

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

**MM,**

**v.**

**WB,**

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**No: 09-20,059**

**OPINION AND ORDER**

**AND NOW**, this 8<sup>th</sup> day of **December, 2011**, after a hearing held on August 31, 2011, in regards to the Petition for Contempt filed July 26, 2011 by Wife and a hearing held on November 7, 2011 for the continuation of the August 31, 2011 hearing and in regards to a cross Petition for Contempt filed October 13, 2011 by Husband. At which time Husband was present with his counsel Steven S. Hurvitz, Esquire and Wife was present with her counsel, Frank S. Miceli, Esquire. At the conclusion of the testimony the Court granted both parties until November 30, 2011 to submit briefs. Briefs were submitted by both parties.

Husband and Wife separated on June 8, 2008, entered into a property settlement agreement (Agreement) on July 15, 2010 which was amended and reaffirmed on March 4, 2011. A final Divorce Decree was entered on April, 21, 2011. Each Petition for contempt is based on the other party's failure to comply with the Agreement.

“In civil contempt proceedings, the complaining party has the burden of proving by a preponderance of evidence the following: (1) that the contemnor had notice of the specific order or decree which she is alleged to have disobeyed; (2) that the acts constituting the contemnor's violation were volitional; and (3) the contemnor acted with wrongful intent.”

*NAF v. JF*, Lycoming County No. 08-21591, Opinion and Order of November 19, 2010 by the Honorable Judge Marc F. Lovecchio (citing ***Lachat v. Hinchliffe*** 769 A.2d 481 at 489 2001 Pa. Super). A showing of noncompliance alone is not sufficient to prove civil contempt; there must be a violation of a “definite, clear, and specific” order which leaves no uncertainty in the mind of the actor of the conduct. ***Lachat v. Hinchliffe***, 769 A.2d 481, 488-89 (2001 Pa. Super) (citing ***Marian Shop, Inc. v. Baird***, 448 Pa. Super. 52, 670 A.2d 671, 673 (Pa. Super. 1996)).

### **Wife’s Petition**

Wife asserts a number of contempt claims against Husband. Each claim will be addressed individually.

#### 1. UNILATERAL ENTRY INTO SAFE DEPOSIT BOX

Paragraph B(5) of the Agreement provides in part “[b]oth parties agree not to enter the safe deposit box or boxes without the other party being present.” On August 27, 2010 Husband, without Wife’s presence, entered the safe deposit box located at the Hughesville Muncy Bank and Trust. Wife argues that Husband’s entry constituted contempt. Husband’s argument is two-fold. In court he testified that he entered as regular course of business, he just needed to retrieve a deed and did not take anything else. In his post-hearing brief he argues Wife waived her right to claim contempt on this issue when on March 4, 2011 the Agreement which contains mutual releases was reaffirmed.

The Court finds that Husband’s first argument fails. The reason for entry does not matter. The fact that he willfully entered the safe deposit box without Wife being present when he was fully aware of the terms and or restrictions of the Agreement is what is relevant.

As for Husband's second argument, Property Settlement Agreements 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 interpreting an Agreement under contract law the Court must look to the intent of the parties. *Kripp* at 1163. If the terms of the contract are clear and unambiguous the Court must ascertain the intent of the parties from the Agreement itself. *Id.* A contractual release is also interpreted according to the intent of the parties. *Conrady v. Conrady*, 550 A.2d 231, 235 (Pa. Super. 1988). "The intention of the parties to a written release is paramount, and in construing a release, a court should adopt an interpretation which, under all of the circumstances, 'ascribes the most reasonable, probably and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished'." *Id.* (quoting *Sparler v. Fireman's Insurance Company of Newark, New Jersey*, 521 A.2d 433, 435 (Pa. Super 1987). The Court finds that the terms of the Agreement were unambiguous. As evident by the terms of the Agreement, the purpose of the Agreement was to settle all claims that each party has against the other. This is illustrated by the fact that the parties entered into an agreement and then later amended the agreement. Both parties had the benefit of counsel and are getting the benefits of their bargain.

The Court notes that when Husband entered the safe deposit box on August 27, 2010 he was in contempt of the Agreement of July 15, 2010. However, when Husband and Wife subsequently amended the Agreement on March 4, 2011 and reaffirmed the remainder of the Agreement both Husband and Wife were absolved from all liabilities present. The affect to Husband was that the contempt of Agreement that occurred on August 27, 2010 was wiped

away and there was a clean slate. Wife's claim for contempt for unilateral entry of the safe deposit box is hereby **DISMISSED**.

## 2. FAILURE TO INVENTORY SAFE DEPOSIT BOXES IN TIMELY MANNER

Paragraph B(5) provides in part "[t]he parties shall further meet at Muncy Bank for purposes of closing any safe deposit box held in joint names. All contents shall be divided by agreement; any disputed items shall be held in escrow by Husband's attorney, Steven S. Hurvitz, Esquire pending the Distribution Date." It is noted that Husband and Wife met at the safe deposit boxes on or about August 25, 2011 and at that time the contents of the safe deposit boxes were inventoried and divided. Wife argues that it took the filing of this contempt petition to force Husband to act. While the Court is not impressed by Husband's lack of diligence in the matter the Court further notes that there was no specified time frame; there is dispute and confusion between the parties as to the urgency of the matter; and further the onus was not solely on Husband. Wife's claim for failure to inventory safe deposit boxes in timely manner is hereby **DISMISSED**.

## 3. FAILURE TO COMPLETE THE SUBDIVISION OF THE BRUMMER TRACT

Paragraph B(11)(b)(ix) provides "Husband currently hold equitable title . . . known as 'Brummer Tract' . . . Upon execution of this Agreement, Husband agrees to make a good faith effort to secure all necessary approvals to allow for the transfer of legal title into the name of Husband." Wife argues that Husband has failed to take the necessary steps to subdivide the property. Wife further claims in Claim 6 of her petition that per the Agreement Husband is to

make Wife first lien holder on Brummer Tract and his failure to complete the subdivision has resulted in his failure to establish her as first lien holder on the property.

Again, Husband has not been diligent in regards to completing his obligations under the Agreement. The Court does not take lightly to individuals who enter into agreements and then hold as little regard to the terms of the agreement as Husband apparently does. However, it was elicited through testimony that there may be a forthcoming agreement for substitution of collateral; exchanging Muncy Bank and Trust Stock for the Brummer Tract. Wife testified that she would need more information in order to make an informed decision.

In light of this, Husband shall provide Wife with information on the Muncy Bank and Trust Stock and a stock pledge agreement; a signed addendum must be completed within fourteen (14) days of this order. If Wife decides not to choose to accept the change in collateral, Husband must show substantial advancement towards the subdivision of Brummer Tract after thirty (30) days.

#### 4. FAILURE TO PROVIDE WIFE WITH DOCUMENTS AND CORRESPONDENCE REGARDING OIL, GAS, AND MINERAL RIGHTS.

Paragraph B(11)(c)(i) and (iv) provide that each party will retain fifty percent (50%) ownership interest in all mineral rights and the parties will provide copies of all correspondence received in connection with the mineral rights to the other party. Wife argues that Husband is in contempt of this provision because he has failed to provide her with information, correspondence and copies of checks that he has received. Husband replies that he has not received any correspondence from the utility companies and therefore he has had no

information to share. It is noted that Husband did acknowledge receiving a royalty check but he testified that due to the fact that Wife receives half of the royalties he knew her check would be identical and did not see the need to forward a copy of his check.

Other than the royalty check Wife has failed to prove that Husband has had any conversations or received any correspondence from the mineral companies. The Court stops short at a finding of contempt in this matter but feels based on Husband's actions dictation of required future behavior is necessary.

The Court Orders that *ANY CORRESPONDENCE OR PAYMENT THAT EITHER PARTY RECEIVES CONCERNING THE MINERAL RIGHTS, NO MATTER IF THEY BELIEVE THE INFORMATION TO BE DUPLICATIVE SHALL BE FAXED TO THE OTHER PARTY WITHIN SEVENTY-TWO (72) HOURS OF RECEIPT. IF EITHER PARTY HAS ORAL COMMUNICATION REGARDING THE MINERAL RIGHTS, THE PARTY SHALL SUMMARIZE IN WRITING THE COMMUNICATION AND E-MAIL IT TO THE OTHER PARTY WITHIN SEVENTY-TWO (72) HOURS OF THE CONVERSATION.*

#### 5. FAILURE TO ESTABLISH AUTOMATIC NOTE PAYMENTS

Paragraph B(13)(a) provides “[p]ayments due under the Note shall occur by automatic deduction or electronic transfer from Husband’s checking account into an account titled in Wife’s name.” Wife asserts that Husband’s failure to establish automatic debit from his checking account constitutes contempt. Husband argues that while his bank has had automatic bill pay capabilities for years that feature was only for payment to businesses; the bank has just recently instituted automatic payment to individuals. Husband has enrolled into the automatic

bill pay program and monthly payments to Wife are to commence on December 1, 2011. Wife acknowledges that Husband's bank lacked the capabilities to complete this Agreement provision but would like the Court to find contempt based on the fact that Husband did not transfer to a bank that had the capability in order to adhere to the terms of the Agreement. The Court will not find contempt on this claim. It was beyond Husband's control that his primary bank did not allow automatic bill pay to individuals. Husband attempted to comply with the program and has enrolled now that the option is available. Husband is ordered to remain enrolled in the automatic bill pay program and provide monthly automatic payments to Wife. Wife's claim for failure to establish automatic note payments is hereby DISMISSED.

6. FAILURE TO GRANT FIRST LIEN MORTGAGE ON THE BRUMMER TRACT

The Court notes that the decision and directive in regards to the Brummer Tract is dictated in Wife's claim 3. Failure to complete the subdivision of the Brummer Tract and directs the parties to reference that portion of the opinion.

7. DIVIDEND PAYMENTS 3-C MURPHY BROWN, LP

Paragraph D(3)(c) and (e) provide "3-C Murphy Brown will retain all funds received by it from dividends, CREP payments, rent or gas royalties related to the Salem Schoolhouse property . . . . Wife shall be responsible for maintaining possession of all account documents and records." Wife argues that Husband failed to notify Woodlands Bank of the address change for mailing of dividend payments; due to his lack of changing the address Husband received dividends that belong to 3-C Murphy Brown.

Pertaining to this term of the Agreement, Husband lacked diligence in regards to completing the task at hand. The filing of the current contempt claim was the catalyst for Husband to complete the term of the Agreement. 3-C Murphy Brown has all monies due to it and Husband is in compliance with the Agreement. Wife's claim for contempt of dividend payments to 3-C Murphy Brown is hereby **DISMISSED**.

8. REASONABLE STEPS TO SECURE THE RELEASE OF 3-C MURPHY BROWN –  
WOODLANDS MORTGAGE

During the hearing evidence was presented in regards to Husband's alleged failure to take reasonable steps to secure the release of the property. In the post-hearing brief submitted to the Court by Wife's counsel on November 28, 2011 Wife withdrew this claim. Due to the withdraw of Wife's claim, no finding will be made.

9. FAILURE TO ESTABLISH AND FUND A LIFE INSURANCE TRUST

Paragraph (E)(1) provides "Husband agrees to maintain and keep in full force and effect life insurance in the minimum amount equal to the then remaining amounts owed to Wife under the Note, naming Wife as irrevocable beneficiary. . . ." Wife argues that Husband has failed to establish a life insurance policy as required by the Agreement. Husband acknowledges that he has not established a life insurance policy as he contracted to do. Husband answers that this failure is out of his control due to the fact that he was denied insurance coverage. Husband further claims that he has a life insurance policy in the amount



of two-million dollars in which Wife is an irrevocable beneficiary and that he is selling off property to pay down the note to take care of the short-fall from the policy.

The Court cannot fault Husband for being denied insurance coverage. Wife's claim for failure to establish and fund a life insurance trust is hereby **DISMISSED**. Husband is ordered to provide Wife with proof of value for his current life insurance policy and documentation that Wife is irrevocable beneficiary.

### **Husband's Petition**

It is noted that in his post hearing brief Husband asserts that contempt is improper because to be in contempt of court there must be a court order and the Agreement is a contract but not a court order. Husband's argument is contrary to the Divorce Code. 23 Pa. C.S. § 3105 Effect of agreement between parties:

(a) *Enforcement.* --A party to an agreement regarding matters within the jurisdiction of the court under this part, whether or not the agreement has been merged or incorporated into the decree, may utilize a remedy or sanction set forth in this part to enforce the agreement to the same extent as though the agreement had been an order of the court except as provided to the contrary in the agreement.

Contempt is a remedy under the law therefore Wife's petition was proper and within the confines of the law. 23 Pa. C.S. 3502 (9).

#### 1. REFUSAL TO PERMIT REPLACEMENT COLLATERAL

The basis of Husband's contempt petition is Paragraph B(13)(c)(ii) of the Agreement which states: "Husband shall have the right to demand the release of any asset constituting the Collateral under the following conditions . . ." Husband argues that per the Agreement he is

entitled to provide replacement collateral towards the note that is payable to Wife. He further argues that he offered Muncy Bank and Trade Stock in lieu of the Brummer Tract and Wife refused therefore resulting in contempt.

In a letter dated August 29, 2011 sent Husband's counsel, Wife's counsel stated that any draft pledge agreement that Husband had prepared and sent over would be reviewed. At the hearing Wife testified that she was not necessarily opposed to the transfer of bank stock in lieu of the land she required more information to make an informed decision. Husband has not yet been refused the exchange of collateral as he as not yet provided the information or draft pledge agreement as requested. Therefore, there is no finding of contempt. Husband's Petition for Contempt is hereby **DISMISSED**.

BY THE COURT,

Joy Reynolds McCoy, Judge