

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

PATRICE LAMB,
 Plaintiff
 vs.

ADRIAN BRODISH,
 Defendant

: **NO. 05-21361**
:
: **CIVIL ACTION-LAW**
:
: **IN DIVORCE**
: **Petition for Enforcement of Property**
: **Settlement, Petition for Attorney Fees,**
: **Petition for Contempt**

OPINION and ORDER

This matter came before the Court on the Petition for Enforcement of Property Settlement, Petition for Attorney Fees and Petition for Contempt filed by counsel for Patrice Lamb on November 17, 2005. After and hearing and argument held on February 6, 2006, the Court makes the followings findings.

1. Petitioner Patrice Lamb (hereinafter “Wife”) and Respondent Adam Brodish (hereinafter “Husband”) entered a property settlement agreement (hereinafter “the Agreement”) on September 30, 2005.
2. In provision No. 4 of the Agreement, Wife agreed to convey the property located at 843 High Street to Husband. In return, Husband agreed to pay all outstanding debts of the property, refinance the existing mortgage, pay Wife \$100,000, within seven (7) days of signing of the Agreement.
3. Under the agreement in provision No. 5, Wife agreed to convey her interest in the residence at 924 West Third Street to Husband. Husband agreed in provision No. 5 to assume payment of all outstanding debts concerning the property and to pay the Citibank Visa credit card and Beneficial Line of Credit in the

approximate amounts of \$7,000 and \$8,000, respectively.

4. Husband has violated the Agreement in that he has failed to make the \$100,000 payment to Wife required by Provision No. 4.
5. Husband has violated the Agreement in that he has failed to pay the Citibank and Beneficial obligations require by Provision No. 5.
6. Husband did pay to Wife, the following sums, \$12,026.92 from the refinancing of 843 High Street and \$54,738.99 for refinancing 924 West Third Street.
7. Wife has paid \$8,401.66 to Beneficial because of Husband's failure to pay Beneficial and \$6,265.73 because of Husband's failure to pay Citibank as required by the Agreement.
8. In light of the above, Husband still owes to Wife the sum \$47,901.48 by the Agreement.
9. Further, Wife has continued to pay in October, November, December 2005 and January 2006, Citibank, Beneficial, State Farm Insurance and Beiters additional payments as follows:

Citibank -	\$1,609.38
Beneficial -	\$ 791.00
State Farm Insurance -	\$ 140.60
Beiters -	\$ 400.00

10. In light of the additional payments in Provision No. 9 listed above, Husband owes Wife the total sum of \$50,842.46 by virtue of the Agreement, which has been marked Petitioner's Exhibit 1.
11. Wife has incurred the sum of \$832.32 for attorney fees to her attorney Janice Ramin Yaw. See Petitioner's Exhibit 3. Attorney billing for October 21,

2005 to December 12, 2005, with two additional hours for preparation and attendance for the hearing held before the Court on this matter on February 6, 2006. See Agreement provisions 25 and 25 concerning sanctions for not complying with the Agreement including payment of reasonable attorney fees.

12. Husband, by virtue of his failure to comply with the Agreement of September 30, 2005, owes wife the sum of \$50,842.45, plus \$832.32 for attorney fees for a total of \$51,674.78.

Discussion

The remaining issue concerns the remedy for payment of the sum of \$51,674.78 from Husband to Wife. Husband argues that a lengthy monthly payment schedule be permitted. Wife objects to this. The problem with Husband's proposal is that it would unfairly change the terms of the Agreement to the detriment of Wife.

The Agreement envisioned that Wife would be promptly paid for giving up her interest in the properties in question. Provision 4 of the Agreement envisions that \$100,000 will be paid to Wife "within 7 days of the date the Agreement is signed by Wife." To extend payments at this time over a lengthy period of time would materially change the essence or thrust of the Agreement and would re-write crucial terms of the Agreement.

Further, Husband began making money immediately from the two properties he obtained in the Agreement because they are rental properties. Thus, he has immediately obtained the benefit of his bargain.

Wife is correct in her argument that the court has the power to order the transfer or sale of any property required to comply with the Court's order. See 23 Pa.C.S.A. §3502(e)(4).

While Husband contends he needs to keep both properties in question for income producing

purposes, and the Court is hopeful this can happen, it cannot in fairness substantially delay Husband's obligation to fulfill his requirements under the Agreement.

Accordingly, it is **ORDERED and DIRECTED** as follows;

ORDER

AND NOW, this ____ day of February 2006, the Court finds Husband owes Wife the sum of \$51,674.78. Husband shall pay this sum as follows:

Husband shall pay to Wife the sum of \$1,674.78 within thirty (30) days of the date of this Order.

Husband shall pay to Wife the remaining sum of \$50,000.00 with interest at the legal rate from December 30, 2005 within ninety (90) days from the date of this Order.

If Husband fails to comply with the above terms, he shall list for sale and sell the property located at 924 West Third Street in order for him to pay his obligation to Wife. Wife's unpaid money shall then immediately be paid from the proceeds of the sale.

All other powers of the Court, including the power of contempt may be utilized for enforcement of this Order. In light of this Order no contempt finding made at this time.

By The Court,

Kenneth D. Brown, P.J.

cc: David Irwin, Esquire
Janice Ramin Yaw, Esquire
Work file