

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KIRK HALLABUK,
Plaintiff

vs.

ASHLEY HALLABUK,
Defendant

: NO. FC-09-20,099
:
: CIVIL ACTION - LAW
: IN DIVORCE
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:
:

OPINION

This matter is before the Court on a Petition for Enforcement of Agreement/Petition for Contempt filed by Ashley Hallabuk (“Wife”) against Kirk Hallabuk (“Husband”). For the reasons set forth below, the Petition is granted in part and denied in part.

I. Factual and Procedural Background

The parties were married in April 2004 and divorced on May 4, 2009. In 2006, they bought property located at 1601 Sheridan Street, Williamsport (“Property”) for approximately \$144,500, paid \$8,800 down, and took out a mortgage for the remaining balance, which would have been approximately \$135,000. On January 21, 2009, the parties entered into what they both considered a Property Settlement Agreement (“Agreement”) which was prepared by Wife. The Agreement contains six (6) paragraphs, and the paragraph in dispute here is number five (5), which states that “[i]f [Husband] sells our house at 1601 Sheridan Street in the next 17 years he will split any profit with [Wife].” The parties did not discuss what the term “profit” meant at the time they entered into the Agreement.

Wife became aware that Husband sold the Property in June 2019, which is less than seventeen (17) years after the parties entered into the Agreement. Wife has not received half of the “profit” from the sale of the Property, prompting the filing of this petition.

Husband testified that prior to settling the Property, he made several “improvements” to the Property, including but not limited to new landscaping, a kitchen and master bath remodel, and the addition of a pool. Trace Hallabuk, Husband’s current wife, testified that all of the improvements made to the Property were funded by the money she received from her divorce from her prior husband. The total amount of money spent on these improvements equals \$176,880.

When Wife inquired about the sale of the Property with Husband, Husband explained to her that he “took a loss” because the original purchase price of the Property plus the amount spent on improvements was more than what the Property sold for. However, the HUD statement shows that the Property sold for \$325,000, that a mortgage in the amount of \$247,583.57¹ was paid off at the time of closing, and that, when closing costs, the mortgage payoff, and other expenses are deducted, the total cash due to Husband was \$36,857.91.

Argument was held September 1, 2021 at which time Wife appeared and was represented by Janice Yaw, Esquire and Husband appeared and was represented by Christina Dinges, Esquire. Husband opposes the petition.

¹ While neither party addressed this point during argument, the Court notes that the mortgage on the Property at the time of sale was over \$100,000 more than the original purchase price. Husband did testify that at some point after the parties entered into the Agreement, he refinanced the mortgage on the Property.

II. Discussion

The dispute between the parties focuses on the definition of the word “profit” as it appears in the parties’ Agreement.

a. Contract Interpretation

Regarding contract interpretation, it is well-settled in Pennsylvania that:

The fundamental rule in interpreting the meaning of a contract is to ascertain and give effect to the intent of the contracting parties. The intent of the parties to a written agreement is to be regarded as being embodied in the writing itself. The whole instrument must be taken together in arriving at contractual intent. Courts do not assume that a contract’s language was chosen carelessly, nor do they assume that the parties were ignorant of the meaning of the language they employed. When a writing is clear and unequivocal, its meaning must be determined by its contents alone.

Only where a contract’s language is ambiguous may extrinsic or parol evidence be considered to determine the intent of the parties. A contract contains an ambiguity if it is reasonably susceptible of different constructions and capable of being understood in more than one sense. This question, however, is not resolved in a vacuum. Instead, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts. In the absence of an ambiguity, the plain meaning of the agreement will be enforced. The meaning of an unambiguous written instrument presents a question of law for resolution by the court.

Maisano v. Avery, 204 A.3d 515, 520 (Pa. Super. 2019), *appeal denied*, 217 A.3d 210 (Pa. 2019), *citing Ramalingam v. Keller Williams Realty Group, Inc.*, 121 A.3d 1034, 1046 (Pa. Super. 2015) (citation and original emphasis omitted).

b. Analysis

Husband argues that “profit” is unambiguous and equals the sale price of the Property minus all costs of acquiring the Property as well as all costs associated with

selling the Property. Husband further claims that these deductibles include the original purchase price, the costs of all improvements, and the closing costs. Husband does not point to any legal source to support that this is the definition of “profit” that the Court should adopt. Instead, he argues that “profit” is a clear and unambiguous term. Despite this assertion, Husband called an “expert” witness, Lori Moore, a CPA, to testify what the term “profit” means, as least as it relates to tax purposes.

Wife, on the other hand, argues that “profit” is defined in Black’s Law Dictionary as sales price minus all costs of the transaction itself and therefore, she is entitled to the half of the bottom line number on the HUD closing disclosure, which is \$36,857.91 and half of that would be \$18,428.96. Wife disputes that all of the costs put forth by Husband are truly improvements and are rather more maintenance in nature. Additionally, Wife asserts not all improvements increase the value of the Property dollar for dollar.

The Court credits Ms. Moore as being well versed in tax practices and IRS regulations. Ms. Moore’s testimony reveals there are different items that can be deducted as expenses against income to determine profit. Further, Ms. Moore testified that the items that can be deducted vary depending on the type of property involved. This illustrates that what may be deducted as expenses to determine profit will vary depending on several variables. This highlights the fact that there is not just one definition of “profit” but that the term itself depends on what the parties’ intention was when they utilized the term in their agreement.

It is clear that “profit” as used by the parties in their Agreement is ambiguous because each party has defined it differently and it is capable of being understood in more than one sense under the current circumstances. Therefore, the meaning of “profit” is a question of law which must be resolved by the Court.

Turning to the parties’ intent, it is Wife’s testimony that she expected to equally split the bottom line from the HUD with Husband. This is one reasonable expectation of the word “profit.”² Husband’s interpretation of “profit” is that the HUD bottom line is reduced by any amount he spent on what he considers improvements to the Property after the Agreement was entered into by the parties. The Court is skeptical that, at the time they entered into the Agreement and utilized the term “profit,” Husband and Wife contemplated Husband making major renovations to the Property. Both Husband and Wife testified that neither of them had the economic means to buy the other one out of the Property. Thus, it is unlikely that either thought the other had any means to do renovations.

The Court finds that the term “profit” was not intended to include a reduction for improvements to the Property. Further, Husband’s current wife, Trace Hallabuk,

² This position left Wife exposed to Husband’s decision making and money management, including any expenses on the HUD that were unrelated to the Property. For example, Husband could have had an income tax debt to the IRS paid off from the proceeds and this would have reduced her share. This is illustrated by the fact that only a total amount of \$23,410 is given as the closing costs on the sale of the Property but no itemization was given. Additionally, the Husband admitted that the mortgage had been refinanced and increased by more than \$110,000 since the parties entered into the Agreement. This does not even take into consideration that the original mortgage amount should have been at least 50% paid off by the time the Property was sold. As testified to by Husband, this mortgage increase was not related to any improvements or other work done to the Property as Husband’s current wife testified that her money from her own property settlement agreement from her divorce was used to pay for all of the improvements to the Property and no loans were used for them.

testified that the only money used to make the improvements to Property was the money that she received from her divorce from her prior husband. Neither Husband's own money or money received from a loan against the Property were utilized to make the improvements. As Trace Hallabuk was not a party to the January 2009 Agreement, that Agreement could not have contemplated that "profit" would include subtracting money spent by a third party – Trace Hallabuk – to improve the Property.

The Court finds that there is no basis to grant Husband an offset for money spent by Trace Hallabuk to improve the Property. While there is some doubt as to what the refinanced loan was utilized for, Wife has not contested that amount for purposes of determining "profit" under the Agreement and the Court will not speculate on the matter. Therefore, the Court holds that "profit" in this particular situation meant sales price minus closing costs as depicted on the HUD closing disclosure. Wife is entitled to one half of \$36,857.91, which equals \$18,428.96. Husband will make payment of the \$18,428.96 to Wife within 30 days of the date of this Order.

ORDER

AND NOW, this **23rd** day of **September, 2021**, upon consideration of Defendant, Ashley Hallabuk's Petition for Enforcement of Agreement/Petition for Contempt, and Plaintiff, Kirk Hallabuk's responses thereto, and for the reasons set forth above, the Petition is hereby **GRANTED** in part and **DENIED** in part. Plaintiff shall pay a total of \$18,428.96 to Defendant within thirty (30) days of the date of this Order. The remaining requested relief is denied.

BY THE COURT,

Ryan M. Tira, Judge

RMT/ads

cc: Christina Dinges, Esq.
Janice Yaw, Esq.
Gary Weber, Esq.
Alexandra Sholley – Judge Tira's Office