

value of his assets. The evidence is overwhelming that no full and fair disclosure of Mr. Geyer's assets was made at or before the time of execution of the ante-nuptial agreement.

Counsel for Mrs. Geyer makes a novel argument that a duty should be imposed upon the estate to show that an explanation of Mr. Geyer's assets was given to Mrs. Geyer and further, that the explanation was understood. Cf. *Hionis v. Northern Mutual Insurance Company*, 230 Pa. Super. 511, 327 A. 2d 363 (1974). To expand the *Hionis* rule, which applies in the area of insurance contracts, to the field of law governing ante-nuptial agreements is a task that should not be lightly undertaken and particularly not by a trial court. We leave such an expansion of the law to the wisdom of the Legislature and our appellate courts.

Therefore, in addition to the agreement being unenforceable due to the breach by decedent of the promise contained therein to bequeath the household furniture and furnishings to Rosalie, the agreement is also unenforceable because of the lack of disclosure to Mrs. Geyer and the unreasonable provision made for her.

#### ORDER OF COURT

NOW, this 22nd day of March, 1983, the petition of George W. Geyer, III, Executor of the Last Will and Testament of George W. Geyer, deceased, to set aside the election of Rosalie S. Geyer to take against the decedent's will is denied.

Exceptions are granted the petitioner.

GETTYSBURG NURSING HOME ASSOCIATES V. CROFT,  
C.P. Franklin County Branch, No. A.D. 1982-112

*Assumpsit - Collateral Estoppel - contract comprising several instruments - Third party beneficiary - Unjust enrichment*

1. A contract may be expressed in more than one writing, that are interpreted together.

2. Where a contract comprises more than one writing, the parties need

not be the same so long as they pertain to the same transaction and their interpretation is aided by reading them together.

3. To entitle a person to maintain an action on a contract to which he is not a party, it must clearly appear that it was the purpose of the contract to impose an obligation on one of the contracting parties in favor of the person claiming the right to action.

4. Where wife did not sign contract for nursing home care for herself, but husband did, wife is liable to the home under the theory of unjust enrichment.

*Denis M. Dunn, Esquire, Attorney for Plaintiff*

*Robert C. Schollaert, Esquire, Attorney for Defendant*

#### OPINION AND ORDER

GARDNER, ROY A., P.J., 44th Judicial District, specially presiding, July 22, 1983:

Defendant, Florence Croft, was admitted to the Guilford Convalesarium,<sup>1</sup> plaintiff, on April 1, 1981. Accompanied by his attorney, Robert E. Graham, Esquire, Mrs. Croft's husband, E. Ray Croft, defendant, entered into an agreement with plaintiff on April 1, 1981, which he attempted to terminate by letter dated January 8, 1982.

Three contracts are the subject of this dispute. First, an "Admission Agreement" dated April 1, 1981, between "The

---

<sup>1</sup>Guilford Convalesarium was owned and operated by Michael Investments from April 1, 1981, until December 30, 1981, when Gettysburg Nursing Home Associates, Inc. became the owner and operator. Two previous suits, *Michael Investments, Inc., t/d/b/a Guilford Convalesarium v. E. Ray Croft and Florence Croft*, No. A.D. 1981 - 213 (C.P. Franklin County), and *Michael Investments, Inc., t/d/b/a Guilford Convalesarium v. E. Ray Croft and Florence Croft*, No. A.D. 1982 - 10 (C.P. Franklin County) were brought to recover the sums incurred from April 1, 1981, until December 30, 1981. In one, the Honorable John W. Keller entered a judgment for plaintiff on the pleadings and in the other, defendants agreed to have judgment entered against them which was subsequently satisfied.

Guilford Convalesarium and Florence Croft and/or E. Ray Croft" which is signed by Mr. Croft only. The contract sets out the financial terms and arrangements providing for the medical, nursing, and personal care of Florence Croft. In part, the contract provides that the Nursing Home agrees:

1. To furnish room, board, linens and bedding, nursing care, and such personal services as may be required for the health, safety, good grooming, and well-being of the patient.
2. To obtain the services of a licensed physician of the patient's choice whenever necessary, or the services of another licensed physician, if a personal physician has not been designated, or is not available, as well as such medications as the physician may order.
3. To arrange for transfer of the patient to the hospital, when this is ordered by the attending physician, and immediately to notify the responsible party of such transfer."

The contract also provides that the patient or responsible party, i.e. Mr. or Mrs. Croft, agrees:

1. To provide such personal clothing and effects as needed or desired by the patient.
2. To provide such spending money as needed by the patient.
3. To be responsible for the hospital charges, if hospitalization of the patient becomes necessary, and transportation.
4. To be responsible for physician's fees, medications, and other treatments or aids ordered by physician.
5. To pay basic rate agreed upon with nursing home at specified intervals."

There is a "Standard Admission Waiver" which is not applicable to the issue at bar. There is a "Duration of Agreement" clause which provides:

"Either party may terminate this agreement on 30 days written notice. Otherwise, it will remain in effect until a different agreement is executed. However, this does not mean that the patient will be forced to remain in the nursing home against his or her will for any length of time."

The second agreement is a "Financial Agreement" dated April 1, 1981, and signed only by E. Ray Croft which provides in

relevant part that "Florence Croft and/or E. Ray Croft" agree to pay daily \$40, and the nursing home will accept this arrangement in full consideration for the care and services rendered as follows:

"To be paid by patient or responsible party:  
1. Room and board (includes bedding and linen) \$40.00

Total \$40.00"

The third agreement dated April 1, 1981, which was entered into and signed by Mrs. Croft and Mr. Croft provides that the parties agree that Mrs. Croft's physician, George W. Baker, M.D. has recommended that Mrs. Croft be admitted to a nursing home and that in consideration of \$1.00 paid to Mr. Croft by Mrs. Croft the parties agreed to the following: that Mrs. Croft shall be admitted to the Guilford Convalesarium and Mr. Croft shall bear the expense of nursing home care, including any medical and hospital expense incurred while Mrs. Croft is a resident there, so long as George W. Baker, M.D., Mrs. Croft's physician, deems in his sole opinion that it is necessary or prudent for her to remain a patient in said nursing home or any substitute nursing home. Also, Mr. Croft agrees that he shall take no steps to obtain Mrs. Croft's release from the nursing home without prior written approval of Dr. Baker and thereby irrevocably relinquishes any legal right he had to procure her release from the nursing home. The agreement states that a copy of the agreement will be delivered to the nursing home and will be sufficient authority for the nursing home to resist any effort of Mr. Croft or his agents to obtain the release of Mrs. Croft from the home. Mrs. Croft relinquishes her right to seek any additional support from Ray so long as she is a resident there and Mr. Croft continues to bear all expenses involved with her care at the home, as well as all of Mrs. Croft's medical and hospital expenses. The contract provides that in the procurement of the agreement Mr. Croft had been represented by Robert E. Graham, Esquire, and Mrs. Croft had been represented by Robert C. Schollaert, Esquire, and both parties agree that neither has been subjected to fraud, concealment, overreaching, or coercion, and that they entered into the agreement freely and of their own volition.

Based on the above instruments, plaintiff brought this action in assumpsit seeking to recover the outstanding balance for services rendered, such amount being \$4,660.92 as of the date of the complaint and being \$25,211.52 as of March 1, 1983.

After a pre-trial conference, by Order of Court dated December 29, 1982, it was determined that the issues to be

decided were whether plaintiffs would have to amend the complaint under Pa. R.C.P. 1033 and whether Mr. Croft's demand for jury trial was timely. Pa. R.C.P. 1033 (1947) allows a party to amend his pleading by leave of Court even though the amended pleading may aver transactions or occurrences which have happened before or after the filing of the original pleading. *Goodrich-Amram 2d, Sec. 1033.5. Goldsman v. Litman*, 68 D.&C. 313 (1948), *Sands v. Forrest*, 290 Pa. Super. 48, 434 A.2d 122 (1981), *Galloway v. World Mutual Health & Accident Ins. Co. of Pa.*, 13 D.&C. 3d 617, 21 Adams 196 (1980). The right to amend should be liberally granted at any stage of proceedings unless there is error of law or resulting prejudice to the adverse party. *Bell v. Shetrom*, 214 Pa. Super. 309, 257 A.2d 323 (1969). Since there would be no prejudice to the defendants to allow the plaintiff to amend its complaint to include damages accruing after the filing of the complaint to the date of trial<sup>2</sup> and in the interest of judicial economy, plaintiff was allowed to amend its complaint to include damages accruing up to March 1, 1983.

Both the plaintiff and the defendant, Mr. Croft, moved for summary judgment. Plaintiff argues collateral estoppel relying on the two actions against the Crofts by the previous owner of Guilford Convalesarium.<sup>3</sup> In both actions the complaints were based upon writings identical to those in the case at bar. In the former, the defendant admitted all of the allegations in the complaint filed and the Honorable John W. Keller entered an Order granting a Motion for Judgment on the Pleadings in favor of Michael Investments. In the latter, defendants allowed judgment to be entered against them which was subsequently satisfied. The only new defense raised by Mr. Croft in the present action is that he attempted to terminate the contract by letter dated January 8, 1982. Plaintiff alleges such letter was ineffective.

In Mr. Croft's Motion for Summary Judgment, he argues that the termination letter was effective and that the plaintiff is limited to \$40 per day recovery because of the limitation in the second contract. The initial issue that has already been decided by the court was whether the termination letter was effective. The court

---

<sup>2</sup>Defendant received monthly statements of amounts due from the plaintiff.

<sup>3</sup>*Michael Investments, Inc., t/d/b/a Guilford Convalesarium v. Croft*, No. A.D. 1981 - 213 (C.P. Franklin County) and *Michael Investments, Inc., t/d/b/a Guilford Convalesarium v. Croft*, No. A.D. 1982 - 10 (C.P. Franklin County).

by its Order dated March 4, 1983, granting plaintiff's Motion for Summary Judgment held that it was not.

There is no requirement that a contract be evidenced by a single instrument, and if contracting parties choose, they may express their agreement in one or more writings and, in such circumstances, several documents are to be interpreted together even though the parties to the separate writings may not be the same, so long as the writings pertain to the same transaction and their interpretation is aided by reading them together. *VonLange v. Morrison - Knudsen Co., Inc.*, 460 F.Supp. 643, affd. 609 F.2d 504 (1978). To entitle a person to maintain an action on a contract to which he is not a party, it must clearly appear that it was the purpose of the contract to impose an obligation on one of the contracting parties in favor of the person claiming the right to action. *VanCor, Inc. v. American Casualty Co. of Reading, Pa.*, 417 Pa. 408, 208 A.2d 267 (1965). Such are the circumstances in the case at bar. Although Mr. Croft and plaintiff are the parties to the "Admission Agreement" and "Financial Agreement" and Mr. and Mrs. Croft are the parties to the third agreement signed on April 1, 1981; in the first two contracts Mrs. Croft is the stated third party beneficiary and in the third contract, plaintiff is the stated third party beneficiary.

The essence of the contract is the intent of the parties. *Harris v. Dawson*, 479 Pa. 463, 388 A.2d 748 (1978). Intent of the parties to a written contract is to be regarded as being embodied in the writing itself and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement. *Stewart v. McChesney*, No. 520 - 1977 (C.P. Warren County) rev'd on other grounds 284 Pa. Super 29, 424 A.2d 1375 (1981) affd., 498 Pa. 45, 444 A.2d 659 (1982).

The contract embodied in the three separate documents read as a whole is not ambiguous. Although the "Admission Agreement" states that either party to the contract, i.e. Mr. Croft or plaintiff, may terminate the agreement, Mr. Croft clearly waived this right in his agreement, with Mrs. Croft when he agreed to take no steps to obtain Mrs. Croft's release from the nursing home without the prior written approval of George W. Baker, M.D. and the agreement specifically provides: ". . . (Mr. Croft) hereby irrevocably relinquishes any legal right he has to procure her release from said nursing home." It is also made clear that Mr. Croft was waiving the right to terminate by clause 3 of the same Agreement which provides:

"3. A copy of this agreement shall be delivered to the

Guilford Convalesarium nursing home and shall be sufficient authority for said home to rely on in resisting any effort of Ray or his agents to obtain the release of Florence from the home."

Although it may not be in the parties' best interests to enter into a particular contract, where there has been no allegation of mistake, fraud, overreaching, or the like, it is not the function of the court to redraft the agreement more favorably to a given party than that into which he chose to enter. *Harris v. Dawson*, supra.

Since the letter attempting to terminate the contract was not effective, the parties are bound by collateral estoppel.

". . . the only requirements to the doctrine of collateral estoppel are: (1) that the issue or issues of fact determined in a prior action be the same as those appearing in a subsequent action, there being no necessity that the cause of actions be the same; (2) that the party against whom the defense is invoked is identical to or in privity to the party in the first action,"

*Thompson v. Karastan Rug Mills*, 228 Pa. Super. 260, 323 A.2d 341 (1974). These requirements have been met in the case at bar.

The "Financial Agreement" specifically provides that the defendant, E. Ray Croft, agrees to pay \$40.00 per day in full consideration for care and services as follows: Room and board, \$40.00, Total \$40.00. The "Admission Agreement" provides that Mr. Croft will be responsible for the basic rate agreed upon with the nursing home at specified intervals, physician's fees, medications, and other treatments or aids ordered by the physician, and for hospital charges, if hospitalization becomes necessary. The only rate agreed upon between the plaintiff and Mr. Croft is \$40 per day. Mr. Croft is liable for this amount plus any charges incurred as specified in this paragraph.

Although Mrs. Croft did not sign these contracts she also is liable under the theory of unjust enrichment. *Warner Hospital v. Alexander*, 6 D.&C. 3d 581, (1976) affd. 256 Pa. Super. 645, 389 A.2d 701 (1978). Unjust enrichment occurs when one person receives a benefit conferred by another where the retention of such benefit by the former without compensation to the latter would be unjust. Id. "A person who has been unjustly enriched at the expense of another is required to make restitution to the other: Restatement, Restitution Sec. 1." Id. at 584. Mrs. Croft received the benefit of the services rendered by plaintiff and it would be unjust for her to have received such benefit without

---

# FIRST NATIONAL

**bank and trust co.**

13 West Main St.  
P.O. Drawer 391  
717-762-8161



**TRUST SERVICES  
COMPETENT AND COMPLETE**

---



WAYNESBORO, PA 17268  
Telephone (717) 762-3121

THREE CONVENIENT LOCATIONS:  
Potomac Shopping Center - Center Square - Waynesboro Mall

24 Hour Banking Available at the Waynesboro Mall

---

attached a certificate signed by the Court Reporter certifying that the transcript is a true and accurate transcript and that the parties or their counsel have been notified of the lodging in the appropriate office.

Rule 39-5000.16 Objections

(a) The Court Reporter shall notify the respective parties or their attorneys that the transcript has been lodged and that if no objections are made to the transcript within five (5) days after receipt of such notice, the transcript will be marked filed and become a part of the record. If objections are made to the transcript by any party, they shall be submitted to and settled by the trial court. The party filing objections shall serve a copy of the objections on the other parties and notify the other parties of the date when the transcript will be submitted to the Court for settlement.

(b) The Court shall examine any parts of the transcripts to which objections are made pursuant to Rule 39-5000.16 and may examine any other parts of the transcripts. If the trial judge examines any portion of the transcript, he shall certify, by reference to the page and line number or their equivalent, which portions he has read and corrected.

(c) After the differences have been settled or other corrections have been made and certified by the Court, the Court shall return the transcript to the appropriate office where the same shall be marked filed and shall become a part of the official record.

Rule 39-5000.17 Certification and Filing

If no objections are made to the text, after five (5) days the appropriate officer shall mark the transcript filed and it shall become a part of the official record.

Rule 39-5000.18 Transcripts to be Available to the Court

After a transcript is lodged, so that it may be available to the Court, it may not be removed from the appropriate office except by the Court or the official court stenographer or to be forwarded to another court for appropriate proceedings.

By the Court,

/s/ George C. Eppinger  
P.J.

compensating the plaintiff.

ORDER

AND NOW, July 22, 1983, summary judgment in the amount of \$25,211.52 (for services rendered to the defendant, Florence I. Croft, to March 1, 1983) be and is hereby entered in favor of the plaintiff and against the defendant.

FIX V. PLUM, C.P. Franklin County Branch, No. A.D. 1982 0 67

*Trespass - No-Fault Insurance - \$750.00 Threshold - Proof of Pain and Suffering - Proof of Disability - Lay Testimony*

1. Where defendant stipulated that medical services exceeded the \$750.00 Threshold of Pennsylvania No-Fault Insurance Act, the Court may refuse to allow plaintiff to show actual costs of medical services to prove pain and suffering.
2. The Pennsylvania Superior Court cases of *Zagari vs. Gralka* and *Martin vs. Soblotney* are in contradiction and a lower court may hold contra to the *Martin* case after concluding *Zagari* better declares the present state of the law.
3. Lay opinion evidence is permitted in an area involving everyday experiences and not in an area requiring special skills.
4. Lay testimony concerning ability to perform secretarial duties is inadmissible where prior expert testimony was given by treating physician.

*John N. Keller, Esquire, Attorney for Plaintiff*

*George F. Douglas, Jr., Esquire, Attorney for Defendant*

OPINION

Roy A. Gardner, P.J.,\* September 19, 1983:

\*Editor's Note: President Judge, 44th Judicial District, Specially Presiding