

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

<b>AS,</b>		:	<b>NO. 10-21,223</b>
	<b>Plaintiff</b>	:	
		:	
	<b>vs.</b>	:	
		:	
<b>RS,</b>		:	
	<b>Defendant</b>	:	<b>IN DIVORCE</b>

**OPINION & ORDER**

**AND NOW**, this 18<sup>th</sup> Day of **September, 2012**, this order is entered after a hearing held on August 30, 2012 regarding Husband's Petition to Enforce Settlement Agreement filed June 18, 2012 and Wife's subsequent New Matter filed July 6, 2012. Present at the hearing was Wife, AS, with her counsel Heather Willis, Esquire and Husband, RS, with his counsel Christina Dinges, Esquire.

***Facts***

The parties were in the midst of divorce proceedings and had been trying to reach an agreement for months. The marital residence had been damaged due to flooding in the area. Wife had no money for repairs and the house was listed for sale. On April 20, 2012 Husband received a call from the realtor regarding an offer to purchase the house. The offer was time sensitive; the sales agreement had to be signed by the end of the month. Husband called Wife. During the conversation Husband stated that he wanted a resolution to the divorce proceedings and distribution of assets now that they had an offer on the house. Husband asked Wife what she wanted to settle the divorce matters. Wife state that she wanted Alimony in the amount of \$1,000 a month. The parties also

discussed Husband's thrift savings account and the escrow account, Husband wanted the entire escrow account but because Wife was selling the house at a loss they decided to divide the escrow account.

Husband called his attorney to tell her that he and his Wife had come to an agreement and that they needed a property settlement agreement (hereinafter "PSA") drafted immediately because he was not going to sign the sales agreement for the house without a signed PSA. Counsel informed Husband that she needed to contact Wife's attorney and that she would get back to him. Near the end of the day counsel for Husband called and told him that Wife's attorney was unavailable so she was unable to provide a PSA to him that day and that if he wanted he could try to draft something. Husband proceeded to memorialize the settlement into a document he entitled "Binding Divorce Agreement Between RS and AS April 20, 2012" (hereinafter "Agreement"). He then met Wife in the parking lot of Century 21, their real estate agency, and told Wife that she needed to sign the Agreement before he would sign the sales agreement on the marital residence. Wife signed the Agreement.

The Agreement consists of the following five (5) provisions:

1. The house located at 9557 Rt. 220 Hwy, Hughesville, PA 17737, shall be sold and all expenses or fees incurred shall be paid by AS. Any fines or penalties resulting from failure to sell above mentioned house shall be the responsibility of AS.
2. RS shall pay Alimony totaling 6 years from the date of separation, in the amount of \$1,000.00 per month. In addition, AS will be given a share of RS' Thrift Savings Plan, totaling \$52,000.00 These funds shall be made available, but any early withdraw fines will be paid by AS. The above mentioned amount is more than half of the current balance at the time of separation, August 18, 2010.

3. The money currently held in escrow shall be divided equally between RS and AS.
4. RS will, upon sale of house and signing of divorce papers, re-finance the 2009 Nissan Murano, eliminating any debt owed by AS, RS has 60 days from signing of divorce papers to complete re-financing.
5. In the event RS loses income, through no fault of his own, a hearing will be held to determine the equitable amount of Alimony to be paid.

The Agreement was then signed and dated by both parties.

Subsequent to the signing of the Agreement, Wife filed for Alimony Pendente Lite 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 is arguing that the Agreement is incomplete because it did not address all of the marital assets. Wife further argues that because this Agreement is only a partial property settlement agreement there should be an equitable distribution hearing on the remaining assets, Husband's FERS account. Husband argues that the Agreement is in fact a fully integrated property settlement agreement and that it does not list every marital asset because when drafting the Agreement he only listed what Wife was entitled to get pursuant to their April 20, 2012 negotiations. To further elaborate Husband used the example of provision 2) of the Agreement which states ". . . [i]n addition, AS will be given a share of RS' Thrift Savings Plan, totaling \$52,000.00 . . ." it does not state the amount of the thrift savings plan that Husband is entitled to. Both Husband and Wife requested that the Court look at the intent of the parties' when reaching the decision.

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 wanted to get all the outstanding issues that were delaying the divorce finalized. He stated that Wife had previously said that she was waiting for the house to be sold. Husband further testified that when they received an offer on the house he felt that it was a perfect opportunity to settle the property distribution. With the intent to settle the property distribution and proceed with the divorce, Husband called Wife and asked her what she wanted to finalize everything. When the attorneys were not available, Husband did his best to put on paper the settlement that him and Wife negotiated during the phone call on April 20, 2012. Wife was aware that Husband intended to bring the Agreement to the realtor's office as he had previously stated that he would not sign the sales agreement on the house without a sign property settlement agreement.

During the hearing Wife's testimony was pliant and her memory was foggy at best. When she was questioned on the inconsistencies in her testimony she became irritated and explained that it was a long time ago. During the first part of her testimony

Wife stated that she was caught off guard when Husband had a document in the parking lot of the realtor's office. She made no mention of a phone conversation earlier that same day. It was only on cross examination that she remembered the call and some of the conversation. Wife's testimony was not credible.

Wife argued that the Agreement does not make mention of Husband's FERS account therefore the agreement is not complete. However, as mentioned above, Husband only detailed what Wife had asked and negotiated for. In prior negotiations and settlement offers Wife had never sought any distribution of Husband's FERS account.

In the alternative Wife argued that there was not full and fair disclosure because to this day no one is certain of the value of Husband's FERS account. Counsel for Husband argued that the existence of the FERS account was disclosed; Wife never bothered to get a valuation of the FERS account; and even if Wife would have gotten the FERS account valued the value is a fiction because of all the variables that go into the equation. Full and fair disclosure requires sufficient disclosures that it allows the parties to make informed decisions; it does not require exact amounts. *Busch v. Busch*, 732 A.2d 1274, 1278 n.5 (Pa. Super. 1999) (citing *Gula v. Gula*, 380 Pa. Super. 249, 254, 551 A.2d 324, 327 (1988)). Wife knew of the existence of Husband's FERS account and had had opportunity to get the account valued if she had wanted to. In fact, Wife had knowledge of all the marital assets. Full and fair disclosure is specific to the facts and circumstances of each individual case. *Nigro v. Nigro*, 371 Pa. Super. 625, 632, 538 A.2d 910, 914 (Pa. Super 1988). While it may have been prudent for Husband to wait until the attorneys were available to draft the agreement instead of drafting the agreement

himself when he is not an attorney and is unfamiliar with all of the technicalities it is unfair to let Wife take advantage of the situation.

The Court finds the following: in this particular fact pattern there was full and fair disclosure of all of the marital assets; both Husband and Wife intended for the signing of both the Agreement and sales agreement on the house to resolve all outstanding property distribution issues so the divorce could proceed; the Agreement is fully integrated; the Agreement was knowingly and intentionally signed by Wife; Wife is not entitled to increased alimony; and Wife is not entitled to equitable distribution on Husband's FERS account. The Agreement is binding and remains in full force and effect.

BY THE COURT,

Joy Reynolds McCoy, Judge