

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

MP,		:	NO. 05-21,587
	Plaintiff	:	
		:	
	vs.	:	
		:	
JP,		:	
	Defendant	:	IN DIVORCE

OPINION

AND NOW, this 24th day of May, 2010, after a hearing on Wife’s Petition for Contempt/Petition for Enforcement of Order was held on this matter on March 17, 2010, and May 19, 2010, this matter is ripe for decision. At the time of both Hearings, Wife, MP, was not present, but was represented by her counsel, Janice Yaw. Husband was present at both Hearings and was represented by his counsel, David Irwin. The Petition before the Court deals with the sale of the marital residence located at 1651 Scaife Road, Williamsport, Pennsylvania. The parties have reached an agreement in regard to the sale of this property and a separate Order has been issued in this regard. The only remaining issue before the Court at this time is a dispute between the parties regarding the division of the proceeds from the sale of the parties’ business.

The parties’ business was sold for \$35,000.00. Pursuant to the parties’ Property Settlement Agreement, Wife was to receive 55% of the net proceeds and Husband was to receive 45% of the net proceeds. Husband retained from the sale of the business the sum of \$12,004.68 for payment of back rent that he alleges the business owed to him. The remainder of the proceeds was divided 55% to Wife and 45% to Husband. Wife alleges

that the monies retained for back rent should be divided between the parties on the stated percentages. Husband argued to the Court that the back rent that was owed from the corporation to him should be retained by Husband solely as he paid expenses on behalf of Wife and provided her with a weekly amount during the parties' separation even after the business stopped paying its rent. As part of her Petition, Wife requests counsel fees as a result of the necessity for her to bring the action to enforce the parties' Property Settlement Agreement.

The parties were before a Family Court Hearing Officer on December 3, 2008, for a Master's Hearing in regard to equitable distribution. After a few hours of negotiation, the parties were able to reach an agreement in regard to the equitable distribution. The portion of the Agreement that is relevant to the dispute at hand states as follows:

“MS. YAW: The parties have further agreed that the business shall be sold and that they will give TS the option of purchasing the business for \$50,000 within the next 30 days. If she cannot buy the business for that amount in the next 30 days, the parties have agreed that the business shall be listed with a broker and wife to receive 55 percent of the proceeds, husband to receive 45 percent of the proceeds.

MR. IRWIN: Again, let's make sure, we are talking net proceeds and with regard to the attempt to sell it to TS, we're going to request \$50,000, but let's put in there that the parties upon agreement could take less.

MS. YAW: Now one thing I don't know about was this 13,000. I don't want him pulling his 13,000.

MR. IRWIN: I don't know what you are talking about.

THE MASTER: I think you are talking apples and oranges. If the business has a debt, I don't care if it's to the bank, I don't care if it's to a party, I don't care if it's to the tax man. If the business has a debt, the

business is going to have to pay its debts and that's going to happen when the sale is made. I understand that there is a psychological aspect to it when it goes to a party as apposed to going to the bank, but it's looked at the same way from my perspective. The business has a debt, it has a debt.

MR. IRWIN: And the parties would agree to challenge, if they thought it wasn't a legitimate debt obviously.

THE MASTER: I agree."

It is clear from the Court's reading of the Agreement that there was some confusion and/or misunderstanding between the parties concerning the sale of the business. It does not appear from the testimony presented at the time of this current Hearing that Wife disputes that there was a business debt owed by the corporation for back rent. Clearly, if the business owes a debt at the time the business is sold, the debt would be paid prior to the net proceeds of the sale being distributed between the parties. The real issue in the dispute between the parties is whether or not the back rent that was owed by the business is a marital asset which should be divided between the parties. Wife argues this to be the case and requests 55% of the back rent be awarded to her. Husband's position is that the back rent should be retained solely by him as it was reimbursement to Husband for expenses that he paid on Wife's behalf during the marriage and support that he paid to her even at a time when the business was no longer paying rent to the parties.

Both parties agree that there was never a support order in place and that Husband voluntarily made payments to Wife or on her behalf during their separation. Unfortunately, the parties' Agreement is silent in regard to the issues of any credits being owed to Husband for back payments of support or any reference to any payments owed

between the parties. In light of the fact that the Agreement is silent on this issue, Husband's argument fails. If it was Husband's position that the parties had an agreement that he would retain the entire rents owed from the corporation to somehow compensate him for previous payments made to Wife, this language should have been placed in the parties' Agreement. It is clear to the Court from reading the parties' language in their Agreement that it was Husband's intent in entering into the Agreement that he would receive the back rents at the time the business was sold. It is also clear from the Agreement that it was Wife's intent that the back rents would not be deducted from the proceeds from the sale of the business before the net proceeds were divided. It is unfortunate that the parties did not choose to resolve this issue at the time of the equitable distribution hearing.

Wife presented as Defendant's Exhibit F a bill for services rendered for preparation of the Petition which was filed on her behalf, as well as the time spent at the Hearing. Wife's request for counsel fees is denied as the Court cannot find that Husband willfully failed to comply with the parties' Agreement. It is clear that Husband believed he was entitled to receive the rents from the sale of the business. Further, Husband reserved the right to argue the issue in the Agreement with the language indicating that the parties agreed that they could challenge the debt issue.

ORDER

It is hereby ORDERED and DIRECTED that Husband shall pay to Wife the sum of Six Thousand Six Hundred Two Dollars and 57 cents (\$6,602.57) within ninety (90) days of the date of this Order. Wife's request for counsel fees is DENIED.

By the Court,

Joy Reynolds McCoy, Judge

JRM/jrr

cc. Janice R. Yaw, Esquire
David Irwin, Esquire
Gary Weber, Esquire