

Same Sex Separation Agreement Ruled Valid, Their Marriage Void

While the marriage between a same sex couple was declared void, their separation agreement, which resolved all of their property and financial disputes, was declared valid by Justice Phyllis Gangel-Jacob in *Gonzalez v. Green*. Although the parties were “married” pursuant to a Massachusetts law that permits same sex unions, their marriage was void since such marriages are not recognized in New York.

Although the parties were not married, the Court declared that they were free to contract to resolve their respective property claims arising from the break-up of their relationship. While cohabitation without marriage does not give rise to property and financial rights, “Cohabitation does not disable the parties from making an agreement within the normal rules of contract law.”

Justice Gangel-Jacobs correctly noted that while the Court of Appeals’ holding in *Hernandez v. Robles* declined to recognize the validity of same sex marriages, it did not negate the existence of the same sex relationships or the reality that same sex relationships dissolve. As when married couples divorce, courts are called on to resolve disputes regarding the distribution of assets from same sex couples. Litigants have always been encouraged to resolve their disputes without resort to protracted litigation

If “divorcing” same sex couples could resolve their property claims by written agreement, why should their settlement agreements not be deemed valid?