VEVA B. PETERS MONTGOMERY, Plaintiff v. VERNON A. PETERS, Defendant, C.P. Franklin County Branch, Civil Action - Law, No. DSB 1999-31002, In Divorce a v.m., assigned to Hon. Carol L. Van Horn

Montgomery v. Peters

Contract Interpretation, Ambiguous Language, Extrinsic Evidence, Intention of the Parties

1. Ambiguity must be found in an agreement before the court may look beyond the agreement to examine surrounding circumstances to interpret the intention of the parties.

2. Intention may be determined by the situation of the parties, the object they had view, and the circumstances surrounding the agreement.

3. Where language in a written agreement is unclear, extrinsic or parol evidence is admissible to resolve the ambiguity.

4. The intention of the parties at the time the contract was made governs interpretation.

5. A contract is to be interpreted from its entirety to resolve the meaning of a particular section.

6. In contract interpretation, more weight should be given to specific terms than general terms.

7. Only after the application of ordinary rules of construction and consideration of extrinsic evidence should any remaining ambiguities in the contract be construed against the drafter.

Donald L. Kornfield, Esquire, Counsel for Plaintiff
Anne M. Shepard, Esquire, Counsel for Defendant

OPINION AND ORDER OF COURT

VAN HORN, J., February 9, 2000:

Background

This matter is a dispute over seemingly contradictory clauses in a Marital Settlement Agreement ("Agreement") between the parties, Mr. Peters and Ms. Montgomery. The Agreement was

executed in Rock County, Wisconsin, at the end of June, 1998, before the parties' divorce became final on July 10, 1998. Ms. Montgomery's attorney drafted the Agreement. Mr. Peters did not have legal representation to review the Agreement or for the divorce proceedings. The subject of the controversy is the repayment of an equity loan to First Financial Bank which was signed by the parties on September 28, 1996 in the amount of $25,000. Mr. Peters signed as borrower, and Ms. Montgomery (then Mrs. Peters) signed as co-borrower. The parties' primary residence was listed as the collateral for this loan on the application.

The Marital Settlement Agreement appears to provide two conflicting clauses as to how this debt to First Financial was to be repaid. In section III, Disposition of Residence, the terms for the sale of the marital home are set out, including a provision for satisfying the mortgage. Section IV, Debts and Financial Obligations, lists how the marital debts are to be distributed. More specifically, section III states, in regard to the sale of the house, that:

> The proceeds from sale shall be subject to the usual costs of sale and pro-rations and any balance existing on the mortgage(s). Any remaining proceeds shall be divided as follows:
>
> 1. The sum of $100,000.00 shall be paid to Petitioner [Ms. Montgomery].
>
> 2. The balance if any, shall be divided equally between the parties.

Following this is section IV, which states in relevant part:

> A. Each of the parties shall be responsible for the following debts and liabilities and each shall hold the other harmless for any payment thereof:

Debt	Responsible Party	Creditor	Approx. Bal.

Loan	Respondent [Mr. Peters]	1st Financial CU
17,000.00		

Mr. Peters claims he interpreted the Agreement to mean that he was to make payments on the loan to First Financial until the debt was satisfied at the closing of the house. He asserts that the language "[t]he proceeds from sale shall be subject to the usual costs of sale and pro-rations and any balance existing on the mortgage(s)," signifies that the loan to First Financial, which is a second mortgage, would be satisfied at the closing from the sale proceeds and he would no longer be obligated for that loan.

Ms. Montgomery claims that the language quoted above from clause III meant that only the original mortgage on the house would be satisfied at the closing. She testified that she did not realize the loan from First Financial was a second mortgage; she thought it was simply a credit loan. Ms. Montgomery asserts that the agreement was for Mr. Peters to be responsible for paying the full amount owed to First Financial, and that she was receive a minimum $100,000 from the sale of the house.

Discussion

An ambiguity must be found in the Agreement before the court may look beyond its four corners and examine the surrounding circumstances to interpret the intention of the parties. *Banks Engineering Co., Inc. v. Polons*, 697 A.2d 1020 (Pa.Super. 1997). The court finds an ambiguity exists between clauses III and IV in the Agreement, with the use of the term "mortgage(s)" in clause III, and reference to a specific debt in clause IV which is also a mortgage. Clause III provides for the mortgage on the house to be paid from proceeds of the sale at closing, and clause IV lists Mr. Peters as solely responsible to pay a second mortgage. Therefore, because the language of the written Agreement is unclear, extrinsic or parol evidence is admissible to resolve the ambiguity. *Spatz v. Nascone*, 283 Pa.Super. 517, 424 A.2d 929 (1981).

Contracts are to be interpreted according to the intention of the parties and, to determine that intention, the court may consider the situation of the parties, the objects they had in view and the circumstances surrounding the agreement. *Winter v. Welker*, 174 F.Supp. 836 (E.D. Pa. 1959). The intention of the parties at the time the contract was made governs the interpretation of the contract. *Baumgardner v. Stuckey*, 735 A.2d 1272, 1999 Pa.Super. 182 (1999). The court has heard testimony from Mr. Peters and Ms. Montgomery as to their objectives at the time the Agreement was created. It is for the court to determine the credibility of the parties' testimony.

> "We accord great weight to this [fact-finding] function of the hearing judge because he is in the position to observe and rule upon the credibility of the witnesses and the parties who appear before him."

In the Matter of C.R.S., 696 A.2d 840, 843 (Pa.Super. 1997).

Ms. Montgomery testified that the intent was for her to receive $100,000 from the sale of the house, because she had provided the money to buy the house. Mr. Peters did not rebut this assertion. In accordance with Ms. Montgomery's claim, the provisions of section III state simply that "[t]he sum of $100,000 shall be paid to Petitioner" [Ms. Montgomery] from the sale of the house before the remaining proceeds are divided between the parties. There is no language in the Agreement as to what would happen if less than $100,000 remained after closing costs and mortgage satisfaction, so the parties apparently did not expect the excess would be less than $100,000.

They did, however, contemplate that there might be more than $100,000 remaining from the sale in the second provision of clause III, which states, "[t]he balance if any, shall be divided equally between the parties." The fact that there is language covering one circumstance, but not the other, suggests to the

court that the parties expected to receive at least $100,000 after closing on the house, and probably more. Ms. Montgomery's testimony supports this theory.

Ms. Montgomery's version of the facts are also reinforced by the dollar amounts involved with the sale of the house and the mortgage debts. The selling price on the house was $156,000. The original mortgage at the time of the closing was satisfied for $49,421.82. In determining the intention of the parties at the time the Agreement was formed, it should be noted that this mortgage amount would have been slightly higher when the Agreement was executed, six months before closing on the house. Accounting for "the usual costs of sale and pro-rations," as the Agreement directs to be paid from the proceeds, it is obvious that Ms. Montgomery would have calculated the selling price to leave her with about $100,000, the amount for which she bargained. If she had expected the loan from First Financial to also be paid from the sale proceeds, it would have been obvious that she would not receive the $100,000 she wanted. At the time the Agreement was drafted, the debt to First Financial was listed at $17,000. It was satisfied at the closing for $15,915.80. Deducting the two mortgage payoff amounts from the selling price, before accounting for closing costs, Ms. Montgomery would be left with $90,662.38. This result not only yields less than the parties agreed Ms. Montgomery would receive, it leaves no surplus to be divided, which is the only additional circumstance for which the contract provided. The final step, deducting closing costs and other incidentals, left Ms. Montgomery with only $76,285.42, far less than she bargained for. If the $15,915.80 for the second mortgage is added back into the final balance, Ms. Montgomery would have received $92,201.22, which is much closer to the original goal of the Agreement.

Furthermore, Mr. Peters testified that he asked Ms. Montgomery if the $156,000 selling price was enough to pay

off everything. She replied that she thought it was, and accepted the offer to sell for that amount. Mr. Peters did not testify that he asked her if she would be satisfied with what she would receive, but if it would be "enough to pay off everything." It is apparent that, because Ms. Montgomery's goal was to receive $100,000, and she gave the final acceptance on the selling price of $156,000, that she expected only the original mortgage of about $50,000 would be paid out of the sale proceeds. That is the only set of circumstances that would allow Ms. Montgomery to accept the selling price believing it was "enough to pay off everything" and still leave her with close to $100,000. The court finds it doubtful that she would have agreed to the selling price if she had expected the First Financial loan to be paid from the proceeds.

Further interpretation along the same lines may be ascertained from using contract interpretation rules on the language in the two controversial clauses of the Agreement. The first rule to be observed is that a contract is to be interpreted from its entirety, not detached portions, to resolve the meaning of a particular section. *In re Alloy Manufacturing Company Employees Trust v. Minnotte*, 411 Pa. 492, 192 A.2d 394 (1963). In the instant case, an overview of the Agreement suggests that the parties had decided to take only the assets they earned or brought to marriage, including cars, pension plans, insurance policies and bank accounts, when they divorced. There are no provisions for support or alimony, or for one ex-spouse to claim retirement or insurance benefits from the other. The alleged intention concerning the sale of the house was for Ms. Montgomery to get $100,000 because she had provided the money to purchase the house. This unrebutted representation is analogous to the overall tone of the agreement, which shows that each party claimed only property that he or she brought to the marriage.

Additionally, contract interpretation rules provide that more weight should be given to specific terms than general language.

"[S]pecific provisions ordinarily will be regarded as qualifying the meaning of broad general terms in relation to a particular subject. *In re Alloy Manufacturing Company Employees Trust v. Minnotte*, *supra* at 496. Clause III lists "mortgage(s)" to be paid, but does not list the name of any financial institution that may hold a mortgage on the house or the amount of any mortgage. It is general, possibly boilerplate, language. Clause IV, however, specifically lists the loan to First Financial, the estimated amount of the loan due, and names Mr. Peters to pay it. This specific language regarding the loan to First Financial more clearly shows the intention of the parties on this matter than the general language in the clause above stating that existing "mortgage(s)[1]" would be paid.

Looking further at the language in these two clauses, it is inconsistent that the Agreement provides a specific provision for payment of the second mortgage, but no details for payment on the original mortgage, which was outstanding at a much higher amount. If both mortgages were to be given the same treatment, that is, to be satisfied from the proceeds received at closing as clause III states, then why was there a need for clause IV to specifically reference the second mortgage from First Financial? The argument that it was listed because Mr. Peters was to pay that particular loan only until closing fails, because clause III addresses this issue, directing that Mr. Peters "shall continue to make the mortgage payments and pay the utilities thereon," then states that "the proceeds from the sale shall be subject to . . . any balance existing on the mortgage(s)."

[1]The court notes that the optional "(s)" on the end of "mortgage(s)" is immaterial in determining whether the parties intended for one mortgage or several mortgages to be paid, as this appears to be part of the boilerplate and it would be difficult to determine if it was left in place intentionally or its omission was an oversight, as there are various other typographical errors throughout this agreement.

The only reason given why the second mortgage was listed separately under Debts and Financial Obligations in clause IV is Ms. Montgomery's credible assertion that she thought the loan from First Financial was simply a credit account, not a second mortgage. According to language on the first page of the Equity Loan Plan Agreement from First Financial, it appears that either checks or something similar to a credit card was issued to access the funds available through the loan. Apparently, this was an open-end line of credit that could be drawn from whenever there were funds in the account, with a monthly minimum payment plan that worked to replenish the account, similar to a credit card. Ms. Montgomery's claim that she did not understand this loan was actually a second mortgage is plausible in light of the circumstances. Mr. Peters' assertion that Ms. Montgomery handled the household finances is without merit on this issue because no specific testimony was given on what this task entailed. If her financial experience consisted of depositing paychecks and paying bills, there is no reason to assume that she would necessarily be imbued with the financial savvy to understand complicated loan documents.

The final step of contract interpretation instructs that remaining ambiguities be construed against the drafter. *In re Unisys Corp. Retiree Medical Benefits ERISA Litigation*, WL 284079 (E.D. Pa. 1994). However,

> "[a]mbiguities should be construed against the drafter only if *after* application of ordinary rules of construction and consideration of extrinsic evidence, the ambiguities remain. If we can ascertain the meaning of the language using ordinary principles of interpretation, there is no need to construe it in any other manner."

Id. at *19 (emphasis added).

The court finds no reason to reach this default rule in the instant case. The intent of the parties can be ascertained from

their testimony and through substantive interpretation of the contract.

In a related matter, both parties testified that Mr. Peters gave Ms. Montgomery a check in the amount of $9360 after the closing on the house. Mr. Peters received this amount from his employer for moving expenses. Ms. Montgomery claims they agreed to use this money to pay the realtors' fees of $9360, and none of it should be credited to the amount Mr. Peters owes her for the First Financial loan. Mr. Peters agrees that the check to was to cover realtors' fees, but that he gave it to Ms. Montgomery to help bring her closer to the $100,000 she wanted from the sale. There is nothing in the written contract specifically addressing this issue.

The court determines that realtors' fees fall under "usual costs of sale," covered in clause III of the Agreement. The parties are equally liable for these costs; the Agreement provides they were to be paid from the proceeds before Ms. Montgomery would receive $100,000. The court further finds that the source of the money is immaterial. The check covered all of the realtors' fees, of which each party was liable for half. Therefore, because Mr. Peters gave the entire amount to Ms. Montgomery, he will receive credit for one-half of that amount, which is $4680, toward the debt to Ms. Montgomery for the amount of the First Financial loan paid from the sale proceeds.

In conclusion, the testimony from both parties, as well as the monetary amounts involved, lead the court to believe that the intention of the parties at the time this Agreement was executed was for Ms. Montgomery to receive close to $100,000 after the house was sold, and for Mr. Peters to pay back the loan to First Financial. Therefore, Mr. Peters shall reimburse to Ms. Montgomery the amount from the sale proceeds that were used to satisfy the second mortgage from First Financial, which was $15,915.80, less the amount of $4680 for credit from his share of the realtors' fees given to

Ms. Montgomery, leaving an amount of $11,235.80 owed by Mr. Peters to Ms. Montgomery.

The final issue before the court is whether Ms. Montgomery is entitled to costs and attorney's fees in pursuing this matter. The court finds that she is not entitled to such compensation because Mr. Peters had a legitimate dispute over the language in the Agreement, which was drafted by Ms. Montgomery's attorney in Wisconsin.

ORDER OF COURT

AND NOW, this 9th day of February, 2000, after hearing on this matter held January 24, 2000,

IT IS HEREBY ORDERED THAT Vernon Peters will pay the sum of $11,235.80 to his ex-wife, Veva Montgomery, as reimbursement for the satisfaction of a second mortgage to First Financial Credit Union from the proceeds on the sale of their marital home. Said payment shall be made in full within sixty (60) days of this date. In the event payment is not received by Ms. Montgomery, she shall file a Praecipe with the Prothonotary to enter judgment against Mr. Peters in the amount of $11,235.80.

IT IS FURTHER ORDERED THAT the claim of Veva Montgomery for attorneys fees, costs and expenses is **DENIED.**