

Is Sofia Vergara likely to lose her frozen embryo battle with ex Nick Loeb? Lawyers weigh in

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EXCLUSIVE

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Sofia and Nick have fought over their frozen embryos for four years (Picture: WWD/REX/Shutterstock)

When Sofia Vergara and her former fiance Nick Loeb decided to store frozen embryos in a clinic, they probably never imagined it would result in an ugly lawsuit.

But that's exactly what happened in 2015 when **Nick, 43, sued the *Modern Family* actress** in a to go ahead and use the eggs himself with a surrogate despite him splitting from Sofia the previous year.

It's a perplexing case and, quite frankly, a legal minefield to get around.



where the eggs were created.

Nick originally filed the lawsuit in California but withdrew before refiling in Louisiana, likely because it's renowned for being a pro-life state. It's also where the businessman has allegedly set up trust funds for the two female embryos, which he has already named Isabella and Emma.





Sofia claims she and Nick signed a contract stating they couldn't use the eggs alone (Picture: WireImage)

Sofia, 46, has made it clear that she wishes for the embryos to be destroyed in light of her split from Nick four years ago and the fact she has since married actor Joe Manganiello.

With Sofia's resistance to giving the embryos life, it sounds like Nick is fighting a losing battle.

But what do the experts say?

While it's common for couples to battle it out in court over embryos which they had frozen during their relationship, what's uncommon is for one party to be sued by the actual eggs themselves.

And that's something many lawyers seem to agree on.

Martha Cohen Stine, founding partner of Cohen Rabin Stine Schumann LLP in New York, says: 'Right now, we are living in a reproductive new frontier, so many options exist for couples and individuals who face obstacles and wish to have a child.

'Legislation, however, has not kept up.



In the US, most states have no specific legislation addressing frozen embryos, and the contracts that couples sign when they enter the fertility clinic and embark on the IVF process govern the disposition of the embryos.'

Sofia argues that she and Nick did sign an agreement at the time of freezing their eggs, stating that neither party could go ahead and use the embryos without the other's permission.

Getting around this contract is likely why Nick filed the lawsuit in Missouri.

Martha suggests that Nick knew he would lose the case in California, which is why he brought it to Louisiana but this time under the embryos' names – not his own.

The lawyer explains: 'Louisiana is one of the few States that has a pro embryo statute on the books.

'This statute, which applies to frozen embryos created and stored in Louisiana, bestows certain rights on unborn frozen embryos, defines them as "judicial persons", and places various rules and restrictions on the patient, her partner, and the fertility doctors and clinics.'

Notably, she adds: 'It's the only law of its kind in the US and has been widely criticised by legal scholars as bizarre, untenable and ambiguous.'







Sofia is now married to Joe Manganiello (Picture: Getty Images)

Bizarre, untenable and ambiguous, which can also be used to pretty much sum up this legal battle.

If you're wondering whether there are similar cases where the embryos sue their 'parents', the simple answer is no.

That's because Nick's lawsuit against Sofia is truly one-of-a-kind.

But it is easy to find countless stories of couples fighting over the use of fertilised eggs following a break-up.

In June, a woman in New York was prohibited from going forward with a unilateral implantation of a frozen egg against her husband's wishes, even though it was her last chance to have a biological child.

A judge ruled in the husband's favour and gave him sole ownership of the embryo purely for disposal purposes at a clinic.

Five years ago in China, a couple died in a car crash before being able to use their frozen embryos via IVF as planned.

The embryos' four grandparents fought tirelessly for rights to the eggs and actually won as there was no precedent in China as to whether they could inherit them.

As a result, a baby boy was born in December 2017 via surrogate, although his birth was only revealed in June 2018.

If Nick's suit does eventually find a home state and make it to trial, Martha believes it's unlikely he would be awarded a similar outcome to the case in China.

While there isn't exactly precedent for embryos suing their parents in the US, there is the small number of signed contracts to uphold.

'The Courts are not normally comfortable with forcing procreation, especially after a couple has sp



Sofia allegedly feels Nick is trying to ruin her marriage with Joe (Picture: Getty Images)

'Generally, the trend that we see in the case law throughout the US is that the clinic contracts are enforced by the Courts, both parties must agree before implantation takes place and each party normally reserves the right to revoke consent at any time.'

It doesn't appear that the UK has seen anyone being sued by their own embryos yet.

And the law sounds a lot less tolerant for it.

Amy Starnes, Senior Associate for Mills & Reeve LLP, cites the Human Fertilisation and Embryology Act 1990 in the UK, which allows a 'cooling off' period of up to a year where both parties have another chance to discuss what they want to do with their eggs.

Similar to the New York case previously mentioned, a woman named Natallie Evans lost a five-year High Court battle in 2007 after she attempted to use the frozen embryos she had created with a partner.

Natallie had become infertile due to cancer treatment but her former partner wanted the eggs destroyed.



Recent reports claim that Sofia feels Nick has dragged out the dispute in an attempt to destroy her marriage to Joe.

Martha doesn't think is a far-off notion.

The lawyer says: 'While to date he has been unsuccessful, Nick's lawsuits have been nothing if not creative and dramatic, garnering headlines and publicity as well as the continued entanglement with Sofia that he seems to crave.'

It doesn't sound promising for the businessman as Martha strongly believes that even a pro-life state such as Louisiana wouldn't be in his corner.

'He signed a California contract that is valid, binding and enforceable in California, and would be upheld by most Courts in the United States,' she says.



Fertility Month

This story is part of Fertility Month, a month-long series covering all aspects of fertility.

For the next four weeks, we will be speaking to people at all stages of the fertility journey as well as doctors, lawyers and fertility experts who can shed light on the most important issues.

If you have a story to tell, please do get in touch at fertilitystories@metro.co.uk.

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'It would seem that Loeb has little chance of convincing even a pro-life Louisiana Court to grant him the extraordinary relief he seeks.'

Amy adds: 'One thing is for sure, the pain of not being able to have a child can motivate people to resort to lengthy and complex court proceedings.'

Metro.co.uk has reached out to Sofia and Nick's reps but have received no comment.

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