

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

<b>KH,</b>		:	<b>NO. 11-21,418</b>
	<b>Plaintiff</b>	:	
		:	
	<b>vs.</b>	:	
		:	
		:	
<b>DH,</b>		:	
	<b>Defendant</b>	:	<b>IN DIVORCE</b>

**ORDER**

**AND NOW**, this 29<sup>th</sup> day of **December, 2017**, pending before the Court is a Motion to Enforce Marital Separation Agreement filed by Husband on June 9, 2016, and Answer and Counterclaim to Motion to Enforce Property Settlement Agreement filed by Wife on July 21, 2016. The original hearing was scheduled in this matter on August 26, 2016. A continuance request was submitted by Wife, which was unopposed by Husband, and the matter was rescheduled for November 21, 2016. Partial testimony was taken on November 21, 2016; however, there was not sufficient time to complete the hearing. The matter was therefore continued to February 10, 2017. Due to a conflict in the Court's schedule, the hearing scheduled for February 10, 2017, was rescheduled to March 9, 2017. Husband requested a continuation of the hearing on March 9, 2017, as he was currently enrolled in college and unable to miss exams and requested the matter be rescheduled to a later date, preferably on a Friday. The matter was rescheduled to April 7, 2017. Further testimony was taken on April 7, 2017; however, there was not sufficient time to complete the hearing. A continuation hearing was scheduled for June 16, 2017. Counsel for Husband requested that the hearing on

June 16, 2017, be rescheduled due to a vacation. The matter was rescheduled for July 14, 2017. Testimony on the outstanding Petitions was concluded before the Court on July 14, 2017.

Throughout these proceedings, Husband was present with his counsel, Bradley Hillman, Esquire, and Wife was present with her counsel, Brandon Schemery, Esquire.

Husband seeks the following relief:

1. Finding Plaintiff in breach of the Marital Settlement Agreements dated March 12, 2014, and April 23, 2014.
2. Finding Plaintiff in contempt by violating the Agreement on multiple counts.
3. Order Plaintiff to pay any and all costs and fees Defendant has incurred or will incur due to the damage caused to the home.
4. Award reasonable counsel fees to Defendant for negotiation of all of this matter and including the fees required to pursue this Petition.

In her Counterclaim, Wife requests the following:

1. Denying Defendant's Petition to Enforce the Marital Separation Agreement with prejudice.
2. Finding Defendant in breach of the Marital Separation Agreements.
3. Have the Defendant provide proof that the remaining marital weapons have been transferred solely in Defendant's name.
4. Order and award Plaintiff the remaining guns, fees, rental fees incurred and attorney's fees incurred.

On March 12, 2013, at a time set for a hearing, the parties entered into a Marital Separation Agreement which resolved all issues between the parties, except for the division of personal property. A second hearing was scheduled for April 23, 2014. At that time, the parties reached an agreement resolving the division of personal property. Pursuant to the parties' first agreement dated March 12, 2014, Husband was to receive the real property situate at 47 Masser Drive, Montgomery, Pennsylvania, as his sole and separate property. At the time the parties entered into the Agreement, Wife was in possession of the property and was given a period of 90 days from the date of the Agreement to vacate the premises. The Agreement further indicated that a site view was scheduled for Thursday, March 13<sup>th</sup> at the residence. The site view was to be utilized to assess the condition of the home. Wife agreed at the time she vacated the marital residence, that the home would be left in the same or better condition as evidenced at the site view scheduled for March 13<sup>th</sup>. A site view occurred on March 13, 2014, by Todd M. Arthur of Long Ridge Realty Services. Husband's Exhibit 2 contains a series of photographs pertaining to the subject property as of the date of the site view.

Husband obtained possession of the property on July 1, 2014. Husband testified at the time he entered the property, there was an overwhelming smell, there was both human and dog urination on the carpets, as well as feces in the hall way and in the back bedroom. Husband arranged for Todd Arthur to re-observe the property on July 29, 2014. Husband's Exhibit 3 contains photographs pertaining to the subject property as of July 29, 2014. Based upon what Husband believes to be damage that occurred to the property that was the responsibility of Wife, Husband produced as Husband's Exhibit 4 an estimate from L&N Interior Systems for damage done to the property.

Husband's appraisal contains 8 separate items with estimates to furnish labor and materials to repair. The Court will address each item separately.

**1. Master bath tub, new motor, fix walls and repaint and install new ceiling fan - \$2,900.00**

The site view which occurred on March 13, 2014, provided pictures of the master bath and included photographs on page 12 and 13 in regard to the master bathroom evidencing wall damage, drywall in need of updates as well as an indication that the motor in the whirlpool tub is not currently functional. The Property Settlement Agreement the parties entered into specifically indicates that Wife agreed at the time she vacates the marital residence, that the home would be left in the same or better condition as is evidenced at the site view scheduled for March 13, 2014. It is clear at the time of the site view that the master bath tub's motor did not work, that the walls needed repaired and repainted. In light of the fact that this damage existed at the time of the site view, Wife is not responsible for these damages. In regard to the ceiling fan, because the estimate is not broken down to determine what portion of the \$2,900.00 would be attributable to the bathroom and what portion would be attributable to the ceiling fan, the Court need make no further determinate in regard to the ceiling fan as even if the Court found Wife to be responsible, the Court does not have a value to place upon the repair of the ceiling fan. Husband's request that Wife be responsible for the cost to repair the master bathroom at \$2,900.00 is denied.

**2. Replace kitchen [island] (PEE STAINED AND DELAMINATED), new floor and handle - \$6,110.00**

Husband testified that the island in the kitchen was damaged and is need of replacement that since moving in, he has tried to wipe it down with Febreze to keep the odor down, but that it needs to be completely torn out. Photographs from the site view on March 13, 2014, show photographs of the kitchen which include the island. There is no indication of any type of damage to the island in the original site view. Photographs from Todd Arthur on July 29, 2014, show two specific photographs of the island with damage, which appear to be scratches and nicks out of the actual cabinet. The photographs do not demonstrate water/urine stain damages.

It is clear from the testimony that the parties had dogs in the home during the marriage and after Husband vacated. Testimony presented by the parties' son indicated that the dogs urinated on the island throughout the marriage. The Court is not convinced, based upon the evidence presented, that the damage to the kitchen island occurred between the time of the site view on March 13, 2014, and the date Husband took possession of the property. Husband's request that Wife be responsible for the cost to replace the kitchen island at \$6,110.00 is denied.

**3. New bathroom cabinet - \$425.00**

Husband testified that the cabinet was located in the spare bathroom and had human urination on it and, as a result, was warped. The site view conducted by Todd Arthur on March 13, 2014, shows a photograph of bathroom number 1 which includes a cabinet. There is no indication of any damage to the cabinet. The site view conducted on July 29, 2014, does not contain any photographs of the bathroom cabinet.

Based upon the evidence presented, the Court is not convinced that the damage to the bathroom cabinet occurred between the time of the site view on March 13, 2014, and the date Husband took possession of the property. Husband's request that Wife be responsible for the cost to replace the bathroom cabinet at \$425.00 is denied.

**4. To replace damaged basement panels, ceiling tile and doors - \$2,180.00**

Husband testified that the basement doors were pealed up at the bottom and looked like several of the panels were struck with something and cut and that there were actual holes where it had been ripped up. Wife testified that the parties had water damage in the basement in the past. The Court does not believe that the damage alleged by Husband to the basement occurred between the site view on March 13, 2014, and the date Husband took possession. Photographs taken by Todd Arthur at the site view on March 13, 2014, show significant water damage to basement panels, ceiling tiles and doors. Husband's request that Wife be responsible for the cost to replace damaged basement panels, ceiling tiles and doors at \$2,180.00 is denied.

**5. To top coat and seal concrete on porch, new garage door openers, replace damaged lights, screens, sidings, and shed with doors and sides - \$8,300.00**

It is clear from the photographs taken by Todd Arthur on March 13, 2014, that there was significant wear and tear at the residence, along with delayed maintenance. The photographs from the site view show damage to the concrete on the porch, damage to shed doors, and damage to screens. As this damage existed at the time of

the site view, Wife is not responsible for this damage. Per the parties' agreement, Wife was to leave the home in the same or better condition as evidenced at the site view.

In regard to the alleged BB gun holes in the siding, broken garage door openers and damaged lights, even if the Court were to determine Wife caused this damage between March 13, 2014, and July 1, 2014, the Court has no way to determine what the cost of these specific repairs would be. Husband's request that Wife be responsible for the \$8,300.00 in damage is denied.

**6. Replace missing fence (16') - \$810.00**

Through testimony in regard to the fence, Wife's counsel admitted that the fence had been run over by the parties' son's friend with a vehicle. This occurred between the inspection on March 13, 2014, and Husband assuming possession of the property. In light of the fact that this damage occurred during this period of time while Wife had possession of the property, Wife shall be responsible for the replacement of the missing fence in the amount of \$810.00.

**7. To furnish and install carpet padding—carpet—tear out Kiln barrier - \$3,200.00**

Husband testified that due to the amount of urine that was on the carpet, that it soaked through not only the carpet and padding, but into the subfloor (kiln barrier).

Husband testified that when he took possession of the home, it was a hot July day, all of the windows were closed, and the air conditioning was not on. He further testified that the smell was overwhelming and that the carpets were urinated on from one end of the house to the other. He believed the urine to be both dog and human

urine. He also testified that there was feces in a few piles. Husband indicated that it was necessary to replace the carpets and kiln barrier at a cost of \$3,200.00.

The site view conducted by Todd Arthur contains various photos that show some of the carpeted areas in the home. There is no obvious damage to the carpets and no comments by Todd Arthur pointing out damage. The follow-up photographs were taken by Todd Arthur on July 29, 2014, after Husband took possession on July 1, 2014. Husband, however, pulled up all of the carpet and sealed the subfloor prior to Todd Arthur's inspection. Husband stated he had photographs to show the carpet damage, but that he lost the camera.

The Court has no doubt that when Husband entered the closed up home on the hot day in July with no air conditioning, that the home had an odor to it. The Court finds it reasonable to believe that a home in which the parties lived for over ten years with multiple dogs would have urine damage to the carpets and subflooring. The Court does not find, based on the evidence presented, that the extensive damage described by Husband was caused by Wife from the date of the home inspection on March 14, 2014, until July 1, 2014, when Husband took possession. Husband's request that Wife be responsible for the cost of \$3,200.00 to replace the carpet is denied.

**8. To replace cracked and broken microwave - \$500.00**

Husband testified that the microwave handle had been ripped off and was only being held on the top. Photographs taken at the site view on March 13, 2014, show the microwave from two different angles and there does not appear to be damage to the handle. The photographs taken by Todd Arthur on July 29, 2014, do not contain any photos of the microwave. Based upon the evidence presented, the Court is not



convinced that Wife caused damage to the microwave after the site visit on March 13, 2014. Husband's request that Wife be responsible for the cost to replace the microwave at \$500.00 is denied.

Husband requests an award of reasonable counsel fees for the negotiation of this matter and including the fees required to pursue this Petition. Husband, however, failed to present any evidence as to the amount of counsel fees or attach a bill to his Petition. The Court has no way to determine what counsel fees Husband has incurred. Therefore, said request is denied.

Wife's counterclaim for contempt alleges that Husband has failed to pay Wife the sum of \$367.50 for ½ of the 7mm Magnum Remington Rifle. Husband does not dispute this.

Wife further alleges that she did not receive the .22 Derringer or the .38 Special or the value therefore in exchange for the actual weapons. Wife previously filed a Petition to Enforce Marital Settlement Agreement on August 21, 2015. In said Petition, Wife alleges that the Defendant agreed to consent to a lost weapon report for the .22 Derringer and .38 Special. The Court's assumption is that Husband was alleging that he did not have possession of either weapon. A Court Order was issued on September 10, 2015, by the Honorable Richard Gray requiring that a lost weapon report be made for the .22 Derringer and the .38 Special within 45 days. No testimony was presented by either party as to whether a lost weapon report was ever made. Though it is clear from the parties' agreement that Wife is to receive these weapons, nothing indicates that Husband had the weapons in his possession. This issue was argued before Judge Gray and an order was issued requiring the parties to file a lost weapon

report. The parties shall, within 30 days, file a lost weapon report for the .22 Derringer and .38 Special.

Wife requests rental fees of \$3,450.00 for Husband's failure to timely file the Deed transferring the property to his sole name. Wife's request is denied. There is nothing in the parties' Agreement requiring Husband to prepare and file a deed transferring the property into his sole name by a particular date. From the documents presented as evidence, a deed was presented to Wife on September 3, 2014. The Court does not find that a two-month period from the date Husband took possession of the property until the date a deed was prepared to be unreasonable. Wife's request for rental fees is, therefore, denied.

Lastly, Wife requests counsel fees in excess of \$3,500.00. Wife, however, failed to present a bill for counsel fees or attach a bill to her Petition. Without verification of a breakdown of costs for counsel fees, including what and when the fees were incurred, this Court will not entertain an award of counsel fees. The Court must determine if the fees are reasonable and, without a detailed bill, has no way to do so. Therefore, Wife's request for counsel fees is denied.

Based on the foregoing, the Court hereby finds that Wife owes to Husband the sum of \$810.00 for the broken fence. Husband owes to Wife the sum of \$367.50 for the 7mm Magnum. As an offset of these payments, Wife shall pay to Husband the sum of

\$442.50 on or before March 1, 2018. Further, within 45 days of the date of this Order, the parties shall file a lost weapon report for the .22 Derringer and .38 Special.

By the Court,

Joy Reynolds McCoy, Judge