

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KRISTEN HAYES-YEARICK,	:	CV-14-21574
Plaintiff	:	
vs.	:	
	:	
JOHN YEARICK, JR.,	:	
Defendant	:	

OPINION AND ORDER

AND NOW, this 18th day of April 2023, the Court issues the following Opinion and Order on the Petition to Intervene and for Contempt filed by Joanne Hayes, Daniel Hayes, and Scott Hayes (“Petitioners”) on August 5, 2022.

BACKGROUND

Plaintiff commenced this action by filing a Complaint in Divorce on November 11, 2014 against Defendant, her then-husband. The Honorable Joy Reynolds McCoy entered a Decree in Divorce terminating the parties’ marriage on November 21, 2016.

Virtually all litigation in this case has concerned a Property Settlement Agreement that the parties entered into on November 21, 2014 (the “PSA”).¹ The PSA contains twenty-eight paragraphs outlining the parties’ agreement concerning the distribution of various assets, their waiver or reservation of various legal claims,

¹ Plaintiff filed separate petitions to enforce the PSA in October 2015 and August 2016. On each occasion, however, Plaintiff failed to appear for necessary Court dates, resulting in the dismissal of the 2015 Petition and the withdrawal by Plaintiff’s prior counsel of the 2016 Petition.

and the legal effect of the PSA itself. The November 21, 2016 Decree granting the parties' divorce incorporated the PSA.

On February 9, 2022, Defendant filed a petition to enforce the PSA, followed by a superseding Amended Petition to Enforce Agreement on June 30, 2022. On July 21, 2022, Plaintiff filed a Petition to Enforce Property Settlement Agreement and a Petition for Contempt.² On December 21, 2022, the Court filed an Order granting Defendant's Amended Petition to Enforce Agreement and denying Plaintiff's Petition to Enforce Property Settlement Agreement. Plaintiff timely appealed from this Order, and that appeal is pending before the Superior Court.³

INSTANT PETITION

A. Contents of Petition

On August 5, 2022, Petitioners – the parents and brother of Plaintiff – filed the instant Petition to Intervene and for Contempt. Petitioners assert that they are entitled to intervene in this matter as third-party beneficiaries of the PSA, citing Paragraphs 8(g) and 8(h) of the PSA, which read as follows:

² These filings were identical except for their title and attached exhibits. Plaintiff did not seek to enforce Paragraphs 8(g) and 8(h) of the PSA, which are the subject of the Petition presently before the Court.

³ Pennsylvania Rule of Appellate Procedure 1701(a) provides that, generally, “after an appeal is taken... the trial court... may no longer proceed further in the matter.” However, Rule 1701(c) clarifies that “[w]here only a particular... claim... in the matter is involved in an appeal... the appeal... shall operate to prevent the trial court... from proceeding further with only such... claim...” Here, Petitioners' Petition to Intervene and for Contempt raises claims entirely distinct from those presented in either Plaintiff's or Defendant's Petitions addressed in the Court's December 21, 2022 Order. Therefore, the Court may proceed on the separate issues presented by Petitioners.

“g. [Plaintiff] and [Defendant] owe [Plaintiff’s] parents (Joanne Hayes and Daniel Hayes) \$40,000.00 for a loan given to them. Each party agrees to be responsible for half of this debt (\$20,000.00 each). Each party will make arrangements to pay their respective share of this debt.

h. [Plaintiff] and [Defendant] owe Scott Hayes \$5,000.00 for a loan given to them. Each party agrees to be responsible for half of this debt (\$2,500.00 each). Each party will make arrangements to pay their respective share of this debt.”

Petitioners assert that Defendant “is in default of [the PSA] as he has never complied with [Paragraphs 8(g) and 8(h)] and has never made any payments as required.” Because the parties’ divorce decree incorporated the PSA, Petitioners contend, Defendant’s failure to comply with those provisions render him in contempt. Ultimately, Petitioners request that they be permitted to intervene in this matter, that the Court find Defendant in contempt of its November 21, 2016 divorce decree incorporating the PSA, and that the Court compel Defendant to comply with the PSA as well as “pay any and all costs and expenses incurred by Petitioner(s) in attempting to have him comply with” the PSA.⁴

B. Hearing

The Court initially scheduled a hearing on the Petition to Intervene and for Contempt on December 7, 2022, but continued this matter to January 31, 2023 at Petitioners’ request.

⁴ Petitioners asserted at argument that Plaintiff has complied with Paragraphs 8(g) and 8(h) of the PSA and paid back her half of the loans.

At the hearing, counsel for Petitioners first acknowledged that the relevant statute of limitations would likely bar Petitioners from instituting a separate civil action to collect Defendant's portion of the loans. He stated that Petitioners did not sign a written agreement with Defendant either at the time the loan was made or at any time thereafter. Counsel for Defendant noted that of the three Petitioners, only Joanne Hayes was present at the hearing, and the two other Petitioners had not signed a verification; thus, she argued, Ms. Hayes could proceed only on her own behalf. Further discussion confirmed that the dispute between the parties was factual as well as legal, and the Court allowed the parties to present testimony and evidence.

Joanne Hayes testified that she had never received any portion of the \$20,000 that Defendant owed her and her husband as reflected in the PSA. Petitioners introduced a copy of their attorney's bill for services to establish their legal costs.

On cross-examination, Ms. Hayes stated that she received \$40,000 from the April 2022 sale of the parties' marital residence, but characterized that as "the \$40,000 that [Plaintiff] had mortgaged on the house that was in her name for monies, beside the \$20,000 that was in [the PSA] and monies that we had subsequently provided to help her and the children with their residence and utilities." Ms. Hayes testified that she was aware the parties entered into the PSA shortly after they signed it, but did not learn until March 2015 that it mentioned the loan and obligated

the parties to repay \$20,000 each. Ms. Hayes stated that she never had a discussion with Defendant about his payment of that sum, and Defendant never attempted to arrange with Ms. Hayes to repay his portion of the loan.

In response to the Court's questioning, Ms. Hayes clarified that the \$40,000 she and her husband loaned to the parties occurred over time prior to November 2014. She confirmed that neither party had made any payments towards that amount prior to their entry into the PSA. Ms. Hayes stated that the parties verbally agreed to repay the loan and did not enter into a written agreement. She testified that her understanding of the money she gave the parties was that it was a loan, and not a gift; she stated that she expressed that the payments were loans rather than gifts to Plaintiff repeatedly, though she did not recall if she expressed as much to Defendant. Ms. Hayes explained that she and her husband made these payments over time to the parties for various reasons, such as to assist with mortgage payments, utilities, and school tuition for the parties' children.

Regarding the terms of repayment, Ms. Hayes testified that the loan did not include interest, and there was no understanding of the timeframe in which it was to be repaid other than when the parties were financially able. She confirmed that "[i]t was just [her] hope and [her] husband's hope and expectation that when [the parties] were financially able that they would be able to pay [them] back," and that she and her husband knew there was a risk that the parties would never be in such a financial position.

Ms. Hayes clarified that Plaintiff did not immediately inform her when the parties entered into the PSA, and Plaintiff did not invite her to sign it. Ms. Hayes testified that prior to March 9, 2015, she did not enter into a written agreement with either Plaintiff or Defendant concerning repayment of the loan. Ms. Hayes explained that on March 9, 2015, she, Plaintiff and the other Petitioners signed a written mortgage agreement in the amount of \$44,000 concerning the marital residence, which Ms. Hayes explained was intended to constitute a writing ensuring that Petitioners would be repaid for Plaintiff's share of the loan from the proceeds of the house when it was sold. Of the \$44,000, \$20,000 represented Plaintiff's share of the loan from Ms. Hayes and Mr. Hayes, and the remaining \$24,000 represented "anticipated loans for lawyer's fees, housing, and different expenses [Plaintiff] was going to incur since she and [Defendant] were getting divorced or were divorced." Ms. Hayes suggested that she and her husband ended up providing at least an additional \$24,000 to Plaintiff over the course of the divorce proceedings. Ms. Hayes testified that Plaintiff has since satisfied the mortgage.

Ms. Hayes explained that she never contacted Defendant concerning repayment of the loan until she and the other Petitioners decided to pursue this action.

On re-direct, Ms. Hayes testified that Plaintiff is not presently employed, and Plaintiff's sole source of income comes from SSI payments. On re-cross, Ms. Hayes

testified that she did not just provide money to Plaintiff, but gave money to Defendant directly in the form of checks made out to him.

After Ms. Hayes testified, counsel for Defendant argued that the applicable statute of limitations, located at 42 Pa. C.S.A. § 5525(a)(8), would not only bar a separate civil action to recover Defendant's portion of the debt, but also bars Petitioners from pursuing those claims even as an ancillary part of Plaintiff's and Defendant's divorce matter. This is because, counsel argued, Ms. Hayes was aware of Defendant's obligation under the loan in March of 2015, but took no action to seek repayment until – at the earliest – 2021, and did not file anything of record until 2022. Counsel argued that because Ms. Hayes made no arrangements to collect the debt, the law imposes upon Defendant at most a duty to make payments within a reasonable timeframe. Counsel argued that the statute of limitations began to run at latest when Plaintiff raised Defendant's failure to repay his portion of the loan in her August 2016 Petition to Enforce the PSA, which was subsequently withdrawn. Counsel for Defendant did not dispute the right of a third party beneficiary such as Petitioners to intervene in this matter.

Counsel for Petitioners agreed that his clients had the right to intervene in this matter as third party beneficiaries of the PSA. However, Counsel disagreed that the enforcement of a Court Order, like the PSA as incorporated by the Divorce Decree in this matter, is subject to the statute of limitations in the same manner as a stand-alone contract claim.

ANALYSIS

Although the parties agree that Petitioners are entitled to intervene in this matter, the Court will first analyze the rules regarding intervention to ensure that Petitioners' intervention is proper. If intervention is appropriate, the Court must determine whether the four-year statute of limitations governing contract actions applies to the instant petition. Finally, if the statute of limitations applies, the Court must determine whether it bars the claims before the Court.

A. Petitioners' Ability to Intervene

Pennsylvania Rule of Civil Procedure 2327 states:

"At any time during the pendency of an action, a person not a party thereto shall be permitted to intervene therein... if

(1) the entry of a judgment in such action or the satisfaction of such judgment will impose any liability upon such person to indemnify in whole or in part the party against whom judgment may be entered; or

(2) such person is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof; or

(3) such person could have joined as an original party in the action or could have been joined therein; or

(4) the determination of such action may affect any legally enforceable interest of such person whether or not such person may be bound by a judgment in the action."⁵

⁵ Rule 2327 applies to civil actions generally. The note to Rule 1920.34, governing joinder in divorce actions, confirms that Rule 2327 governs intervention in divorce actions.

A third party beneficiary to a contract may generally intervene in an action pursuant to Rule 2327(4).

The Supreme Court of Pennsylvania has evaluated the intervention of third party beneficiaries in actions to enforce property settlement agreements under the test set forth in Restatement (Second) of Contracts 302. Intervention is appropriate in such cases if both of the following conditions are satisfied:

“(1) the recognition of the beneficiary’s right must be ‘appropriate to effectuate the intention of the parties,’ and (2) the performance must ‘satisfy an obligation of the promisee to pay money to the beneficiary’ or ‘the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.’”⁶

Courts must apply this test (the “*Guy* test,” first approved in *Guy v. Liederbach*⁷) within the context of contract principles applicable to the property settlement agreement, because such agreements “are considered independent contracts, interpreted according to the law of contracts.”⁸

The Supreme Court of Pennsylvania approved of the application of this test to property settlement agreements in *Chen v. Chen*. In *Chen*, the property settlement agreement provided that husband was to pay wife child support until their daughter turned 18, with the amount to be adjusted to reflect increases in husband’s income.⁹ Husband paid child support until daughter turned 18, but never increased the

⁶ *Chen v. Chen*, 893 A.2d 87, 90-91 (Pa. 2006) (quoting *Guy v. Liederbach*, 459 A.2d 744, 751 (Pa. 1983)).

⁷ *Guy v. Liederbach*, 459 A.2d 744 (Pa. 1983).

⁸ *Chen*, 893 A.2d at 93.

⁹ *Id.* at 88.

amount of support when his income increased. Following daughter's 18th birthday, wife sued husband for the difference between the support husband did pay and that which he would have paid had he properly accounted for his increases in salary.¹⁰

Daughter sought to intervene, arguing that she had a legally enforceable interest as a third party intended beneficiary to husband's agreement to pay child support.¹¹ The Supreme Court agreed that "circumstances indicate that [wife] intended to give [daughter] the benefit of the promised performance" concerning the child support payments, and therefore daughter had satisfied the second prong of the *Guy* test.¹² The Court held, however, that in light of policy considerations underlying the purpose of child support payments, daughter was "not an intended beneficiary under Section 302 and *Guy* because recognition of [daughter's] right to performance is not 'appropriate to effectuate the intention of the parties.'"¹³

In *Weber v. Weber*, the Superior Court of Pennsylvania applied the *Guy* test to a son's petition to intervene to enforce a provision in a marital settlement agreement requiring the parents to "share equally the reasonable costs of an

¹⁰ *Id.*

¹¹ *Id.* at 88-89.

¹² *Id.* at 94.

¹³ *Id.* at 96. In particular, the Court observed that "[t]he peculiar best interests of a child passing through life's changes are not implicated" after the child reaches adulthood, and expressed concern that allowing intervention in the circumstances presented "could open a Pandora's Box... allow[ing] every child of divorced parents whose property settlement agreement contained a provision for child support to bring suit against one or both parents... demand[ing] from the payee-parent a dollar for dollar accounting of moneys paid for support pursuant to a separation agreement."

appropriate... post-secondary education” for their children.¹⁴ The Superior Court held that because “[i]t [was] clear that the intent of [the provision of the settlement agreement concerning the children’s education was to assist [the children] by sharing the costs of [their] education... [son] is therefore a third-party beneficiary” under the *Guy* test.¹⁵

Here, the Court agrees with the parties that Petitioners are third party beneficiaries under the *Guy* test, and therefore may intervene under Rule 2327(4). Paragraphs 8(g) and 8(h) do not merely recognize that Plaintiff and Defendant owed Petitioners a debt; they also reflect an agreement by Plaintiff and Defendant to each “make arrangements to pay their respective share of this debt.” Thus, Paragraphs 8(g) and 8(h) were clearly intended to benefit not just Plaintiff and Defendant – by relieving each of them of the joint liability to pay the other’s half of the debt – but also Petitioners, by encouraging Plaintiff and Defendant to take steps to begin their repayment. The Court finds that the recognition of Petitioners’ right to intervene is appropriate to effectuate Plaintiff’s and Defendant’s intention, which was to establish both their rights concerning the repayment of the loan as well as their obligation to pay back their half of the loaned amount.

¹⁴ *Weber v. Weber*, 168 A.3d 266, 268 (Pa. Super. 2017).

¹⁵ *Id.* at 270-71.

B. Statute of Limitations

1. Applicability of Four-Year Limitation to Petitioners' Claim

The four-year statute of limitations on civil claims, codified at 42 Pa. C.S.A. § 5525, applies to, *inter alia*, various contract actions. In particular, § 5525(a)(8) provides that, generally, “[a]n action upon a contract, obligation or liability founded upon a writing [other than a ‘bond, note or other similar instrument’]... must be commenced within four years....”

Pennsylvania Courts have consistently applied this limitation to agreements governing the distribution of property in divorce actions.¹⁶ This is because, as noted above, “property settlement agreements incorporated but not merged into divorce decrees are considered independent contracts, interpreted according to the law of contracts.”¹⁷ This is precisely what occurred here. As stated in the November 21, 2016 Divorce Decree:

“[T]he terms, provisions and conditions of a certain Property Settlement Agreement reached between the parties on November 21, 2014... are hereby incorporated into this DECREE AND ORDER by reference as fully as though the same were set forth herein at length. Said agreement shall not merge with but shall survive this DECREE AND ORDER.”

¹⁶ See, e.g., *K.A.R. v. T.G.L.*, 107 A.3d 770 (Pa. Super. 2014) (applying § 5525(a)(8) to equitable distribution agreement read into record in divorce action); *Crispo v. Crispo*, 909 A.2d 308 (Pa. Super. 2006).

¹⁷ *Chen*, 893 A.2d at 93; *Crispo*, 909 A.2d at 312-13 (“Where... [a] property settlement agreement was incorporated, but not merged, with the Divorce Decree... it stands as a separate contract... subject to the law governing contracts and is to be reviewed as any other contract.”).

Because the PSA therefore stands as an independent contract under Pennsylvania law, the Court must evaluate it as any other contract. Thus, the Court will proceed to analyze whether the applicable statute of limitations bars Petitioners' attempts to enforce Paragraphs 8(g) and 8(h) of the PSA.

2. Timeliness of Petitioners' Claim¹⁸

Generally, "the statute of limitations begins to run as soon as the right to institute and maintain a suit arises."¹⁹ Here, Petitioners loaned a combined \$45,000 to Plaintiff and Defendant at some point prior to the signing of the PSA; Paragraphs 8(g) and 8(h) of the PSA recognize this fact and impose upon Defendant the sole obligation to repay of 50% of this amount. Therefore, the statute of limitations applies to Petitioners' claims in the same manner as it would to any contractual agreement to repay a loan.

When a loan specifies that the obligation to repay is contingent upon "on the future performance of a condition... or at a certain time after demand, there a demand is necessary to a right of action,' and the statute of limitations does not begin running until demand is made."²⁰ However, when "there is no evidence... which indicates that payment was contingent on the occurrence of a condition

¹⁸ At the January 31, 2023 hearing, counsel for Petitioners expressed his belief that if the four-year statute of limitations applied, then Petitioners' claims were likely untimely. Counsel, however, did not clearly concede this point, and therefore the Court will continue to an analysis of the timeliness of Petitioners' claims.

¹⁹ *K.A.R.*, 107 A.3d at 775 (quoting *Fine v. Checcio*, 870 A.2d 850, 857 (Pa. 2005)).

²⁰ *Gurenlian v. Gurenlian*, 595 A.2d 145, 150 (Pa. Super. 1991) (quoting *Cook v. Carpenter* (No. 1), 61 A. 799, 803 (Pa. 1905)).

precedent or of a demand for payment,” the statute of limitations begins to run either immediately or, at the latest, “after a reasonable period of time or when the debtor is able to pay.”²¹

Here, there is no evidence that suggests that Defendant’s obligation to repay the loans depended on a demand or the occurrence of some external condition; rather, the language of the PSA clearly reflects Defendant’s unqualified obligation to repay his portion of the loans. Additionally, there is neither evidence that Defendant offered to repay the loan nor evidence that Petitioners sought repayment from Defendant who was at the time unable to pay. In short, the plain language of the PSA suggests that Defendant’s obligation to repay his share of the loans existed the moment the parties entered into the PSA, and no testimony or evidence in this case alters that natural reading.

Here, Petitioners filed the instant Petition on August 5, 2022, meaning that it is untimely unless the statute of limitations did not begin to accrue until on or after August 5, 2018. In a light most favorable to Petitioners, Defendant’s obligation to repay the loan became effective on November 21, 2016, when the PSA was incorporated into the parties’ divorce decree.²² At the latest, the four-year statute of limitations began to accrue a reasonable period of time after this date. Therefore,

²¹ *Id.*

²² The Court believes it likely that the relevant date is not November 21, 2016, when the Court entered the divorce decree incorporating the PSA, but either November 21, 2014, when the parties signed the PSA, or March 2015, when at least one Petitioner learned that the PSA addressed Defendant’s obligation to repay the loan.

the timeliness of the instant Petition depends on whether August 5, 2018 was within a reasonable period of time after November 21, 2016 before the statute of limitations began to accrue.

The Court concludes that even if the statute of limitations here began to accrue some reasonable period of time after November 21, 2016, it certainly began to accrue prior to August 5, 2018. Therefore, the four-year statute of limitations bars their efforts to enforce the PSA in the instant Petition.

Ms. Hayes testified that she learned of the contents of the PSA in March 2015. At that time, Petitioners could have sought repayment of half of the loan from Defendant. The testimony established that Defendant did not reach out to Petitioners to arrange for repayment, as the PSA obligated him to do; however, when Defendant failed to meet this obligation, Petitioners did not seek to enforce it.

Ultimately, as of August 5, 2018, 1) Defendant's individual obligation to repay half of the loans had existed for at least 3 years, 8 months, since the signing of the PSA on November 21, 2014; 2) Petitioners were aware that Defendant was required to arrange for repayment of the loans but had not done so for 2 years, 5 months, since March 2015; and 3) all parties knew that the obligations of the PSA had been incorporated into the parties' divorce decree over 1 year, 8 months prior, on November 21, 2016. All of these periods of time, taken together, mean that Petitioners' "right to institute and maintain a suit" or otherwise enforce Defendant's obligation to repay his portion of the loans arose well before August 5, 2018.

Therefore, the four years within which Petitioners were permitted to file an action seeking enforcement of that obligation concluded prior to August 5, 2022, the date the instant Petition was filed.

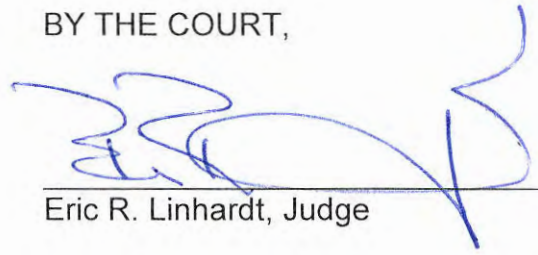
ORDER

For the foregoing reasons, the Court hereby ORDERS as follows:

- Petitioners' Petition to Intervene is GRANTED.
- Petitioners' Petition for Contempt is DENIED, as the relief Petitioners seek is barred by the four-year statute of limitations in 42 Pa. C.S.A. § 5525.

IT IS SO ORDERED.

BY THE COURT,



Eric R. Linhardt, Judge

ERL/jcr

cc: Christina Dinges, Esq.
Fred Lingle, Esq.
Kristen Hayes

315 South Valley Forge Road, Apt. 3, Devon, PA 19333-1324

Family Court

Gary Weber, Esq. (Lycoming Reporter)