

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

**SHEILA HARTUNG,**  
**Plaintiff**  
  
**vs.**  
  
**STEVEN HARTUNG,**  
**Defendant**

**: NO. FC-15-21262**  
**:**  
**: CIVIL ACTION - LAW**  
**: IN DIVORCE**  
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**OPINION**

This matter is before the Court on a Petition for Special Relief filed by Sheila Hartung (Wife) on July 28, 2021. A hearing was held October 8, 2021 at which time Wife appeared and was represented by Jason Lepley, Esquire and Steven Hartung (Husband) appeared and was represented by Christina Dinges, Esquire. For the reasons set forth below, Wife’s Petition is **GRANTED** in part and **DENIED** in part.

**I. Factual and Procedural History**

On February 21, 2020, the parties entered into a Property Settlement Agreement (“Agreement”) as it relates the division of their assets. Two of those assets included a joint Wells Fargo account ending in 7065 (“Wells Fargo account”) as well as a joint AXA Equitable Retirement Service Solutions account (“AXA account”). It is undisputed that the documentation obtained from Wells Fargo and AXA<sup>1</sup> show that, as of July 2019, the Wells Fargo account had a balance of \$68,008.90 and the AXA account had a balance of \$52,836.60. See *Exhibit P1 at Paragraph 10, unnumbered page 5.*

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<sup>1</sup> The parties dispute which one of them received and provided these documents to the other.

Prior to entering into the Agreement, the parties engaged in extensive settlement negotiations. On December 7, 2018, both parties filed Pre-Trial Memoranda separately identifying the Wells Fargo and AXA accounts. See *Exhibits H1 and P2*. On July 18, 2019, Wife's attorney at that time sent a settlement offer to Husband's attorney stating that Wife "would receive the joint AXA and Wells Fargo account." See *Exhibit H2*. On September 4, 2019, Husband's attorney sent a proposed Property Settlement Agreement "pursuant to the terms of the proposal outlined in your letter of July 18, 2019 . . . ." See *Exhibit H3*. Page 7 of the proposed agreement attached to the letter states that the "parties agree that the funds within these two accounts [the Wells Fargo and AXA accounts] shall be retained by WIFE." See *Exhibit H3 (emphasis in original)*.

On September 16, 2019, Wife's attorney again sent a letter stating that Wife would receive "the joint AXA [and] the joint Wells Fargo ending in 7065 . . . ." See *Exhibit H4*. The parties eventually entered into the February 21, 2020 Agreement, which was prepared by Wife's attorney, and which states that Wife shall receive "the joint AXA Annuity account ending in 1917 and the joint Wells Fargo Accounts ending in 7065." See *Exhibit P1 at Paragraph 10, unnumbered page 5*.

It has now been discovered, and is undisputed, that the AXA account is contained within and is part of the total amount of the Wells Fargo account. See *Exhibits H5 and H6*. Therefore, instead of there being approximately \$120,000 between the two accounts, there is only \$68,008.90 in the Wells Fargo account, which

includes the \$52,836.60 in the AXA account. This discovery forms the basis of Wife's Petition. Argument was held October 8, 2021.

At the time of the hearing, Wife testified that, at the time she entered into the Agreement, her understanding was that there were two separate accounts – the Wells Fargo account and the AXA account – and that each account contained a separate amount that she would be receiving. In other words, she believed that the Wells Fargo account contained \$68,008.90 and the AXA account contained \$52,836.60 *in addition to* the amount in the Wells Fargo account, and that she would be receiving both amounts. She also testified that, had she known that one account contained the other, she would not have entered into the Agreement.

## **II. Discussion**

Wife argues that a mutual mistake has occurred. In her Petition, she asks that the Court order Husband pay her the entire amount contained in the Wells Fargo account, which is \$68,008.90. At the time of the hearing, however, she argued that the Agreement should be rescinded in its entirety.

Husband argues that the Agreement was not fraudulently entered into and that he in no way deceived Wife regarding these two accounts. Rather, asserts, a unilateral mistake occurred on Wife's part. In the alternative, Husband asserts that, if a mutual mistake is found, Wife would only be entitled to half of the amount in the Wells Fargo account rather than the entire amount.

### **a. Mutual Mistake**

A mutual mistake “occurs when the parties to the contract have an erroneous belief as to a basic assumption of the contract at the time of formation which will have a material effect on the agreed exchange as to either party. A mutual mistake occurs when the written instrument fails to set forth the true agreement of the parties.” *Murray v. Willistown Twp.*, 169 A.3d 84, 90 (Pa. Super. 2017). If a mutual mistake is found, the contract may be rescinded if:

(1) the mistake relates to “an essential fact which formed the inducement to [the contract],” and

(2) “the parties [can be] placed in their former position with reference to the subject-matter of [the contract].”

*Id.*, citing *Vrabel v. Scholler*, 85 A.2d 858, 860 (Pa. 1952).

### **b. Reformation**

In addition to rescission, the Court has the option of reforming a contract entered under a mutual mistake if the party seeking to show the existence of the mistake does so by clear, precise, and convincing evidence. *Murray*, 169 A.3d at 91, citing *Smith v. Thomas Jefferson Univ. Hosp.*, 621 A.2d 1030, 1032 (Pa. Super. 1993).

Most commonly, reformation occurs where there is a “scriveners’ error,” where the writing fails to accurately record the parties agreed-upon terms. *Murray*, 169 A.3d at 91. Other times, a mistake occurs as a result of the parties’ failure to actually understand the terms of the contract and later realize that what they agreed to is

simply not possible. *Id.* In other words, there is an impracticability of performance when the thing agreed upon does not exist. *Id.* at 92.

In this situation, the Second Restatement of Contracts provides the following remedy, which is structured so as to avoid injustice:

Under the rule stated in § 204,<sup>2</sup> when the parties have not agreed with respect to a term that is essential to a determination of their rights and duties, the court will supply a term that is reasonable in the circumstances. Since it is the rationale of this Chapter that, in a case of **impracticability or frustration**, the contract does not cover the case that has arisen, the court's function can be viewed generally as that set out in § 204 of supplying a term to deal with that omitted case.

Restatement (Second) of Contracts § 272 cmt (emphasis added); see also *Murray*, 169 A.3d at 92-93.

In the *Murray* case, the Superior Court held that the trial court did not err in reforming a contract when specific performance of the contract was impossible and when the only other remedy would be to render the entire contract void. *Id.* at 93.

Pursuant to Section 204 of the Second Restatement, the Court has the power to imply contract terms when necessary to *effectuate the parties' intent*. *Id.*

### **c. Analysis**

Here, the parties agree that the AXA account was included twice in the Agreement into which they entered, either by mistake or deception. The Court does not believe that either party, or their legal counsel, purposefully deceived the other as

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<sup>2</sup> Section 204 of the Second Restatement provides that a court may imply necessary terms of a contract that have not been stated in the written document. *Id.*

there is no evidence of such. However, based on the parties' course of negotiations as outlined in detail above, it is also not conceivable that Husband actually realized that the AXA account was contained within the Wells Fargo account. The Court finds that a mutual mistake occurred as to the understanding of the amounts in the AXA and Wells Fargo accounts. Having determined that a mutual mistake has occurred, the Court must now determine whether the contract can be reformed or if it must be rescinded in its entirety.

The mistake made in this case is clearly not a scrivener's error, as the Agreement entered into by the parties accurately reflects their understanding of the monies that were in both accounts. The mistake here stems from the parties' failure to understand that one account was contained within the other. Therefore, similarly to the *Murray* case, *supra*, specific performance of the Agreement as entered into by the parties is impossible because the money they thought existed in reality does not. Therefore, the Court will reform that portion of the Agreement.

In reforming the Agreement, the Court must look to the parties' intent when entering into the Agreement. Clearly, the parties' intent was to equitably divide the marital property. If it was realized that the Wells Fargo account contained the AXA account, the "scale" balancing the equitable distribution of the marital estate would have shifted. Under these circumstances, the parties were not contemplating a specific piece of property that could not be equitably divided such as a car or piece of land. Nor was the property of unique nature that held something other than economic value.

Therefore, the \$68,008.90 believed to exist in a Wells Fargo account shall be divided equally between the parties.

### **III. Conclusion**

The Court holds that a mutual mistake occurred regarding the existence of two separate accounts and that the marital estate had an additional worth of \$68,008.90. This mutual mistake led to Wife receiving \$68,008.90 less than she expected. In order to make Wife whole and account for this loss in value in the overall marital estate, the Court hereby orders that the Agreement is reformed so that Wife will receive one half of the amount she expected to receive from the double counted account, \$34,004.45. Husband shall pay Wife the \$34,004.45 within ninety (90) days of the date of this Order.

**ORDER**

**AND NOW**, this **26<sup>th</sup>** day of **October, 2021**, for the reasons set forth above, the Petition for Special Relief is **GRANTED** in part and **DENIED** in part. Husband shall pay Wife \$34,004.45 within ninety (90) days of the date of this Order.

BY THE COURT,

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Ryan M. Tira, Judge

RMT/ads

cc: Jason Lepley, Esq.  
Christina Dinges, Esq.  
Gary Weber, Esq.  
Alexandra Sholley – Judge Tira’s Office