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Kerlin v. Kerlin

Edward J. Kerlin, Plaintiff v. Danelle E. Kerlin, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch Civil Action No. 2011 - 4102

HEADNOTES & LEGAL POINTS

Contract: Property and Separation Agreements; Breach of Contract

1.A property settlement agreement between husband and wife will be enforced by the courts in accordance with the same rules of law applicable to ascertaining the validity of contracts generally.

2.A breach of contract claim requires a showing of: 1) the existence of a contract, 2) breach of a duty imposed by the contract, and 3) resulting damages.

3.When construing agreements involving clear and unambiguous terms, the court only needs to examine the writing itself to give effect to the parties' understanding. The court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation. When the terms of a written contract are clear, this court will not re-write it to give it a construction in conflict with the accepted and plain meaning of the language used.

4.The purpose of a contract is to set forth obligations that each party has to meet in order to secure performance by another party and, in this way, a contract allows parties to attain their respective desired goals. Where a party to a contract does not perform within the specified time period as agreed in the contract, an argument that this was not truly a deadline, but merely a way to ensure that the obligation occurred at some point in the near future, is disingenuous. Any argument that the time period set forth in the contract did not reflect the intent of the parties and, therefore should be ignored by the court, would obviate the need for setting forth such terms and deadlines in contracts.

5.When one contract provision contains a time deadline while another provision does not have any specific time deadline for completion, it indicates a conscious intention by the drafters and parties to impose a time deadline on only one provision. Such drafting belies a conscious intent to impose a time obligation on only one provision and strongly suggests that there was a specific intent to have the obligations under that provision occur quickly.

6.When parties agree that the separate obligations contained in an agreement shall be deemed independent, there is no basis for arguing that certain obligations must be performed before others when there is no condition precedent. As such, an argument that money obtained from a Qualified Domestic Relations Order was necessary to meet an obligation to refinance the marital property will not be entertained by the court when it is not supported by the terms of the contract.

Contract: Property and Separation Agreements; Remedy for Breach

1.Damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made. If loss results other than in the ordinary course of events, there can be no recovery for it unless it was foreseeable by the party in breach because of special circumstances that he had reason to know when he made the contract.

2.When a party to a contract 1) knows that the other party is having difficulty obtaining financing, as required by the contract, 2) invades his IRA in reliance upon that obligation, and 3) fails to inform the other party that his intent was to purchase a new home, his failure to re-pay his IRA is not a foreseeable or probable result of the breach. This is particularly true where no evidence was presented that the non-breaching party had signed a contract to buy a home or was involved in a binding negotiation before learning that the breaching party was having difficulty fulfilling contractual obligations.

3.While a party to a contract should be able to rely upon the contract, he cannot be awarded damages that were not a foreseeable or direct result of the breach. Examples of a direct result of breach in this context may have been costs incurred renting a home while waiting for the refinance to finalize, a lost opportunity to purchase a home, or a higher interest rate on a mortgage. When a party's intention to buy another home is not known to the other party at the time of signing the contract and there was no evidence to show that the home had to be purchased immediately, invading an IRA account in order to obtain the funds to purchase a home is an unforeseen result of breach. This is further supported when there is no evidence of any set contract date by which the home must be purchased or any competing offers on the desired house.

Appearances:
Janice M. Hawbaker, Esq., Attorney for Petitioner
Abigail Salawage, Esq., Attorney for Petitioner
Edward J. Kerlin, Petitioner / Plaintiff
Martha B. Walker, Esq., Attorney for Respondent
Danelle E. Kerlin, Respondent / Defendant

OPINION

Before Meyers, J.

On December 13, 2012, the Petitioner, Edward J. Kerlin, filed a Petition for Enforcement of Property and Separation Agreement with this Court. Hearing was held on April 16, 2013 and April 17, 2013. The Court allowed each party time to file briefs which were to be submitted by May 8, 2013 for the Petitioner and May 28, 2013 for the Respondent.

FACTS

Edward Kerlin and Danelle Kerlin were married on October 15, 1988 and divorced in 2012. While in the process of divorcing the parties entered into a Property and Separation Agreement, (hereinafter "PSA")[1], on June 14, 2012.[2] To offer some guidance as to the relevant portions of the Property and Separation Agreement, the Court has reproduced the most pertinent portions of the agreement:

> Paragraph 11(a): "The parties hereto acknowledge and agree that they are owners of a certain improved tract of real estate located at 15977 Mountain Green Road, Spring Run, Franklin County, Pennsylvania, which is presently encumbered with mortgage to PHH Mortgage. For and in consideration of the mutual covenants and agreement herein contained in the body of this instrument, Husband and Wife further stipulate and agree that Wife shall refinance the mortgage so as to remove Husband's name from any liability therefore and Husband shall simultaneously execute a deed conveying all of his right, title and interest in the real estate to Wife. Wife shall refinance within sixty (60) days of this Agreement date."
>
> Paragraph 12(d): "Husband agrees to rollover from his 401(K) account with Landis Cinetic the sum of Twenty Thousand Dollars ($20,000.00) to Wife's Davis IRA. Husband's counsel shall prepare the necessary Qualified Domestic Relations Order."

There were no time limits or additional conditions attached to either paragraph. Both parties were represented by counsel during the negotiation of this agreement.

Mrs. Kerlin stated that, at the time the PSA was signed on June 14, 2012, she believed she could re-finance within sixty days as required under the agreement. At the time of signing, she did not have a commitment letter with conditions for approval and did not yet know that she needed $20,000. Mrs. Kerlin further stated that she did not even apply for a mortgage until approximately one week after she signed the PSA. Although she stated that she had emailed with the bank, she did not say which bank and did not present any evidence of the emails. She also went on the PSECU website to use the mortgage calculator in order to obtain information as to what the interest rates and payments *might* be. Based on this mortgage calculator, she believed that she knew what she would need and what she could afford.

In an email to her counsel, dated June 28, 2012,[3] Mrs. Kerlin wrote that she was approved for a mortgage through her credit union but was also waiting for a response from Juniata Valley Bank. Mrs. Kerlin's email did not make any mention of needing additional money to obtain the mortgage or hint that she would not be able to refinance by the agreed upon date of August 14, 2012. On July 3, 2012 she met with Juniata Bank but decided not to use them for her mortgage. On July 5, 2012 she informed PSECU that she wanted to use their institution for her mortgage. Mrs. Kerlin was unsure whether she could have obtained a mortgage before the PSA was signed although she did not explain why she held this belief.

1 Petitioner's Exhibit 1.
2 The PSA was signed by Mr. Kerlin on June 7, 2012 and by Mrs. Kerlin on June 14, 2012.
3 Petitioner's Exhibit 3.

On July 7, 2012, Mrs. Kerlin first learned that she needed the $20,000 in order to refinance with PSECU.[4] She did not contact Mr. Kerlin until July 24, 2012 regarding the money from the Qualified Domestic Relations Order (hereinafter "QDRO") approval referenced in Paragraph 12(d) of the PSA. She first contacted her attorney. She stated she did not know that PSECU would add this condition once she had applied for the mortgage. Mrs. Kerlin acknowledged that the PSA did not have a requirement that she obtain the QDRO money before the re-finance and that there was no date at all for the QDRO transfer to take place. In her opinion it was a quid pro quo as to what would occur. Mrs. Kerlin believed that she probably could have gotten a loan without paying $20,000 but she did not know that for a certainty. After receiving that letter, she contacted Attorney Walker, Davis IRA fund, and Morgan Stanley.

At the time of signing the PSA, Mr. Kerlin was unaware that Mrs. Kerlin needed the $20,000 from the QDRO in order to afford the mortgage. On July 24, 2012, Mr. Kerlin learned via text message that Mrs. Kerlin was relying on the money from the QDRO in order to refinance the marital home and was waiting for this money to be transferred. Mr. Kerlin stated that there was no condition in the agreement that the QDRO be processed at any particular time but once he became aware that Mrs. Kerlin needed the $20,000, he did everything he could to get the QDRO signed. For instance, he called his company's human resources department, signed it the same day it was approved, and dropped it off to Attorney Hawbaker that same evening of July 27, 2012. Mr. Kerlin stated that he still expected Mrs. Kerlin to meet the time requirements set forth in the PSA. It took from July 2, 2012 to July 26, 2012 for the QDRO to be approved by his company's human resources department. When presented with Respondent's Exhibit 4, which was a letter from PSECU regarding Mrs. Kerlin's mortgage application dated July 6, 2012, Mr. Kerlin stated that he did not recall seeing, in writing, that Mrs. Kerlin needed $20,000 to obtain the mortgage.

Janice Hawbaker, Esquire, stated that Attorney Walker prepared the PSA and that there was no inclusion that Mrs. Kerlin's obligation to refinance was contingent on receiving the $20,000 rollover from the 401(k). Attorney Hawbaker testified that she prepared the QDRO and was not aware that Mrs. Kerlin needed the $20,000 to refinance at the time of the QDRO preparation. Attorney Hawbaker testified that Petitioner's Exhibit 2 was a letter that she had sent to the plan administrator with a draft QDRO for approval. She learned from her client, Mr. Kerlin, on July 25 or July 26, 2012 that Mrs. Kerlin needed the money from the QDRO.[5] At that point, she got in touch with the plan administrator and had Mr. Kerlin sign the approved QDRO on July 26, 2012. She denied ever seeing the letter from PSECU about Mrs. Kerlin's mortgage approval (Respondent's Exhibit No. 4). Attorney Hawbaker recalled the email correspondence between her and Attorney Walker's office on June 28, 2012 discussing that Mrs. Kerlin was approved for a mortgage through a "credit union" but there was no reference to the $20,000 needed for the refinance in this correspondence. Due to the email correspondence on July 26, 2012 in which Mrs. Kerlin stated she was approved for a mortgage, Attorney Hawbaker believed that she had financing but no commitment letter was provided.

On August 1, 2012 Mr. Kerlin received a second text from Mrs. Kerlin stating that she needed $20,000 and then the financing would go through. On August 5, 2012, Mr. Kerlin invaded his IRA to remove $129,644.91[6] in order to purchase a house. Mr. Kerlin stated that he planned to re-pay the IRA within sixty days to avoid paying taxes on it. He further planned to get a loan on the property and use that to re-pay his IRA. On August 8, 2012, Mr. Kerlin and Mrs. Cressa Kerlin purchased a home for $245,500 which they paid for using $129,000 from the IRA and the remainder from Mr. Kerlin's father. Mr. Kerlin informed the Court that he needed to provide cash for the purchase of the home because it was a foreclosure property.

On the date he invaded his IRA, August 5, 2012, Mr. Kerlin's name was still on the mortgage for the marital home. Mr. Kerlin testified that he was not able to close on his new home because his name was still on the mortgage for the previous house. Although he completed the mortgage application, he was under the impression it could not be processed until his name was removed from the previous mortgage. Mr. Kerlin testified that, as a result, he was not able to obtain a mortgage in sufficient time to repay his IRA and suffered tax consequences. It was only after Mr. Kerlin had taken money out of his IRA that Attorney Hawbaker became aware of his action and told Attorney Walker's office.

Mr. Joe Luisi, a loan officer with Mortgage Network, was working with Mr. Kerlin and Mrs. Cressa Kerlin to obtain a loan. He did not recall telling Mr. Kerlin that his mortgage application could not go forward because his name was on another mortgage. Mr. Luisi did not believe that Mr. Kerlin was delaying in obtaining a mortgage. Mr. Luisi seemed unwilling to give information at this hearing and stated that the underwriter has more knowledge of

4 Letter from PSECU as Respondent's Exhibit 4.
5 Attorney Hawbaker was on vacation the week prior to this so she learned of it when she returned.
6 Petitioner's Exhibit No. 5.

whether something could prevent the mortgage to go through. Mr. Luisi also worked with Cressa Kerlin throughout the mortgage application process. He stated that there was no conversation that a thirty day time period was required between settlement of the old mortgage and the new. He did acknowledge that there is generally a three day rescission period when re-financing a house in which you live. He further stated that kitchen repairs had to be completed on Mr. Kerlin's home before settlement could take place. Mr. Luisi's testimony was very limited as he claimed not to have knowledge of most aspects of the process, claiming that it was the underwriter who possessed such details.

Mrs. Cressa Kerlin, Mr. Kerlin's current wife, owns the newly purchased home with him. Cressa stated that she was usually the one in contact with Mr. Luisi and that they usually spoke over the phone. She believed that in order to purchase the home, they needed Mr. Kerlin's name to be removed from the previous mortgage and needed to make the new house habitable by putting in a toilet and sink. Cressa did not have any letters or written evidence in her possession from Mr. Luisi or the underwriter as to what was required by the lender in order to obtain approval for the mortgage. It was her understanding that she could not obtain a commitment letter from the lender until the application process had begun and they could not submit the application until Mr. Kerlin's name was off the mortgage.

Although Mrs. Kerlin was required to refinance by August 16, 2012, she did not pay off the marital mortgage until September 6, 2012. Mrs. Kerlin received the check from ADP into her bank account on August 30, 2012 and signed a new commitment letter on September 4, 2012 as her previous rate had expired. Mr. Kerlin stated that he did not know why Mrs. Kerlin's refinancing was not going through during this time even though he received the second text on August 1, 2012. Mr. Kerlin applied for a mortgage on September 11, 2012. Although Mr. Kerlin acknowledged that his wife usually spoke with Mr. Luisi, Mr. Luisi had indicated to her that the mortgage application could not be processed until his removal from the previous mortgage. Mr. Kerlin acknowledged that he did not have anything in writing to support this statement from Mr. Luisi or the underwriter. On August 8, 2012 Mr. Kerlin and Mrs. Cressa Kerlin purchased their home and on October 6, 2012 they went to settlement. Mr. Kerlin was required to re-pay his IRA by October 1, 2012.

Mr. Kerlin acknowledged that he was required to perform certain repairs on the home before he could obtain financing. Mr. Kerlin believed that he could have had the repairs completed in time to re-pay the IRA but stalled the contractor. Subsequently, the house did not pass inspection due to new requirements from the lender. As a result, Mr. Kerlin was delayed in going to settlement. Mr. Kerlin further stated that if he could have started construction one month earlier, then he could have had the repairs done in time. Instead, he waited on the construction because he was waiting for Mrs. Kerlin to refinance. Mr. Kerlin testified that because Mrs. Kerlin was late in complying, she caused him delays in starting his repairs on his new house. But for this delay, Mr. Kerlin seemed to suggest that he may have been able to settle in time to be able to pay his IRA back with the money from the mortgage. Mrs. Cressa Kerlin also stated that the contractor informed her he could have finished their house on time if they had not told him to slow down once the date for repaying the IRA had passed.

As a result of his inability to replace the funds withdrawn from his IRA account, Mr. Kerlin owed $42,094 according to his 2012 tax return.[7] Mr. Kerlin also submitted tax form 1040 for 2012 which calculated Mr. Kerlin's tax liability without the IRA distribution.[8] The 1040 form reflected a refund of $6,147.00. In order to repay the tax liability Mr. Kerlin stated that he borrowed $43,000 to pay the tax liability - the Susquehanna Bank loan document stated that the loan was in the amount of $88,900.[9] The interest rate is 2.99% for the first two years. As Mr. Kerlin is also requesting attorney's fees, a print out of the fees and costs expended by Attorneys Hawbaker and Salawage throughout this case, not all of which were a result of Mrs. Kerlin's alleged breach, were submitted to the Court.[10] The total amount incurred due to the alleged breach was $1,401.25, as represented by Petitioner's counsel, but did not include fees for the hearings on April 16-17, 2013.

Mrs. Kerlin stated that she did not how Mr. Kerlin had paid for his house or when he had to pay back the IRA funds. She further stated that she does not have any further assets because she used her Morgan Stanley and Davis IRAs on something else.[11] Although she has a mortgage on her home, there is significant equity as it is mortgaged for $125,000 and the home was appraised at $270,000.

7 Petitioner's Exhibit No. 6.
8 Petitioner's Exhibit No. 8.
9 Petitioner's Exhibit No. 7.
10 Petitioner's Exhibit No. 9.
11 The Court was not presented with any evidence as to when or for what purpose Mrs. Kerlin removed assets from these two retirement accounts.

DISCUSSION

1.Did Wife breach the Property and Separation Agreement?

Marital settlement agreements between husband and wife will be enforced by the courts in accordance with the same rules of law applicable to ascertaining the validity of contracts generally. Vacarello v. Vacarello, 757 A.2d 909, 913 (Pa. 2000); Kleintop v. Kleintop, 436 A.2d 223, 225 (Pa. Super. 1981). A breach of contract claim requires a showing of: 1) the existence of a contract, 2) breach of a duty imposed by the contract, and 3) resulting damages. Sullivan v. Chartwell Inv. Partners, LP, 873 A.2d 710, 716 (Pa. Super. 2005). Here, the parties signed a property and separation agreement on June 14, 2012, therefore, there is no dispute by either party that a valid contract was formed. The Vacarello court referenced the appropriate standard in construing marital settlement agreements as stated below:

> When construing agreements involving clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. The court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation. When the terms of a written contract are clear, this Court will not re-write it to give it a construction in conflict with the accepted and plain meaning of the language used.

Vacarello, 757 A.2d at 914 (citing Carosone v. Carosone, 688 A.2d 733 (Pa. Super. 1997)).[12]

As the terms of the agreement are clear and unambiguous that Mrs. Kerlin was to refinance within sixty days of signing the PSA, the Court does not find any reason to parse the terms of the contract to determine their meaning. It is clear from the precise wording that there was a time deadline on the refinancing obligation. Any argument that this was not truly a deadline, but merely a way to ensure that the refinancing occurred at some point in the near future, is disingenuous. Contracts are written to give the parties guidelines as to what their own obligations are as well as how they can expect the opposing party to perform. An obvious benefit of agreeing to terms of a contract is that it allows each party to rely upon the obligations set forth within and allows them to act based upon the expected performance of the other party. Especially in the context of a divorce, many parties desire to move on and have some finality to the process. It is expected that at least one party, the party moving out of the marital residence, needs to find new housing. This is not a surprise. Any argument that the time period set forth in the contract did not reflect the intent of the parties and, therefore should be ignored by the Court, would obviate the need for setting forth such terms and deadlines in contracts. In fact, it would call into question the validity of all contracts. The purpose of a contract is to set forth obligations that each party has to meet in order to secure performance by another party and, in this way, a contract allows parties to attain their respective desired goals. For this Court to say that a specified time period in the PSA was not actually intended by the parties, would make a mockery of all contractual agreements between parties and render contract drafting a useless art.

Furthermore, the Court finds it noteworthy that the refinancing provision contained a time deadline while the QDRO provision did not have any specific time deadline for completion. This indicates a conscious intention by the drafters and the parties to impose a time deadline on one provision and not another, thereby suggesting that time was a concern only with regard to refinancing the marital home. Mrs. Kerlin cannot now argue that the lack of a "time is of the essence" clause shows that the refinancing obligation was not particularly time sensitive. The drafting of the PSA belies an intent to impose a time obligation on one provision and not another which strongly suggests that there was a specific intent to have the refinancing occur quickly. As a result, the Court finds that Mrs. Kerlin breached the PSA when she failed to refinance the martial home within sixty days of signing the PSA as required by Paragraph 11(a).

Mrs. Kerlin further argues that the "delay" in processing the QDRO resulting in her obtaining the $20,000 later than she desired, caused her breach. Paragraph 29 of the PSA states,

> "Each party shall, at any time and from time to time thereafter, take any and all steps and execute, acknowledge and deliver to the other party any and all further instruments and/or documents that the other party may reasonably require for the purpose of giving full force and effect to the provisions of this Agreement."

Mr. Kerlin testified before this Court that, at the time of making the agreement, he did not know Mrs. Kerlin required

12 Although the Vacarello court cited to Carosone in recognition that it stated the appropriate standard, the Vacarello court stated that the Carosone court erred in its application of that standard to the marital settlement agreement in that case. Id.

this money to refinance and once she made him aware of this fact, he acted pursuant to Paragraph 29 in taking numerous steps to follow up with the QDRO through his plan administrator and sign the necessary documents as soon as he received them. There may have been some delay due to multiple parties taking summer vacation but this was clearly beyond Mr. Kerlin's control. Furthermore, Paragraph 31 of the PSA states that,

> The parties agree that the separate obligations contained in this agreement shall be deemed independent…the failure of any party to meet his or her obligations under any provision of this agreement, with the exception of the satisfaction of the conditions precedent, shall in no way void or alter the remaining obligations of the parties.

This paragraph clearly states that, unless there is a condition precedent, each obligation that the parties agreed to, is an independent obligation. As a result, Mrs. Kerlin's argument that she needed the QDRO money in order to meet her obligation to refinance, is not supported by the terms of the contract. Her obligation to refinance was not, in any way, connected to her receipt of the QDRO funds. Paragraph 12(d) of the PSA merely states that "Husband agrees to rollover from his 401(K) account with Landis Cinetic the sum of Twenty Thousand Dollars ($20,000.00) to Wife's Davis IRA. Husband's counsel shall prepare the necessary Qualified Domestic Relations Order." Unfortunately for Mrs. Kerlin, there was no provision in the contract stating that her obligation to refinance was conditional upon her receipt of the QDRO funds.

The Court believes Mrs. Kerlin's testimony that she was not aware PSECU would have a condition for $20,000 but Mrs. Kerlin acknowledged that she likely could have obtained another loan that did not require a $20,000 down payment. There was evidence that Mrs. Kerlin had applied to multiple institutions but chose to go with PSECU for reasons that she believed would be beneficial to her without regard for her contractual obligations and the deadline by which she agreed to perform. There is also evidence that Mrs. Kerlin had retirement accounts with SERS, Morgan Stanley and Davis but that she chose to use the Morgan Stanley and Davis IRAs for other purposes instead of using them to avoid breach. All of this indicates to the Court that Mrs. Kerlin could have avoided breach of the contract but chose to act differently. As this Court finds that Mrs. Kerlin breached the PSA, the next issue before the Court is determining appropriate damages.

2.Should Wife be Responsible for Damages to Husband including Tax Liability and Attorney's Fees?

Mr. Kerlin is requesting that the Court award him the following damages for Wife's alleged breach: 1) taxes owed due to failure to repay IRA, 2) interest on home equity loan obtained to pay off taxes, and 3) attorney's fees for enforcing the PSA. Based upon the language in Paragraph 25 of the PSA, the Court is not constrained to awarding any particular type of damages. Mrs. Kerlin makes the argument that she should not be held responsible for Husband's poor financial decision to borrow from his IRA account. Conversely, Mr. Kerlin argues that he was entitled to rely upon the terms of the contract in order to make decisions about his living arrangements and his future generally. If Mrs. Kerlin had performed her obligation under the contract, Mr. Kerlin argues he would have been able to repay his IRA as he intended.

Restatement (Second) of Contracts § 351(1) states "damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made." The Comment goes on to elaborate further: "If loss results other than in the ordinary course of events, there can be no recovery for it unless it was foreseeable by the party in breach because of special circumstances that he had reason to know when he made the contract. For example, a seller who fails to deliver a commodity to a wholesaler is not liable for the wholesaler's loss of profit to the extent that it is extraordinary nor for his loss due to unusual terms in his resale contracts unless the seller had reason to know of these special circumstances." Comment to Restatement (Second) of Contracts § 351. The Court also recognizes that the measure of damages for breach of contract is compensation for the loss sustained, the aggrieved party can recover nothing more than will compensate him. Helpin v. Trustees of University of Pennsylvania, 72 A.2d 66 (Pa. 2010); Lambert v. Durallium Products Corp., 72 A.2d 66 (Pa. 1950). Plaintiffs should be placed as nearly as possible in the same position they would have occupied had there been no breach. Id.

As mentioned above, it is not unreasonable that Mr. Kerlin needed to find another residence as Mrs. Kerlin was remaining in the marital home. Yet Mrs. Kerlin denied knowing that Mr. Kerlin was trying to purchase property and did not have this knowledge until after the PSA was signed. There was no evidence presented that Mr. Kerlin

had signed a contract to buy the home or was, in some other way, involved in a binding negotiation before he learned that Mrs. Kerlin was having trouble obtaining financing. By July 24, 2012 Mr. Kerlin knew that Mrs. Kerlin was having trouble obtaining financing yet he continued with his actions of invading his IRA on August 5, 2012. Mr. Kerlin's actions were imprudent when he was already aware that Mrs. Kerlin was having trouble obtaining financing and was already halfway into her sixty day time period for refinancing. With the knowledge that Mrs. Kerlin was having this difficulty, it was a very drastic action for Mr. Kerlin to invade his IRA for $129,644.91. As a result, the Court is of the opinion that Mr. Kerlin's actions of invading his IRA, and incurring a large tax liability due to his failure to repay, were not foreseeable or probable results of Mrs. Kerlin's breach.

While Mr. Kerlin certainly should have been able to rely upon the contract, he cannot be awarded such substantial damages when the damages were not a foreseeable or direct result of the breach. Examples of a direct result of her breach, in this situation, may have been if Mr. Kerlin had incurred costs renting a home while waiting for the refinance to finalize, if he had lost an opportunity to purchase a home, or had to obtain a higher interest rate on a mortgage. Such losses would have been more directly related to the breach. Here, Mr. Kerlin's intentions to buy another home were not known to Mrs. Kerlin at the time of signing the contract and there was no evidence to show that Mr. Kerlin could not have waited to purchase his current home. The Court did not hear of any set contract date by which they had to purchase or any competing offers on their desired house. Accordingly, the Court cannot find that Mr. Kerlin's losses were a probable result of the breach, instead, they were quite unforeseen.

The Court has considered the argument that Mrs. Kerlin's failure to refinance within sixty days caused Mr. Kerlin's efforts in repaying his IRA to be delayed and also caused delay in his home repairs. Mr. Kerlin was entitled to rely upon the contract; he was not entitled to take drastic and unforeseeable actions in order to purchase a home and then expect Mrs. Kerlin to compensate him for losses that were not envisioned by either party at the time of signing the contract. Even though Mrs. Kerlin is the breaching party, the Court cannot require her to pay for the unanticipated damages that Mr. Kerlin has incurred. Mr. Kerlin's actions of invading his IRA are so imprudent that the Court cannot require Mrs. Kerlin to compensate him for those actions despite her breach. As a result, the Court will not award Mr. Kerlin's tax liability for the failure to re-pay his IRA or the interest on the Susquehanna Bank loan.

Paragraph 25 of the PSA contains a provision for payment of legal fees and costs incurred by a non-breaching party in attempting to enforce rights created under the agreement. In this matter, there was evidence that Mrs. Kerlin could have obtained a mortgage from other financial institutions or used her retirement accounts to satisfy the $20,000 down payment requirement from PSECU. Based on this evidence, the Court believes that Mrs. Kerlin made the conscious decision to take the most beneficial financial route for her, without regard for her contractual obligations. The Court finds that attorney's fees should be awarded to Mr. Kerlin in the amount of $1401.25 plus Attorney Salawage's rate of $150.00 calculated based upon the time spent in court on April 16-17, 2013.

ORDER

AND NOW THIS 23rd day of July, 2013, the Court having considered the Petitioner's Petition for Enforcement of Property and Separation Agreement, the Respondent's response thereto, and having held hearing,

IT IS HEREBY ORDERED that

1.Mrs. Kerlin breached the Property and Separation Agreement;

2.Mrs. Kerlin shall not be responsible for paying Mr. Kerlin for the tax liability incurred or for the interest on the Susquehanna Bank loan that Mr. Kerlin borrowed to repay his tax liability;

3.Mrs. Kerlin shall pay Mr. Kerlin's attorney's fees in the amount of $1401.25 plus Attorney Salawage's rate of $150.00 calculated based upon the time spent in court on April 16-17, 2013.

Pursuant to Pa.R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order, including a copy of this Order, to each party, and shall note in the docket the giving of such notice and the time and manner thereof.