scholars], in light of the fear that, without a direct order from the Beit Din to deliver a *get*, should the long-awaited *get* ultimately be granted, it would be considered a *get me’useh* (an invalid “forced divorce” - Z.B.) if damages were awarded before the *get* was granted. This might cause great damage to the spouse requesting the *get*, especially if children are born to the wife after the granting of the *get me’useh*.

But then, there are other scholars who would argue against the paternalism of those who stipulate that an award of damages for *get* refusal can only be made if there is an order from the Beit Din to give the *get*; as well as against the “calculations” made in the wife’s stead (and it usually is the wife), thus placing their world view as an impediment to a woman who seeks damages for the harm done to her by her husband; and thus, because of their own personal attitudes about the need for inter-jurisdictional accord and their own personal desire to prevent the consequences of a *get me’useh*, would deny a woman the opportunity to seek damages even though we are talking about her life, her preferences, her free will, her autonomy to choose her own paths – and the harm done to her privacy.

It is inappropriate to deny a Plaintiff (here, the Respondent) relief from the outset – to deny her access to a court in which she can set forth her claim for damages, when she is making a case in tort in accordance with *Pekudat Nezikin* that on its face, from a legal perspective, looks like it can be made separate from any divorce proceedings in the Rabbinic court – just out of concern for the impact that a potential ruling might have on the *get* should damages actually be awarded.

All of these matters, including the argument of the Petitioners that there is no cause of action for the claim before us because a *get* has yet to be ordered, will be resolved at trial,

and are, in fact' the principle question at issue. For the sake of efficiency, there is no need at this juncture to separate out from the rest of the lawsuit the question of whether harm can occur in the absence of an order granting a *get*, since the answer to this question is intimately connected to the question of [the kind of] support given by the family members to the husband., as well as the additional question of whether assistance of this kind can give rise to damages in the absence of a decision ordering a *get*.

I must call attention to the fact that, in this case, the Beit Din has, for all intents and purposes, declared that the Respondent is an *agunah*, by noting that:

The Beit Din once again appeals to the Executive Office of the Rabbinic Courts to appoint a detective on its behalf for the purpose of locating the husband who has disappeared for an extensive period of time; and there is no information available as to his whereabouts, while the wife is an *agunah* (emphasis mine- N. M.), and it is an great mitzvah to release her from the chains of *igun*.

Also relevant is the responsum of the Elder Rabbi Chaim Pology in his book, *Chaim v'Shalom*, (section 114). There he makes the point that it is possible to order the granting of a *get* when a couple has been separated for a long time, and, in his words:

Generally, it is my position that when the Beit Din sees that a couple has been separated for a long time, and that there is no possibility of reconciliation, on the contrary, that every effort should be made to separate the spouses one from the another and to grant a *get* so that they will not commit greater sins, etc. The court should rest assured that anyone who delays the granting of a *get* in such a situation – in order to take revenge on one another out of jealousy, hatred, rivalry, and the like – will in the future have to give account for such delay. And I am hereby setting a time limit to this matter. Should a disagreement develop between a man and his wife, and should they despair of any attempts at mediation and reconciliation, they should wait 18 months, and if after that period of time the Beit Din sees no possibility for reconciliation between them, they should each go their separate ways and [the court] should compel the husband to give his wife a *get* until he states, "It is my will to do this," and so forth.

In the instant case, the original parties have not lived together for six years, while the Husband disappeared and has remained in hiding for three of them, with the aim, according to the Respondent, of making her an *agunah*.

In her view, the Petitioners have collaborated with him, enabling him to escape and disappear, so that the question of whether the Beit Din has obligated, or not obligated, the husband to grant a *get* cannot even be determined in light of his disappearance and the support that the Petitioners have provided for that disappearance.

As mentioned above, the fundamental question – whether, prior to the ordering of a *get*, damages can be granted for the withholding of that *get* – will be addressed before the court, at the time of trial, and together with the other questions raised here that, in the interest of efficiency, will be dealt with at that time.

In short, the request of the Petitioners for summary dismissal of the complaint of the Respondent has been rejected, and is hereby denied.

The Petitioners will pay costs and attorney's fees, including tax, relating to this Motion in the amount of NIS 3000, with interest compounding until payment, as required by law.

Issued on the 4th of Tamuz, 5768 (July 7, 2008) in the absence of the parties.

The administration will deliver copies to the parties.

Nili Maimon, Judge

Deputy President