

113 A.D.3d 560  
Supreme Court, Appellate Division,  
First Department, New York.

Scott R. TREPTEL, Plaintiff–Appellant,  
v.  
Rosanne TREPTEL, Defendant–Respondent.

Jan. 28, 2014.

### Synopsis

**Background:** Father appealed from an order of the Supreme Court, New York County, [Lori S. Sattler, J.](#), which awarded mother child support arrears and attorney fees.

**Holding:** The Supreme Court, Appellate Division, held that father's additional payments to mother did not satisfy his unpaid cost-of-living (COLA) child support increases and distributive award interest obligations.

Affirmed.

### Attorneys and Law Firms

\*73 Hennessey & Bienstock, LLP, New York ([Peter Bienstock](#) of counsel), for appellant.

Grant & Appelbaum, P.C., New York ([Michael W. Appelbaum](#) of counsel), for respondent.

[ACOSTA, J.P.](#), [SAXE, MOSKOWITZ, FEINMAN, JJ.](#)

### Opinion

Order, Supreme Court, New York County ([Lori S. Sattler, J.](#)), entered May 24, 2012, which, to the extent appealed from as

limited by the briefs, upon defendant's motion for an award of certain unpaid cost-of-living (COLA) increases in child support and distributive award interest, and for counsel fees, awarded her \$38,994 in arrears and \$2,500 in counsel fees, unanimously affirmed, without costs. Order, same court and justice, entered on or about February 5, 2013, which denied plaintiff's motion to renew, granted his motion to reargue, and, upon reargument, adhered to the original determination, unanimously affirmed, without costs.

The “Voluntary Payments” clause in the parties' stipulation of settlement provides that “[a]ny payments made by either party to the other ... shall not alter that party's legal obligations hereunder (except to the extent it discharges or satisfies such obligations), nor create any precedent for the future.” This clause clearly and unambiguously expresses the intent of the parties (*see e.g. Matter of Meccico v. Meccico*, 76 N.Y.2d 822, 559 N.Y.S.2d 974, 559 N.E.2d 668 [1990]). Since the payments to defendant that plaintiff was not obligated to make, however generous, did not satisfy any of his obligations under the stipulation, he is liable for the unpaid COLA increases and distributive award interest required by the stipulation.

Plaintiff failed to support his motion for renewal with reasonable justification for not submitting the purportedly new facts on the original motion (*see CPLR 2221[e]*). In any event, the new facts would not have changed the original determination.

We have considered plaintiff's remaining contentions and find them unavailing.

### Parallel Citations

113 A.D.3d 560, 979 N.Y.S.2d 72, 2014 N.Y. Slip Op. 00467