

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

<b>LWH,</b>		:	<b>NO. 13-21,529</b>
	<b>Plaintiff</b>	:	
		:	
	<b>vs.</b>	:	
		:	
		:	
<b>JLF,</b>		:	
	<b>Defendant</b>	:	<b>IN DIVORCE</b>

**OPINION & ORDER**

**AND NOW**, this **28th** day of **August, 2015**, this order is entered after a hearing held August 25, 2015, regarding Husband’s Petition to Enforce Settlement Agreement/Petition for Contempt filed July 8, 2015. Present at the hearing was Wife, JLF, with her counsel Michael Morrone, Esquire, and Husband, LWH, with his counsel Janice Yaw, Esquire.

***Facts***

The parties were married in August of 2007. During the marriage the parties resided together in Wife’s residence. Husband made significant financial contributions towards improvements in the home. The parties executed a Property Settlement Agreement on October 30, 2013. A final Divorce Decree was entered on March 31, 2014. The Decree does not retain the Court’s jurisdiction over any matters, but does incorporate the Property Settlement Agreement. A term of the marital settlement agreement reads as follows:

“5. Real Estate. Husband and Wife hereto agree that Husband shall convey all his right, title and interest in and to the premises situate at 732 S. Howard Street, South Williamsport, PA 17702 to Wife...Husband and Wife further agree that the above real estate conveyance in heading #5 of this Separation and Property Agreement is contingent upon Husband receiving the sum of sixty-thousand dollars (\$60,000.00) from Wife no later than December 31, 2014.”

The agreement further states:

“6. Equitable Distribution. In final settlement of both parties’ claims in equitable distribution Husband and Wife hereby agree that other than ...the real estate transfer and payment of \$60,000 described in section 5 above, all other equitable distribution claims are resolved by Husband and Wife.”

Wife has not paid Husband the sum of \$60,000.00.

### ***Discussion***

Husband argues the language is clear and unambiguous. He requests the Court order the sale of the residence and hold Wife responsible for counsel fees.

Wife argues that the Agreement is complete and unambiguous, if the Court aligns with her interpretation of the agreement. Wife’s interpretation of the contract is that in the event she failed to pay Husband the \$60,000, then Husband would not waive his right to the residence and the parties would proceed to equitable distribution on Husband’s claim regarding increased value of the home.

In the event the Court does not agree with Wife’s interpretation of the agreement, Wife argues the agreement is ambiguous and the Court should look to the intent of the parties. Wife’s intent being that, in the event she failed to pay Husband the \$60,000, then Husband would not waive his right to the residence, and the parties would proceed to equitable distribution on Husband’s claim regarding increased value of the home.

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.

The Court finds the Agreement is clear and unambiguous. In final settlement of all claims regarding equitable distribution between the parties, Wife was to pay Husband the sum of \$60,000. At no point does the agreement say this monetary amount was only in relation to the value of the residence. The Agreement does however; secure Wife's failure to pay against the residence. Husband was only obligated to sign off any rights he may have to the residence upon receipt of the \$60,000.

The Court finds the following: the Agreement is binding and remains in full force and effect. The Agreement resolves the economic issues of Equitable Distribution.

Having found above that the Agreement is clear and unambiguous and that Wife has failed to pay the agreed upon \$60,000, Husband is awarded attorney's fees for Wife's non-compliance. Wife shall pay to Husband the \$400.00 in attorney's fees on or before November 2, 2015.

Husband next requests this Court find Wife in contempt for her failure to pay the \$60,000 sum agreed upon by the parties.

"In proceedings for civil contempt of court, the general rule is that the burden of proof rests with the complaining party to demonstrate that the defendant is in noncompliance with a court order. To sustain a finding of civil contempt, the complainant must prove, by a preponderance of the evidence, that: (1) the contemnor had notice of the specific order or decree which he is alleged to have

disobeyed; (2) the act constituting the contemnor's violation was volitional; and (3) the contemnor acted with wrongful intent."

*MacDougall v. MacDougall*, 49 A.3d 890, 892 (Pa. Super 2012)(citations omitted).

Husband has not proven by a preponderance of the evidence that Wife acted with wrongful intent when she failed to make the payment to Husband. The parties continued to negotiate the payment for months after the contract's due date. Wife sought sources of money in order to meet the obligation. Wife's non-compliance alone does not demonstrate a wrongful intent.

Wife is hereby ordered to pay Husband the sum of \$60,000 plus interest from December 13, 2014 until the date of final payment at a the rate of 3.25%. If Wife fails to make the payment by November 2, 2015, the residence at 732 South Howard Street, South Williamsport, PA 17702, shall immediately be placed on the market and sold. Husband shall receive his \$60,000 plus interest from the sale of the residence. The Court specifically orders that Husband may place a lien against the property for \$60,000 plus the interest outlined above. Additionally, Wife shall pay to Husband the \$400 in attorney's fees outlined above.

BY THE COURT,

Joy Reynolds McCoy, Judge