

material provisions, then to argue that these provisions were inadvertently included in the contract. The plaintiff's own failure to abide by the terms of the agreement makes it very difficult for them to persuade the court to only enforce the clauses which are beneficial to them.

All three documents were signed on the same day, as such, they should be considered as an integrated contract. Since the employer failed to abide by the material terms of the employment contract that they had written, the court is not inclined to enforce the non-competition agreement against the defendant.

Wherefore, the court finds that the temporary preliminary injunction banning defendant from competing with the plaintiff should be lifted.

DECREE NISI

July 9, 1986, the court orders that the temporary preliminary injunction issued by order of court dated June 23, 1986 is lifted, and Mrs. Cheryl Statler will not be barred from competing with The Franklin Shopper.

RYDER V. RYDER, C.P. Franklin County Branch, Equity Doc. Vol. 7, Page 462

Equity - Tenancy by Entireties - Partition

1. To permit the plaintiff to provoke his spouse to commit an action sufficient for partition would allow him to destroy the entireties estate by his own act.
2. Where a party acts in good faith for the mutual benefit of both parties, the use of joint income is not an offer of partition.

J. McDowell Sharpe, Esq., Counsel for Plaintiff
Richard W. Cleckner, Esq., Counsel for Defendant

OPINION AND ORDER

WALKER, J. September 20, 1989:

FINDINGS OF FACT

A trial without jury was held on June 27, 1989, to determine if the defendant, Miriam K. Ryder, appropriated property owned as tenants-by-the-entireties to the detriment of her husband, the plaintiff, William L. Ryder, Sr. Plaintiff claims that the defendant made an offer to partition by refusing to share the income from jointly owned property, by taking jointly owned income and depositing it into her own individual account, and by using joint income for her own benefit rather than the mutual benefit of both parties. Plaintiff further claims that he accepted this offer for partition by filing this suit.

DISCUSSION

As stated in *Shapiro v. Shapiro*, 424 Pa. 120, 137, 224 A.2d 164, 169 (1966) *Citing Stemniski v. Stemniski*, 403 Pa. 38, 42, 169 A.2d 51 (1961):

A violation of the rules by one's spouse appropriating the property to his own use works a revocation of the estate by the fiction of the appropriation's being an offer of an agreement to destroy the estate and an acceptance of that offer when the other spouse starts suit . . .

In the case at bar, however, the court finds that the defendant's actions did not constitute an offer of partition; therefore, there can be no acceptance.

The facts in this case indicate that the defendant acted for the mutual benefit of both parties. On April 10, 1987, without telling the defendant, the plaintiff voluntarily left the marital home. Weeks later, defendant discovered that the plaintiff had had a nervous breakdown and was institutionalized in Tennessee. Their joint checking account at the Chambersburg Trust Company required both signatures for use. Based on the plaintiff's disability, the defendant had no access to this joint account, so she opened a special account in her name at Farmers & Merchants.

The court finds that this special account was for the purpose of allowing the defendant to pay joint expenses of the family, and the family business, not an appropriation of joint income for her individual benefit.

The plaintiff did make some arrangements for access to the joint checking account when he left, but the court finds that these arrangements were improper. The defendant was expected to submit all requests for withdrawals from the joint account to plaintiff's attorney, J. McDowell Sharpe, and then her estranged son was supposed to co-sign the checks pursuant to his power of attorney. This system was burdensome on the defendant, and the power of attorney was invalid; therefore, the court finds that the defendant's refusal to use this system did not show a lack of good faith.

If the plaintiff were allowed to impose the above burden on his spouse, it would in effect, drive the spouse to commit an action which could be grounds for partition.

If this were sanctioned by this court, what would stop spouses from seeking this manner of property division rather than equitable distribution? As stated in *Shapiro*:

The general rule regarding entireties' property is clear; neither tenant can partition (except after divorce) nor terminate or sever by his or her own conveyance, as a joint tenant can do, nor by his or her own act affect the other's right of survivorship.

Shapiro, supra. at 136 (citations omitted). To permit the plaintiff to provoke his spouse to commit an action sufficient for partition would be allowing him to destroy the entireties' estate by his own act. This would be improper.

While it is true that both the plaintiff and defendant have equal entitlement to the joint income as tenants-by-the-entireties, joint obligations must be satisfied. A good faith exception to the above-stated general rule exists which allows these joint obligations to be met without the appropriation by one of the tenants being construed as an offer to partition.

The Pennsylvania Supreme Court held that:

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Once a tenancy-by-the-entireties has been created, then neither spouse can appropriate to his or her own use the property held in such tenancy and the only appropriation which can be justified is one made in good faith for the mutual benefit of both parties to the tenancy.

Shapiro, supra at 136. (emphasis in original)(citations omitted). The court finds that the defendant acted in "good faith for the mutual benefit of both parties" by putting the joint income into a special account to facilitate the payment of taxes, a donation to the fire company, the payment of life insurance premiums (which had been paid out of joint income in the past), and the payment for yard work and the installation of flood lights at the marital home. Plaintiff was not excluded from the marital home, he left and stayed away of his own volition. These uses benefitted the plaintiff as well as the defendant.

Based on the above, the court finds that the defendant, Mrs. Ryder, acted in good faith in her appropriation and use of joint income. Consequently, plaintiff's bid for partition of the tenants-by-the-entireties estate is denied.

ORDER OF COURT

September 20, 1989, the plaintiff's request for partition of tenants-by-the-entireties' property is denied.

BURKHOLDER V. BENJU CORP., C.P. Franklin County Branch,
No. D.S.B. 1988-329

Confessed Judgment - Motion to Open - Amendment of Judgment

1. Where the rate of interest set forth in a confessed judgment differs from that authorized in the warrant of attorney, the Court may correct the judgment without opening it.

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