

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

NILDA TARTAGLIONE,	:	NO. 11 – 21,004
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
MICHAEL TARTAGLIONE,	:	
Defendant	:	Petition to Vacate Agreement

OPINION AND ORDER

Before the Court in this divorce action is Plaintiff's Petition/Amended Petition to Vacate Agreement, filed August 4/September 27, 2011, respectively. A hearing on the petition was held October 27 and November 7, 2011.

The parties were married July 20, 2001, and separated in April 2011. At issue is a post-nuptial agreement signed on November 1, 2010. Plaintiff seeks to invalidate the agreement on the basis of fraud, lack of disclosure and unconscionability. As the Court finds that there was not the full and fair disclosure required, only that issue will be addressed.

For a post-nuptial agreement to be valid, full and fair disclosure of the parties' financial positions is required. Simeone v. Simeone, 581 A.2d 162 (Pa. 1990). Further, if an agreement provides that full disclosure has been made, as does the agreement in the instant case, a presumption of full disclosure arises. Id. This presumption may be rebutted, however, by clear and convincing evidence. Id.

According to Plaintiff, she was informed by Defendant on the morning of November 1, 2010, that he wanted her to accompany him to the office of his attorney, Robert O'Connor, Jr., for the purpose of signing a document. Defendant was planning a trip to the Philippines and told Plaintiff that the document was for

her protection against his son (Plaintiff's step-son) in the event something unexpected happened to Defendant, in that one of their two residences would be placed in her name and the other in Defendant's name. Plaintiff testified that at that time, there had been no mention of divorce and she did not know that the document was actually a post-nuptial agreement. There was no disclosure statement attached to the agreement and there was no discussion of the parties' relative financial positions. Plaintiff testified that she signed the document without reading it because she trusted her husband.

Defendant testified to the contrary, stating that Plaintiff knew full well what the document was when she signed it, and that it had been her idea to have the agreement drawn up. The Court resolves the credibility issue presented by this dichotomy in favor of Plaintiff.

Attorney O'Connor testified that he did point out the substantive portions of the agreement to Plaintiff and that she did not have any questions about it.¹ This does not support a finding of full and fair disclosure, however, and Attorney O'Connor admitted that there was no discussion of the parties' financial positions. With regard to such, Plaintiff testified that she was not aware of all of Defendant's financial accounts and that she did not know their value, that the parties kept separate finances. Further, Plaintiff testified that although she knew

¹ The Court wishes to point out that it does not believe this testimony contradicts Plaintiff's assertion that she did not know the document was a post-nuptial agreement. Plaintiff testified that she came to the United States from the Philippines in July 2001 and that she can read, write, speak and understand English. The Court found Plaintiff's testimony itself, however, to demonstrate some difficulty with English and believes that Plaintiff has more trouble comprehending English than she is willing to admit. For example, although Plaintiff would seemingly respond appropriately to a question put to her during the hearing, a subsequent response would reveal that she had not, in fact, understood the prior question. The court is thus convinced that Defendant led Plaintiff to believe she was signing a document which provided only for the titling of their two homes and that Attorney O'Connor's explanation did not help to dispel this misconception as such was not fully understood by Plaintiff. She testified that Attorney O'Connor explained the document to mean, in her words, "what's his is his and what's mine is mine". This is entirely consistent with an understanding that the document provided only that each of them would be deeded one of their two homes.

Defendant has other properties, she did not know what they were and had no idea of their value. Finally, she testified that she had no idea of the value of the home on Little Plum Run Road, which the agreement transferred to Defendant. Defendant offered no evidence that Plaintiff did know these things, testifying simply that Plaintiff had access to account statements and that she knew his properties “weren’t worth very much”. Such falls far short of full and fair disclosure and thus Plaintiff has carried her burden of showing a lack of the requisite disclosure.

Accordingly, the court will enter the following:

ORDER

AND NOW, this 18th day of November 2011, for the foregoing reasons, the Petition/Amended Petition to Vacate Agreement is hereby GRANTED. The Agreement dated November 1, 2010, is hereby declared VOID.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Meghan Young, Esq.
Paul Welch, Jr., Esq., 136 East Water Street, Lock Haven, Pa 17745
Gary Weber, Esq.
Hon. Dudley Anderson