A written contract that is clear and unambiguous must be strictly construed. *Robert F. Felte v. White,* 451 Pa. 137, 302 A.2d 347 (1973). When interpreting a contract, the intention of the parties must be determined, and in ascertaining that intent effect must be given to all the provisions of the contract. Id. The written agreement[1] and the intent[2] of the parties is clear and unambiguous. If the buyer should fail to obtain financing, he is entitled to a return of his down payment by the settlement date.

The parties have the right to make their own contract and it is not the function of the Court to rewrite it, or give it a construction in conflict with the accepted and plain meaning of the language used. Id.

A mortgage financing clause is an important condition in a written agreement of sale which must be given effect unless altered by the parties or specifically waived by the party in whose favor the condition runs. Id. The waiver of such a contractual right - the return of the escrow deposit - must be a clear, unequivocal and decisive act of the party. Id. There was no such waiver of this right by Houpt. Although the specified date was subsequently extended by oral agreement of the parties, this extension did not cause a waiver of the right of Houpt to the return of his down payment in the event that he complied with all terms of the agreement but was unable to obtain financing. Id.

Although the contract does not state that time is of the essence, it is necessarily implied from the language of the contract and from the clear action of the parties. *Tanenbaum v. Sears, Roebuck and Co.,* 265 Pa. Super. 78, 401 A.2d 809 (1979). The provision declaring the contract null and void if mortgage arrangements were not completed by a certain date is a sufficient expression of

[1]"Mortgage loan application shall be made through the office of Valley Bank and Trust Company who for purpose of negotiating for the said mortgage loan, shall be considered that agent for the Buyer, and if said mortgage loan cannot be obtained, this agreement shall be NULL AND VOID and all deposited moneys shall be returned to the Buyer on or before date for settlement as provided herein, subject however to the provisions in paragraph #4(e) and #4(f)."

[2]On page 6 of her deposition, Judith Harding, Agent for the Seller stated "... and I stated to him that if the contract was null and void, if he wasn't going to go through with it, then he would be entitled to his money back."

the intent of the parties to make the specified date the essence of the contract. *Shumaker v. Lear et al.;* 235 Pa. Super. 509, 345 A.2d 249 (1975).

By mutual consent, the parties to an unperformed contract may effectuate an extension of time for its performance. *Cosgrove v. Kappel,* 9 Chest. 343, affd. 403 Pa. 108, 168, A.2d 319 (1960). The buyer and the seller orally agreed to extend the time for approval of the mortgage. After the extended date passed, the Fittrys offered to take back a purchase money mortgage. Houpt was not bound to accept this offer.

A purchaser has the right to seek his own mortgage and cannot be compelled to accept the type of financing which the vendor happens to think is reasonable. *Tieri v. Orbell,* 192 Pa. Super. 612, 162, A.2d 248 (1960). *King v. Clark,* 183 Pa. Super. 190, 130 A.2d 245 (1957).

ORDER OF COURT

June 9, 1983, the prayer of Harold O. Fittry and Betty L. Fittry, Plaintiffs, for a Declaratory Judgment ordering that a $5000 deposit made by Kurt D. Houpt, defendant, to Century 21 Lincoln Associates, Ltd., Realtors to be held in escrow pursuant to a written agreement for the sale of Plaintiffs' real estate to Defendant, should be paid to Plaintiffs is denied and Defendants prayer that it would be returned to him is granted, and

IT IS ORDERED that a Declaratory Judgment be entered that Century 21 Lincoln Associates, Ltd. shall pay the said sum of $5,000 to Kurt D. Houpt, Defendant.

Costs shall be paid by Plaintiffs.

CLEVENGER V. WARRENFELTZ, C.P. Franklin County Branch, F.R. 1980 - 212-S

Support - Paternity - URESA - Jurisdiction of Pennsylvania Court

1. Where a support action was transferred to Maryland where defendant

resides and defendant denies paternity, an order dismissing the case by the Maryland Court after a proceeding at which plaintiff did not appear does not bar a new action in Pennsylvania.

2. Where the issue of paternity is raised, a Court is without power to act on the question of support until the issue of paternity is resolved.

E. Franklin Martin, Esquire, Counsel for Plaintiff

Kenneth E. Hankins, Jr., Esquire, Counsel for Defendant

OPINION AND ORDER

KELLER, J., June 23, 1983:

The genesis of this paternity action was the birth of a child to the plaintiff, Catherine Ann Clevenger, on June 22, 1979. The plaintiff filed a complaint on March 3, 1980, against Robert Lee Warrenfeltz alleging that he was the father of Christy Lee Clevenger and owed a duty of support to the child. On March 5, 1980, the proceeding was transferred to Maryland, the domicile of the defendant, under the provisions of the Revised Uniform Reciprocal Enforcement of Support Act, 42 Pa. C.S.A. Sec. 6741 to Sec. 6780, which Act was adopted by Maryland, Code 1957, art. 89C, Sec. 1 to Sec. 39.

The defendant appeared at the hearing scheduled in the Maryland Courts on August 22, 1980, and denied paternity or owing a duty of support to Christy Lee Clevenger. The Honorable Fred C. Wright, III, entered the following Order on that date:

> "It is hereby ordered by the Circuit Court for Washington County, Maryland, this 22nd day of August, 1980 that the petition in the above entitled case is dismissed, as paternity has not been established and respondent denies such paternity."

In Franklin County the plaintiff filed a new complaint for support on January 31, 1983, and a support conference was scheduled and held on February 22, 1983. The defendant denied paternity and a trial without jury on the issue of paternity was held on May 16, 1983. The unchallenged evidence presented by the plaintiff disclosed that she and the defendant began having sexual intercourse in July of 1978 and that she had intercourse with no one other than the defendant from July of 1978 until the birth of Christy on June 22, 1979. The plaintiff testified that her last menstrual cycle was on October 8, 1978 and again that she had intercourse only with the defendant between that date and

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November 8, 1978 which was the anticipated date for the beginning of her next menstrual cycle.

Defendant presented no evidence to contradict the testimony of the plaintiff concerning their relationship during the year prior to Christy's birth. However, the defendant raised the legal issue of the applicability of the Maryland statute of limitations for paternity actions. Defendant contends that the Maryland statute prohibits the bringing of paternity actions more than two years after the birth of the child. To effectively present the opposing positions to the Court on the legal issue, briefs were exchanged between the parties and argument was heard by this Court on June 2, 1983. The issue of paternity is now ripe for disposition.

We understand defendant's positions to be that the Order entered by Judge Wright on August 22, 1980, forever dismissed plaintiff's claim for support because she failed to appeal from the Order which was a final determination, and now her current action is barred because the statute of limitations has run. The crucial question is whether the Maryland Court did, in fact, on the merits dismiss plaintiff's claim for support.

Provision is made in URESA for situations such as this where the putative father contests paternity:

> "If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated."

42 Pa. C.S.A. Sec. 6767.

In the case at bar, plaintiff did not appear before Judge Wright on August 22, 1980, when defendant appeared and contested paternity. Clearly this was not a case where the presence of the plaintiff was not necessary. As the mother of the child for whom support was sought her testimony was critical to any determination of paternity. There is no evidence in the record to even suggest that the defendant presented his case to Judge Wright, and it is unreasonable to conclude that Judge Wright nonetheless made an ex parte determination as to paternity in favor of the defendant and dismissed the action on the merits.

An examination of the record in this case and the applicable provisions of URESA supports our conclusion that the Order entered by the Maryland Court effectively adjourned the hearing pursuant to 42 Pa. C.S.A. Sec. 6767 since the plaintiff was not before the Court and indeed could not be made to submit herself to the jurisdiction of the Maryland Court for purposes of determining the paternity issue. The purpose of URESA is to enforce duties of support, 42 Pa. C.S.A. Sec. 6741(b). Finding that no duty of support could be enforced absent a prior determination of paternity, the Maryland Court was without power to act.

There can be no doubt that plaintiff met her burden of establishing paternity at trial. Furthermore, plaintiff testified that the child was conceived in Pennsylvania and that she and Christy have resided in Pennsylvania since the child's birth. The applicable statute of limitations in actions to determine paternity in Pennsylvania is found at 42 Pa. C.S.A. Sec. 6704(e):

> "All actions to establish the paternity of a child born out of wedlock brought under this section must be commenced within six years of the birth of the child, except where the reputed father shall have voluntarily contributed to the support of the child or shall have acknowledged in writing his paternity, in which case an action may be commenced at any time within two years of any such contribution or acknowledgement by the reputed father."

Christy is now just four years old. It is clear that plaintiff's action for support is timely according to the Pennsylvania statute.

The assertion by defendant of a defense based upon a Maryland statute of limitations is without merit. The defendant appeared before this Court on May 16, 1983, and a non-jury trial was held on the issue of paternity. No objection was made by the defendant to this Court's jurisdiction over him. The proceeding was a Pennsylvania one to which Pennsylvania law applies. We conclude that the defendant, Robert Lee Warrenfeltz, is the father of Christy Lee Clevenger and owes a duty of support to her.

ORDER OF COURT

NOW, this 23rd day of June, 1983, the Court finds that Robert Lee Warrenfeltz is the father of Christy Lee Clevenger born June 22, 1979 to Catherine Ann Clevenger.

The Domestic Relations Division of the Court will schedule a support conference before a Hearing Office, give due notice of

the same to the plaintiff and defendant herein and establish the sum to be paid by the defendant for the support of his daughter, Christy Lee Clevenger, commencing March 14, 1983.

IN RE: GEYER ESTATE, C.P. Franklin County Branch, No. 54 - 1982

Orphan's Court - Antenuptial Agreement - Breach of Agreement

1. The person seeking to nullify an antenuptial agreement must overcome the presumption of validity of the agreement.

2. To nullify an antenuptial agreement, clear and convincing evidence must be shown that neither a reasonable provision was made for the spouse nor full and fair disclosure of decedent's worth.

3. The test of reasonableness is whether the agreement is sufficient to enable the widow to live comfortably after decedent's death in substantially the same way as she had previously lived.

4. Provisions made outside an antenuptial agreement are not relevant to the issue of reasonableness.

5. The highest degree of good faith on the part of both parties is required and if there is any failure of performance, the consideration for the agreement also fails.

John McD. Sharpe, Jr., Esquire, Counsel for Petitioner

Thomas J. Finucane, Esquire, Counsel for Respondent

OPINION AND ORDER

KELLER, J., March 22, 1983:

George W. Geyer died testate May 1, 1982. His Last Will and Testament dated July 13, 1981 was duly probated and letters testamentary were issued by the Register of Wills of Franklin County, Pennsylvania to George W. Geyer, III on May 7, 1982. The decedent's Last Will and Testament was recorded in Franklin County Will Book Vol. 96, Page 55. On July 2, 1982, Rosalie S.

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