

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>JP,</b>	<b>Plaintiff</b>	:	<b>NO. 14-21, 030</b>
		:	
		:	
<b>vs.</b>		:	
		:	
<b>VP,</b>	<b>Defendant</b>	:	<b>IN DIVORCE</b>

**OPINION & ORDER**

AND NOW, this 9<sup>th</sup> day of April, 2015, this order is entered after a hearing which began on January 9, 2015 and was concluded on February 27, 2015 regarding Husband’s Petition to Enforce Settlement Agreement and Exclusive Possession filed December 20, 2014. Present at the hearing was Wife, VP, with her counsel Patricia Shipman, Esquire and Husband, JP, with his counsel Melody Protasio, Esquire. Both attorneys filed briefs in support of their position prior to the final hearing.

***Facts***

The parties were married on September 11, 2000. After a period of separation, Wife moved out of the marital residence in January 2014. The parties discussed, at Husband’s insistence, the division of their property. On January 24, 2014 the parties executed a post nuptial agreement prepared by Husband entitled Custody, Support Agreement and Schedule, hereinafter “Agreement”. Within the Agreement a separate section is entitled Financial/ Property Agreement. This section outlines the distribution of the marital residence (including both its debt and equity), the parties’ vehicles, health insurance for Wife and the children, FLEX account, certain expenses in regard to the

children, the parties' savings account, credit cards, business accounts, 529 college plans, retirement plans, as well as the parties' items of personal property. The Agreement is silent as to Alimony, Alimony Pendente Lite. The Agreement contains no specific terms as to child support, containing that the parties will "split the costs of clothes/necessities" for the children. Regarding Husband's PSERS account, the parties agree Wife is "entitled to a percentage of 13 years of service"; however the percentage is not delineated. At no point does the agreement mention divorce or final resolution or any like phrase indicating equitable distribution is completed through the Agreement.

Sometime after the parties executed the Agreement, Husband took the terms to an attorney to have a final Property Settlement Agreement professionally drafted. Wife refused to sign any agreement prepared by an attorney. Husband filed for divorce July 29, 2014.

On December 2, 2014, Wife filed a counter claim in divorce in part seeking alimony. Additionally, Wife filed for Alimony Pendente Lite and health insurance which in turn prompted Husband to file his Petition for Enforcement of Agreement on June 21, 2012 and Wife to file her Answer and New Matter on July 11, 2012.

### ***Discussion***

Wife argues that the Agreement is incomplete because it did not address all of the marital assets. Wife further argues that because the Agreement is only a partial property settlement agreement there should be an equitable distribution hearing on the remaining assets, including Husband's PSERS account. Husband argues that the Agreement is in fact a fully integrated property settlement agreement. Additionally, Husband requests

exclusive possession of the marital residence as Wife has been out of the residence and in her own separate accommodations for approximately one year.

Property Settlement Agreements, such as the one in this case, are governed by contract law. *Kripp v. Kripp*, 849 A.2d 1159, 1163 (Pa. 2004) (citing *Vaccarello v. Vaccarello*, 757 A.2d 909, 914 (Pa. 2000); see also *Krizovensky v. Krizovensky*, 624 A.2d 638, 642 (Pa. Super. 1993). When the terms of the contract are clear and unambiguous the Court must ascertain the intent of the parties from the Agreement itself. *Kripp* at 1163. In this instance because there is no direct language indicating that the Agreement is fully integrated there is some ambiguity and we must look at the intent of the parties. *Id.*

During the hearing Husband credibly testified that he believed the agreement entered by the parties was the final agreement as to the parties' property. Husband testified he made changes to the agreement, prior to its finalization, at the request of Wife. Husband stated his intent was a 50-50 division of the parties' property. Husband specifically started to carry out some of the terms of the agreement, such as dividing costs associated with the children, the handling of certain bank accounts, and purchasing new furniture for Wife and the children. However, the Agreement lacks any language stating it is a complete resolution of the parties' claims or that it is in contemplation of divorce.

During the hearing Wife's testimony confirmed the agreement defined which party was "to get what assets", but argues that she felt the agreement was a draft and not final. This argument is not persuasive. Wife additionally testified that she felt the agreement was not legally binding. Contemplation of a final draft does not negate the

contract which the parties signed and partially performed. *See Krause v. Great Lakes Holdings, Inc.* 563 A.2d 1182 (1989). Husband and Wife went through multiple drafts of the Agreement and signed and initialed each page. The parties went on to carry out certain terms of the agreement. The Agreement is a binding contract. The terms contained within the Agreement are resolved. This includes Wife's claim to Husband's business. The agreement specifically waives Wife's right to the JP-3D Networks, LLC business accounts and accounts for personal property that may have been related to the business. Wife offered no testimony regarding other assets associated with Husband's business.

Wife confirmed that the agreement was to split everything 50-50. The portion of Husband's PSERS account outlined in the Agreement was clearly intended to be split equally.

Wife thought the parties were merely separating and did not want to discuss certain aspects of dissolution of marriage specifically alimony. Wife's counsel argues that the Agreement is not a full and final resolution of the marital property. Additionally, Wife argues that if the Agreement is enforceable, it should only address item specially identified on the face of the document. Wife counsel relies on *Sabad v. Fesseden*, 825 A.2d 682(Pa. Super 2003) for the supposition that the Court should find any term not specifically waived in the terms of the agreement as open for Equitable Distribution. "Generally, the parties are bound by their agreements, absent fraud, misrepresentation, nor duress. They are bound without regard to whether the terms were read and fully understood and irrespective of whether the agreements embodied reasonable or good bargains." *Id.* at 688 (internal citations omitted). Notably in *Sabad*, both parties agreed

there was no waiver of alimony. *Id.* at 691. The Court agrees that at no point did the Agreement specifically waive the rights to spousal support, alimony pendente lite, or alimony.

The Court finds the following: the Agreement is binding and remains in full force and effect. The Agreement resolves the economic issues of Equitable Distribution except Wife's claims for alimony, APL and Spousal Support which have not been waived. Husband is granted exclusive possession of the marital residence.

BY THE COURT,

Joy Reynolds McCoy, Judge