

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

DIANE BURMAN <i>Plaintiff</i>	:	JUNE TERM, 2006
v.	:	NO. 3902
	:	(Commerce Program)
STEVEN L. BURMAN <i>Defendant</i>	:	Superior Court Docket No. 3248 EDA 2006

OPINION

Albert W. Sheppard, Jr., J.January 22, 2007

This opinion is submitted relative to the appeal of plaintiff, Diane Burman (“Plaintiff”), of this court’s Order of October 30, 2006, sustaining defendant, Steven L. Burman’s (“Defendant”), Preliminary Objections. For the reasons discussed, this court respectfully submits that its Order should be affirmed.

Plaintiff brought this action alleging, *inter alia*, fraudulent and tortious conduct, negligent misrepresentation, and breach of fiduciary duty by defendant in his role as an officer and director of Burman’s Medical Supplies, Inc. (“BMS”). Plaintiff further alleged that Defendant’s actions forced her to sell her majority interest in BMS to Defendant at a fraction of its fair market value.

BACKGROUND

Plaintiff and Defendant were married from September 15, 1984 through July 19, 2005. They were the sole shareholders and directors of BMS, a closely held Pennsylvania corporation, incorporated in March 1989.¹ BMS' principal place of business is in Delaware County, Pennsylvania. Between March 7, 1989 and August 15, 2005, Plaintiff held a majority interest in BMS.

Plaintiff filed for divorce in the Pennsylvania Court of Common Pleas, Delaware County on or about November 21, 2003 and a divorce decree was entered on July 19, 2005.² On July 7, 2005 and in connection with the divorce action, the parties executed a Property Settlement Agreement ("Settlement Agreement") for which purpose both were represented independently by counsel. As part of the Settlement Agreement, plaintiff agreed to transfer her interest and shares in BMS to defendant for \$150,000.00.³ The parties agreed to complete this transaction once they had the opportunity to consult with corporate counsel.⁴ Pursuant to the Settlement Agreement, on August 15, 2005, the parties entered into a Stock Transfer Agreement ("Transfer Agreement") which transferred plaintiff's shares in BMS.⁵

Plaintiff filed her Complaint in Philadelphia County on June 30, 2006 seeking to rescind the Transfer Agreement on the grounds of fraud in the inducement, breach of fiduciary duty, and duress. In addition, Plaintiff demanded equitable and injunctive relief. Defendant filed Preliminary Objections on July 26, 2006 arguing, *inter alia*, that Plaintiff's action was precluded as a matter of law by the parties' Settlement Agreement.

¹ Complaint at ¶ 3-14.

² Complaint at ¶ 22.

³ Defendant's Preliminary Objections, Ex. "B", ¶ D, p.4

⁴ Id.

⁵ Complaint at ¶ 52.

This court sustained Defendant's Preliminary Objections and dismissed Plaintiff's Complaint on October 30, 2006. The Plaintiff has now appealed.

DISCUSSION

In Pennsylvania, the Family Court retains jurisdiction over the disposition of property rights and interests between spouses, including those created under separate agreement, even after a final divorce decree is entered. Johnson v. Johnson, 864 A.2d 1224, 1228 (Pa. Super. Ct. 2004) (determining that such jurisdiction is granted to the court under 23 Pa.C.S. § 3104(a)(1)). This court should not exercise subject matter jurisdiction over plaintiff's lawsuit because it is connected to the parties' Settlement Agreement and final divorce decree in Delaware County.⁶

The Delaware County Court entered a final divorce decree dissolving the parties' marriage and enforcing the parties' Settlement Agreement. Both plaintiff and defendant were individually represented by counsel in executing the Settlement Agreement. Section 3 of the Settlement Agreement clearly establishes the terms by which Plaintiff would transfer her majority interest in BMS as part of the overall distribution of marital property.⁷ This property was not transferred in the Settlement Agreement because the parties intended to consult with corporate counsel to determine the most tax advantageous way for plaintiff to relinquish her shares.⁸

The Transfer Agreement, executed on August 15, 2005, makes specific reference to, and incorporates the terms of the parties' Settlement Agreement. It is a general rule of contract law that where two writings relate to the same subject matter, they should be

⁶ The court may raise the issue of subject matter jurisdiction *sua sponte*. Pa. R. Civ. P. 1032(b) (2006).

⁷ Defendant's Preliminary Objections, Ex. "B", ¶ D, p.4

⁸ Id.

construed together and interpreted as a whole. There is not "any 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, the several documents are to be interpreted together, each one contributing (to the extent of its worth) to the ascertainment of the true intent of the parties." International Milling Co. v. Hachmeister, Inc., 110 A.2d 186, 191 (Pa. 1955) (citation omitted).

Plaintiff brings this action solely to challenge the validity of the Transfer Agreement. Plaintiff argues that the Transfer Agreement is a separate and distinct contract. However, a review of the two contractual instruments here, the Settlement Agreement and the Transfer Agreement, illustrates that the two agreements form a single unified expression of the intent of the parties. The Transfer Agreement was not only contemplated by the parties in the Settlement Agreement, but the Settlement Agreement set forth the terms of the stock transfer which were later incorporated into the Transfer Agreement. But for the parties' desire to avoid tax liability in the transfer of Plaintiff's shares to Defendant, the Transfer Agreement would not have been executed.

Because the Transfer Agreement arises out of the distribution of the parties' marital property, the Delaware County Court retains subject matter jurisdiction over this matter. Accordingly, this court sustained Defendant's Preliminary Objections and dismissed Plaintiff's Complaint without prejudice to seek relief, if appropriate, in the Delaware County Court of Common Pleas.

For the reasons discussed, this court respectfully submits that its Order of October 30, 2006 should be affirmed.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.