

called at trial, no sanction should be imposed unless the complaining party shows that he has been prejudiced from properly preparing his case for trial as a result of a dilatory disclosure . . . Id. at 168-169.

None of the facts presented to this Court reveal any evidence of bad faith or misrepresentation by the plaintiffs of the existence of an expert witness. Moreover, since the matter has not been listed for trial, we do not perceive that the defendant has been prejudiced in the preparation of his case. Therefore, we are not prepared at this time to conditionally impose sanctions or determine what those requested sanctions should be.

This present decision not to impose sanctions does not, however, imply that plaintiffs may with impunity delay the disposition of this case by failing to answer the expert interrogatories addressed to plaintiffs' expert must be answered promptly or plaintiffs should without delay seek the assistance of a more cooperative expert witness.

If the plaintiffs' response is not forthcoming within thirty days, and plaintiffs have not selected another expert and provided defendant with his name and a reasonable time schedule for providing answers to the interrogatories, we will entertain a renewed motion for the imposition of appropriate sanctions.

ORDER OF COURT

NOW, this 9th day of October, 1984, the motion of Dr. Vincent D. Waldron, defendant, to compel plaintiffs' expert witness, Dr. Tom J. Altizer, to respond to defendant's interrogatories is granted, and his answers shall be filed and served within thirty (30) days of this date.

The defendant's motion for the imposition of specific automatic sanctions is denied. The Court will entertain a renewed motion for the imposition of sanctions upon plaintiffs' failure to comply with this order.

JOHNSON v. JOHNSON, C.P. Franklin County Branch, F.R.
1982 - 854-S

Support - Post-Nuptial Agreement

1. A separation agreement may terminate the obligation of support while the parties remain married.

George E. Wenger, Esquire, Counsel for Plaintiff

H. Anthony Adams, Esquire, Counsel for Defendant

OPINION AND ORDER

KELLER, J., October 18, 1984:

On November 16, 1982, the complaint for support of Judy Johnson was presented to the Court and an order signed directing the plaintiff and defendant to appear before Robert J. Woods, Domestic Relations Hearing Officer on December 20, 1982 for a conference so the officer could recommend an appropriate support order. The conference was held as scheduled and on the recommendation of the Hearing Officer an order was entered on December 22, 1982 requiring the defendant to pay to the plaintiff on December 27, 1982, and each Monday thereafter the sum of \$41.00 plus \$.50 service charge, and further the defendant was required to maintain existing medical coverage on the plaintiff. On October 27, 1983, the defendant's petition to terminate the said support order and remit arrears alleging that the defendant's expenses had increased by reason of being responsible for the three children of the marriage and a decrease in his earnings was presented to the Court, and an order signed setting December 12, 1983 at 9:00 a.m. as the date and time for hearing before the Domestic Relations Hearing Officer. The Hearing Officer found that \$1.00 per 100 lbs. of milk he is producing on his dairy farm is being deducted under a government program, and the defendant is supporting the three children of the marriage who live with him on a full-time basis. On December 21, 1983, the Court entered an order requiring the defendant to pay on December 19, 1983, and each Monday thereafter the sum of \$25.00 plus \$.50 service charge and an additional \$5.00 to be applied to the arrearage accumulated in the case. The order also noted that the defendant's weekly net income was \$120.00 and the plaintiff had a weekly earning capacity of \$50.00.

On June 14, 1984, Robert Lee Johnson filed his complaint against Judy E. Johnson for support from her for the maintenance of their three minor children. An order was signed June 14, 1984

setting July 30, 1984 at 9:00 o'clock a.m. as the date and time for hearing before a Domestic Relations Hearing Officer. On July 9, 1984, the petition of Robert Lee Johnson to terminate the existing support order and remit arrearages was presented to the Court and order signed also setting July 30, 1984 at 9:00 o'clock a.m. as the date and time for hearing before the Domestic Relations Hearing Officer on the said petition. The petition alleged that a change of circumstances had occurred by reason of the fact that "on February 16, 1984, Robert Johnson and Judy Johnson signed a separation agreement for a \$25,000 settlement which has been paid by Mr. Johnson". On July 31, 1984, the Domestic Relations Hearing Officer recommended that the support order of December 21, 1983 be terminated effective February 13, 1984 by reason of the separation agreement between the parties. On the same date the Domestic Relations Hearing Officer recommended the dismissal of the complaint of Robert Lee Johnson for support from Judy Johnson on the grounds that Judy Johnson does not have sufficient income to pay support. On August 1, 1984, the Court entered orders pursuant to the recommendations of the Domestic Relations Hearing Officer terminating the December 21, 1983 support order, and dismissing the complaint for child support filed against Judy E. Johnson. Mrs. Johnson via her counsel filed an appeal from the termination of the prior support order effective February 13, 1984, and an order was entered on August 6, 1984, setting September 5, 1984 at 1:00 o'clock p.m. as the date and time for hearing on the support appeal. Counsel for the parties appeared and agreed that the parties remained married, and the sole issue for resolution by the Court was one of law, viz. whether a separation agreement entered into by the parties does as a matter of law terminate the obligation of support of Robert Lee Johnson to Judy E. Johnson, his wife. Counsel provided the Court with a copy of the separation agreement of February 16, 1984, and pursuant to the direction of the Court counsel for Mrs. Johnson filed her memorandum of law on September 12, 1984, and counsel for Mr. Johnson filed his memorandum of law on September 14, 1984. The matter is, therefore, ripe for disposition.

The provisions of the separation agreement which apply directly to the question here presented are:

1. *Mutual Releases:* Subject to the provisions of this agreement, each party has released and discharged, and by this agreement does for himself or herself, and his heirs or her heirs, legal representatives,



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BEING sold as the property of Kenneth R. Lyons and Grace L. Lyons, husband and wife, Writ No. AD 1985-143.

SALE NO. 7
Writ No. DSB 1984-135 Civil 1985
Judg. No. DSB 1984-135 Civil 1985
Charles M. Cook
and
Margery C. Cook, his wife,
and
Charles McK. Cook
and
Nancy W. Cook, his wife
— vs —
Kanti Purohit, Anil Kothari t/a
Mim Three Properties
Atty. Stephen E. Patterson

ALL THAT CERTAIN tract of real estate together with the improvements erected thereon lying and being situate at Blue Ridge Summit, on Norwood Avenue, Washington Township, Franklin County, Pennsylvania, known as the Sumerfield Hotel Property, bounded and described as follows:

BEGINNING at an iron pin on the northerly edge of Norwood Avenue, said iron pin marking the southeasternmost corner of lands now or formerly of Donald I. Kline and wife; thence by lands now or formerly of Donald I. Kline and wife, north 9 degrees 00 minutes east 100 feet to an iron pin; thence by the same, north 2 degrees 00 minutes west 509.4 feet to an iron pin; thence by lands now or formerly of Eighenbrode and by Lots Nos. 1 and 2 of a plan of three lots laid out by J. Harvey Gearhart in November, 1954, north 88 degrees 00 minutes east 242.5 feet to an iron pin in the centerline of a 33-foot-wide easement or right-of-way opposite lands now or formerly of Henry J. Werrick and wife; thence with said centerline, south 3 degrees east 140 feet to an iron pin near an apple tree; thence continuing with said centerline, south 12 degrees 00 minutes east 335 feet to an iron pin on the northerly edge of Norwood Avenue; thence by the same on a curve to the left, having a radius of 108.25 feet, a distance of 85.3 feet to a point; thence by the same, south 1 degree 45 minutes east 47.7 feet to a point; thence by the same on a curve to the right having a radius of 68.5 feet a distance of 128.50 feet to a point; thence by the same, north 74 degrees 15 minutes west 206.5 feet to an iron pin, the place of beginning. CONTAINING 3.98 acres, more or less, according to a survey by John Howard McClellan, C.S., recorded in Franklin County Plot Book Volume 288, Page 273.

BEING the same real estate conveyed by Charles M. Cook and Margery C. Cook, his wife, and Charles McK. Cook and Nancy W. Cook, his wife, to Kanti Purohit and Anil Kothari t/a Mim Three Properties by deed dated May 27, 1981, and recorded in Franklin County Deed Book Volume 837, Page 107.

INCLUDED within the above-described tract of real estate; but specifically excepted and excluded from this conveyance are the following two (2) tracts of real estate:

(A) All that tract of real estate containing 19,149 square feet, being Parcel "A" according to a survey prepared by William A. Brindle Associates, dated October 9, 1976, and conveyed by the within Grantors to Mike J. Orlando and Esther T. Orlando, his wife, by deed dated July 18, 1977, and recorded in Franklin County Deed Book 745, Page 851.

(B) All that tract of real estate containing 23,796.8 square feet, being Parcel "B" according to a survey prepared by William A. Brindle Associates, dated October 9, 1976, and conveyed by the within Grantors to Mike J. Orlando and Esther T. Orlando, his wife, by deed dated July 18, 1977, and recorded in Franklin County Deed Book 745, Page 854.

BEING sold as the property of Kanti Purohit and Anil Kothari, t/a Mim Three Properties, Writ No. DSB 1984-135.

TERMS

As soon as the property is knocked down to a purchaser, 10% of the purchase price plus 2% Transfer Tax, or 10% of all costs whichever may be the higher, shall be delivered to the Sheriff. If the 10% payment is not made as requested, the Sheriff will direct the auctioneer to resell the property.

The balance due shall be paid to the Sheriff by NOT LATER THAN Monday, August 26, 1985, at 4:00 P.M. E.D.S.T. Otherwise all money previously paid will be forfeited and the property will be resold on Friday, August 30, 1985 at 1:00 P.M. E.D.S.T., in the Franklin County Courthouse, 3rd Floor, Jury Assembly Room, Chambersburg, Franklin County, Pennsylvania, at which time the full purchase price or all costs, whichever may be higher, shall be paid in full.

Raymond Z. Hussack
Sheriff
Franklin County, Chambersburg, PA

executors, administrators and assigns, release and discharge the other of and from all causes of action, claims, rights, or demands, whatsoever and in law or equity, which either party had or now has against the other, except any or all causes of action for divorce and except any or all causes of action for breach of any provision of this agreement.

8. *Waivers of Claims Against Estates:* Except as herein otherwise provided, each party may dispose of his or her property in any way, and each party hereby waives and relinquishes any and all rights he or she may now have or hereinafter acquire, under the present or future laws of any jurisdiction, to share in the property or the estate of the other as a result of the marital relationship, including without limitation, support, dower, curtesy, statutory allowance, widow's allowance, right to take in intestacy, right to take against the will of the other's estate, and each will, at the request of the other, execute, acknowledge, and deliver any and all instruments which may be necessary or advisable to carry into effect this mutual waiver and relinquishment of all such interest, rights and claims.

This paragraph shall not effect either party's right or power to expressly include the other party as beneficiary in any wills or other documents or as the beneficiary of any insurance policy, whether written in the past or future.

12. *Voluntary Execution:* The provisions of this agreement and their legal effect are fully understood by the parties. Both parties have read this agreement. Each party acknowledges that this agreement is fair and equitable, that it is being entered into voluntarily, and that it is not the result of duress or undue influence. Wife acknowledges that she understands that this agreement has been prepared by H. Anthony Adams, Esq., acting as attorney for and on behalf of Husband and that she, Wife has the absolute right to have this agreement reviewed by an attorney of her choosing and that she is represented by George E. Wenger, Jr., Esq.

15. *Descriptive Headings:* The descriptive headings used herein are for convenience only. They shall have no effect whatsoever of determining the rights or obligations of the parties.

In *White v. White*, 226 Pa. Super. 499, 503 (1973), the Superior Court of Pennsylvania held:

"This court has held that a post-nuptial agreement, if supported by adequate consideration and if full disclosure of the assets of the

parties are disclosed prior to execution, and if there be no fraud, coercion or unlawful purpose in the execution, may be fully enforced. There is no public policy or legal reason why an adult spouse may not, under the proper circumstances, waive her right to future support. *Commonwealth v. Doghty*, 187 Pa. Super. 499, 144 A. 2d 521 (1958); *Commonwealth ex rel. Jablonski v. Jablonski*, 179 Pa. Super. 498, 118 A. 2d 222 (1955)."

In the case at bar, there is no contention by the plaintiff that she is not of age or that the agreement was secured by fraud or mistake. Indeed, by the provisions of paragraph 12, supra, she acknowledges that it is fair and equitable, entered into voluntarily and that she has the right to have it reviewed by the attorney of her choice. We note that Mrs. Johnson's signature on the agreement is witnessed by George E. Wenger, Jr., who was identified in paragraph 12 as her counsel.

We note that counsel for Mrs. Johnson argues that paragraph 8 "covers and is intended to cover the situation where upon the death of either spouse such rights as are mentioned in paragraph 8 could not be asserted against the estate", and the word "support" was included in the paragraph only to demonstrate the intention of the parties that the support obligation would terminate upon the death of Mr. Johnson. We find no merit in this contention for:

1. Paragraph 8 also waives other claims more associated with life than with death.

2. Paragraph 8 provides that each spouse will at the request of the other "execute, acknowledge and deliver any and all instruments which may be necessary or advisable to carry into effect this mutual waiver and relinquishment of all such interest, rights and claims". It certainly assumes the parties to be alive.

3. Paragraph 15 effectively eliminates consideration of the title of paragraph 8.

In our judgement the language of both paragraphs 5 and 8 are legally sufficient to effectively terminate the right of Judy E. Johnson to personal support from Robert Lee Johnson effective as of the date of the agreement.

The appeal will, therefore, be dismissed.

ORDER OF COURT

NOW, this 18th day of October, 1984, the appeal of Judy E. Johnson from the order of August 1, 1984, is dismissed.

Costs to be paid by appellant.

Exceptions are granted the appellant.

FRANKLIN COUNTY SPECIAL EDUCATION CENTER v.
STEVE BLACK, INC., et al, C.P. Franklin County Branch, No.
A.D. 1983 - 181

Summary Judgment - Contract - Economic Loss - UCC - Negligence in Design

1. A reply to an offer, though purporting to accept it, which adds qualifications or requires performance of conditions, is not an acceptance but actually a counter offer.

2. Where a contract is ambiguous either side may introduce parol evidence to resolve the ambiguity and the question of its meaning should be left to the jury and summary judgment is not appropriate.

3. A case involving alleged design negligence of equipment causing economic loss is not in the exclusive realm of the Uniform Commercial Code, but may also proceed on a common law negligence theory.

Anthony Stefanon, Esquire, Counsel for Plaintiff

Daniel L. Sullivan, Esquire, Counsel for Defendant, Steve Black, Inc.

Eileen F. Schoenhofen, Esquire, Counsel for Defendant, York Division of Borg-Warner Corporation

OPINION AND ORDER

EPPINGER, P.J., November 2, 1984:

Plaintiff, the Franklin County Special Education Center, constructed its building in 1977. Defendant, Steve Black, Inc., was