

01-1601-CD
MARGARET J. SMEAL "vs" WILLIAM SMEAL

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2001-
WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claims or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PA., 16830
(814) 765-2641

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2001-

WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

COMPLAINT

AND NOW, comes the plaintiff, Margaret J. Smeal, an adult individual, who by and through her attorney, John R. Carfley, Esquire, files the following claim:

1. The Plaintiff is Margaret J. Smeal, an adult individual who presently resides at R. R. 2, Box 184, Morrisdale, Pa., 16858.

2. The Defendant is William J. Smeal, an adult individual, who presently resides at Morrisdale, Clearfield County, Pa.

3. The parties formerly were husband and wife they having been divorced on June 13, 1995.

4. During the pendency of this divorce action, the said parties negotiated a post nuptial agreement a copy of which is attached hereto as Exhibit A.

5. During the course of this negotiation both parties were expected and required to disclose their assets in order to finalize a reasonable and equitable settlement agreement.

6. It is plaintiff's contention that defendant did not disclose all of his assets as a result of which there was a shortfall of over \$80,000.00 which represented the plaintiff's share of the equitable distribution of the marital estate.

7. An addendum to the Post Nuptial Agreement was then drafted by the defendant's counsel after Plaintiff's counsel had determined

after a full analysis of the marital estate that a shortfall had, in fact, occurred. A true and correct copy of the addendum is attached hereto as Exhibit B.

8. Correspondence exchanged between counsel for the plaintiff and counsel for the defendant recognized the existence of the shortfall and attempted to reconcile the shortfall by the payment of a lump sum. However the defendant and his counsel refused to consider the payment of a lump sum based on alleged economic hardship suffered by the defendant at that time.

9. The course of negotiations between plaintiff's counsel and defense counsel derived a system under which the payment of the short fall would be established on an installment basis and would be termed "alimony" in order to provide the defendant with advantageous income tax consequences throughout the term of the payout. All of the information exchanged between counsel and the strategy of plaintiff's counsel is contained in the notes prepared and recorded by plaintiff's counsel and attached hereto as Exhibit C.

10. Pursuant to this agreement defendant commenced payment of the alimony/equitable distribution for a period of ten (10) years notwithstanding the contract negotiated by the parties and notwithstanding that the designation of the distribution of plaintiff's equitable share of the marital estate was in a manner consistent with the rules governing alimony.

11. It is averred that this arrangement was reached in order to provide defendant with advantageous tax benefits, however, Defendant notwithstanding the agreement reached on the payout of

this shortfall challenged plaintiff's right to alimony based on her cohabitation with another individual.

12. Said matter was presented to the Court of Common Pleas of Clearfield County, Pennsylvania, for resolution and resulted in a ruling in favor of the defendant, there being no issue as to the cohabitation which existed between the plaintiff and her alleged paramour.

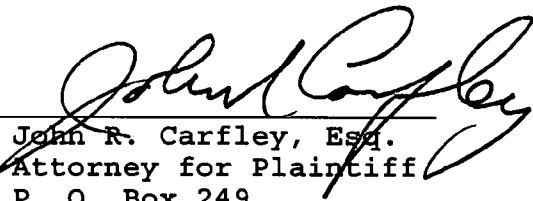
13. It is believed and therefore averred that the defendant defaulted on the terms and conditions of the agreement and further violated the equitable principles espoused in the Divorce Code of 1980, as amended, which benefits accrue in favor of a dependant spouse upon the dissolution of the marital contract.

14. It is further believed and therefore averred that the defendant knew full well that the sums which were to be paid to the plaintiff while styled as alimony were, in fact, payment for plaintiff's equitable share of the marital estate.

15. It is believed and therefore averred that the defendant has defrauded the plaintiff from her equitable share of the marital estate as a result of which the entire agreement should be set aside until a determination of assets can be made and plaintiff's distributive share consistent with the respective economic positions of the parties can be determined and rendered.

16. In the alternative defendant should be ordered to continue to make payment of all installment payments as determined by the parties in their agreement and addendum.

WHEREFORE, Plaintiff demands that judgment be entered in favor of the plaintiff and against the defendant in an unliquidated amount in excess of \$20,000.00, together with interest thereon and costs of this proceeding.


John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: September 24, 2001

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Margaret J. Stans

Dated: September 24, 2001

COPV

POSTNUPTIAL AGREEMENT

AND NOW, this 27 day of March, 1995,

THIS AGREEMENT is by and between WILLIAM I. SMEAL, of P. O. Box 583, Philipsburg, PA 16866, referred to hereinafter as "Husband", Party of the First Part,

A
N
D

MARGARET J. SMEAL, of R. R. 2, Box 184, Morrisdale, PA 16858, referred to hereinafter as "Wife", Party of the Second Part.

W I T N E S S E T H :

WHEREAS, the parties hereunto were married on June 26, 1971;

and

WHEREAS, two sons were born to the marriage, named Brad Smeal and William N. Smeal, with both sons now being emancipated; and

WHEREAS, unfortunate and irreconcilable differences have arisen between the parties, giving rise to the parties living separate and apart and further giving rise to the filing of a Divorce Complaint by Wife on September 6, 1994, before the Court of Common Pleas of Clearfield County, in Docket No. 94-1163-CD; and

WHEREAS, the parties have engaged in meetings between

EXHIBIT

A

themselves and with their attorneys, have had numerous discussions with one another, and have determined that they will reach a mutual settlement in this case rather than expending the time, expense and anxiety associated with further litigation in the divorce proceeding; and

WHEREAS, the parties have entered into negotiations with one another so as to seek to resolve all issues involving their divorce proceeding, and have determined that they will enter into this agreement;

NOW THEREFORE, in consideration of their mutual covenants and with the intention of being legally bound, the parties hereunto agree as follows:

1. Resolution of All Issues - The parties expressly agree that through the signing of this agreement, they are addressing all issues relating to their divorce proceeding, including the entry of a no-fault divorce and the resolution of all property rights issues. Among the matters which have been reviewed and discussed between the parties are the matters of equitable distribution of all marital assets and liabilities, costs, attorney's fees, alimony, spousal support, and in general their present, past and future financial and personal relationships. These discussions have led to the decision to resolve this case without the necessity of litigating the various issues that could be addressed before the court, including a divorce master, as relative to their divorce proceeding in Docket No. 94-1163-CD of

the Court of Common Pleas of Clearfield County.

2. No-Fault Divorce - The parties hereunto have concluded that there has been an irretrievable and irreparable breakdown of their marriage, and as a result, they have determined to agree upon the entry of a no-fault divorce under Section 3301(c) of the Divorce Code. Attached hereto as Appendix A are Affidavits of Consent which the parties each agree to sign so that a no-fault divorce may be entered in this proceeding.

3. Entry of No-Fault Divorce - It is agreed that counsel for Husband shall prepare and cause to be filed with the prothonotary of the Court of Common Pleas of Clearfield County a praecipe directing that a Divorce Decree be entered, with such decree to specifically refer to the present Postnuptial Agreement which the parties are signing herewith and to specify that the terms and conditions are expressly approved.

4. Comprehensive Decision - The parties hereby acknowledge that in view of the terms of equitable distribution set forth below, that there shall be no award of alimony, costs, or counsel fees to Wife, as the assets and income stream provided for under equitable distribution are sufficient to meet her economic needs. The parties hereby acknowledge that they have considered elements that could be considered in a claim for alimony, costs, and counsel fees among the factors that have prompted the terms and conditions that have been set forth pertaining to equitable distribution.

5. Equitable Distribution to Wife - The parties agree that the following assets shall be distributed to Wife:

(a) Full ownership of the marital domicile, with Husband assuming the complete responsibility for paying the existing mortgage on the premises. Husband shall indemnify and hold Wife harmless for any payment obligations owed under the said mortgage.

(b) Ownership of the commercial rental property in Philipsburg, with this being the property on which the building is located in which Smeal Enterprises operates. Such property shall be free and clear of any liens or encumbrances.

(c) With respect to the commercial real estate mentioned in part (b) above, Husband agrees that he shall cause Smeal Enterprises to sign a ten-year lease, obligating the company to make rental payments to Wife for the said commercial property at the rate of \$3,500.00 per month. Besides the monthly rental term, the lease shall have those terms and conditions which are consistent with the present leasing arrangement on the property. In addition, there shall be an option in the lease which shall give Wife at the conclusion of the ten-year rental term the option to require Smeal Enterprises to purchase the said commercial property from her. The payment for the commercial property at that point shall consist of payments at the rate of \$1,000.00 per month for a total of ten (10) years thereafter. Title to the real estate shall be free and clear of any liens and encumbrances, and in conjunction with the transfer of title to Smeal Enterprises, if Wife elects to pursue her option, it shall be the requirement that a mortgage evidencing the terms of payment for the property shall be executed.

(d) The ownership of the residential rental property which the parties now jointly own, such property being adjacent to the marital domicile. Such property shall be free and clear of any liens or encumbrances.

(e) Ownership of the real estate which the parties jointly own which currently houses the gift shop and a rental apartment. Such property shall be free and clear of any liens or encumbrances.

(f) Ownership of the lot and trailer located on it,

which is in the Allport area. Such property is subject to a mortgage of approximately \$15,000.00, and Wife shall have the obligation to make payments of that mortgage and indemnify and hold Husband harmless for any claim made against him for payments of such mortgage.

(g) Ownership of all household goods, furnishings and items of personality now located at the marital domicile.

(h) Ownership of the Lincoln Town Car which is currently in Wife's name, with the understanding that Wife shall be obligated to make payment of any installment payments that may be owed on the said automobile.

(i) Ownership of the IRA currently in Wife's name.

(j) Ownership of all inventory and assets for gift shop which Wife operates.

(k) Full entitlement to money which heretofore has been in the joint savings accounts of the parties and distributions made to her covering the sale in 1994 of real estate owned by the parties.

6. Equitable Distribution to Husband - The parties agree that the following assets shall be distributed to Husband:

(a) Ownership of 100% of the stock of Smeal Enterprises. It is understood that currently 60% of the outstanding shares of stock of the said company is issued in the name of Husband and 40% of the outstanding shares of stock of the said company is issued in the name of Wife. Husband shall also be responsible for insuring that all debt of the corporation which may have been jointly guaranteed by the parties shall be fully paid, and Husband shall indemnify and hold Wife harmless for any claim made against her for any such claim.

(b) Ownership of the IRA currently in Husband's name.

(c) Ownership of the profit sharing plan with Smeal Enterprises.

(d) Ownership of the life insurance policy with

Nationwide in Husband's name.

(e) Ownership of the debt (account receivable to Husband and Wife) now owed by Smeal Enterprises to Husband and Wife jointly, such debt representing dividends which Smeal Enterprises has declared in the past but has not actually distributed to the parties, but instead has retained such dividends for use in the operation of the business.

(f) Those items which are now in Husband's possession, consisting essentially of those items utilized at his apartment in Philipsburg, Pennsylvania.

7. 1994 Income Tax Return - The parties agree to jointly file a 1994 income tax return for local, state and federal taxes. Any additional taxes owed or refund due shall be shared jointly by the parties.

8. Settlement - Settlement shall occur no later than May 1, 1995, at a time and place mutually agreeable to the parties. At the time of settlement, the following shall occur:

(a) The parties shall execute deeds to all real estate transferring ownership of such real estate to Wife as provided in part 5 of this agreement.

(b) Title to the Lincoln Town Car shall be executed by Husband.

(c) Wife shall sign her stock certificates transferring ownership of her shares in Smeal Enterprises to Husband. In the event that such stock certificates are not located, Wife shall sign a Power of Attorney authorizing Husband to take all steps necessary to have the stock certificate(s) reissued and transferred to his name.

(d) Wife shall sign an assignment transferring her interest in the debt owed by Smeal Enterprises to Husband and Wife, as described in part 5(c) of this agreement.

(e) Lease between Smeal Enterprises and Wife, as

covered by part 5(c) of this agreement.

(f) Any other document reasonably necessary to implement the terms of the distribution of assets and assumption of liabilities as provided under this agreement; in particular, section 4 of this agreement.

9. Review of Documentation - Both parties agree that they have had full and complete opportunity to review the present document that they are now signing. The parties further warrant that they have had an opportunity to discuss with legal counsel any terms, conditions or provisions of this agreement with which they have any questions or may have any uncertainty pertaining to the meaning thereof.

10. Mutual Release - By this agreement each party does for himself or herself and his or her heirs, legal representatives, executors, administrators and assigns, release the other from all claims, liabilities, debts, obligations, actions and all causes of action of every kind and nature whatsoever that have been or will be incurred relating to or arising out of the marriage between the parties. However, neither party is relieved nor discharged from any obligation under this agreement or under any instrument or document executed pursuant to this agreement.

11. Entire Agreement and Effective Date - This agreement contains the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein. This agreement shall take

effect upon the date that it is signed by both parties.

12. Separability - If any terms, conditions, clause or provisions of this agreement shall be determined or declared to be void or invalid or otherwise, then only that term, condition, clause or provision shall be stricken from this agreement, and in all other respects this agreement shall be valid and continue in full force and effect. Likewise, the failure of any party to meet his or her obligation under any one or more of the paragraphs herein shall in no way alter the remaining obligations of the parties.

13. Construction - This agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. Those headings used in the text of this agreement are solely for the convenience of reference, and do not have any effect in meaning or construction.

14. Waiver 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 hereafter acquire, under the present or future laws of any jurisdiction; the right to share in the property or the estate of the other as a result of the marital relationship, including without limitation, dower, curtesy, statutory allowance, widow's allowance; the right to take property under equitable distribution; the right to take under the intestacy laws; the right to take against the Will of

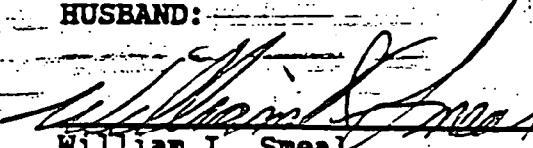
the other, and the right to act as an administrator or executor of the other's estate, and each will, at the request of the other, execute, acknowledge, and deliver any and all instruments which may be necessary or advisable to carry into effect this mutual waiver and relinquishment of all such interests, rights and claims.

15. Survival of Agreement - The parties agree that this agreement shall survive entry of a Divorce Decree.

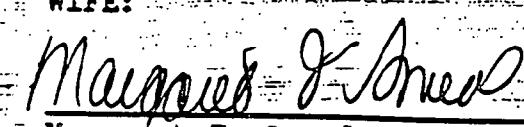
16. Incorporation in Decree - The terms and conditions of this Postnuptial Agreement shall be and are hereby merged and incorporated by reference into the Divorce Decree to be entered as the court's adjudication of those issues as though the same were set forth herein at length, verbatim; and the parties shall be directed to comply in all respects with the terms and provisions of the said Postnuptial Agreement, the same being enforceable by further order of court, if necessary.

17. Enforcement of Agreement - If either party breaches any provision of this Postnuptial Agreement, either prior to or subsequent to the entry of a Divorce Decree, without just cause as determined by court, the party breaching the same shall be responsible for payment of any and all legal fees and costs incurred by the other in enforcing his/her rights under the same.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals on the day and year written below.

PARTY OF THE FIRST PART/
HUSBAND: 

William I. Smeal
DATE: 2-27-95

PARTY OF THE SECOND PART/
WIFE: 

Margaret J. Smeal
DATE: 3-27-95

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA:

:SS:

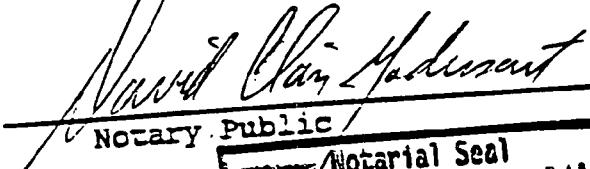
COUNTY OF ~~CLEARFIELD~~ CENTRE :

on this 27th day of March, 1995, before me, a

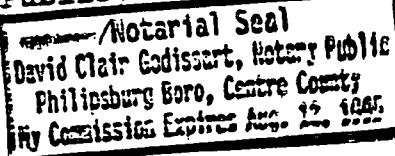
Notary Public, the undersigned officer, personally appeared
WILLIAM I. SMEAL, known to me (or satisfactorily proven) to be
the person whose name is subscribed to the within instrument, and
acknowledged that he executed the same for the purposes therein
contained.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial

Seal.


Notary Public

ACKNOWLEDGEMENT



COMMONWEALTH OF PENNSYLVANIA:

~~CENTRE~~

:SS:

COUNTY OF ~~CLEARFIELD~~

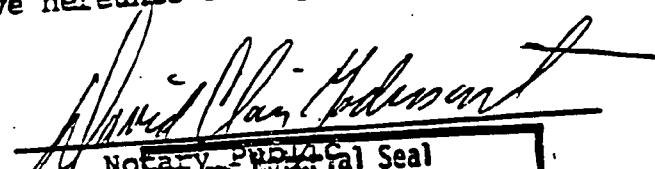
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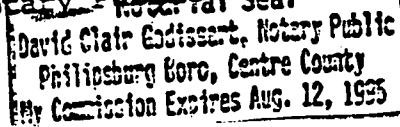
on this 27th day of March, 1995, before me, a

Notary Public, the undersigned officer, personally appeared
MARGARET J. SMEAL, known to me (or satisfactorily proven) to be
the person whose name is subscribed to the within instrument, and
acknowledged that she executed the same for the purposes therein
contained.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial

seal.


Notary Public Seal



APPENDIX A

Attached hereto are the Affidavits of Consent to be signed
by the parties.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL,
Plaintiff

-vs-

WILLIAM I. SMEAL,
Defendant

Docket No. 94-1163-CD
IN DIVORCE

AFFIDAVIT OF CONSENT

1. A Complaint in Divorce under Section 3301(c) of the Divorce Code was filed on September 6, 1994.
2. The marriage of Plaintiff and Defendant is irretrievably broken and ninety (90) days have elapsed from the date of the filing of the Complaint.
3. I consent to the entry of a final Decree of Divorce.
4. I understand that if a claim for alimony, alimony pendente lite, marital property or counsel fees or expenses has not been filed with the Court before the entry of a final Decree of Divorce, the right to claim any of them will be lost.
5. This Affidavit of Consent is being executed with the understanding that there is no reservation of jurisdiction over any property rights matters pertaining to the divorce proceeding herein, including equitable distribution, temporary alimony, permanent alimony, costs and counsel fees.

I verify that the statements made in this Affidavit are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

DATE: _____

Margaret J. Smeal, Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL,
Plaintiff

-vs-

WILLIAM I. SMEAL,
Defendant

* Docket No. 94-1163-CD
IN DIVORCE

AFFIDAVIT OF CONSENT

1. A Complaint in Divorce under Section 3301(c) of the
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3. I consent to the entry of a final Decree of Divorce.

4. I understand that if a claim for alimony, alimony
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not been filed with the Court before the entry of a final Decree
of Divorce, the right to claim any of them will be lost.

5. This Affidavit of Consent is being executed with the
understanding that there is no reservation of jurisdiction over
any property rights matters pertaining to the divorce proceeding
herein, including equitable distribution, temporary alimony,
permanent alimony, costs and counsel fees.

I verify that the statements made in this Affidavit are true
and correct. I understand that false statements made herein are
subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn
falsification to authorities.

DATE: _____

William I. Smeal, Defendant

ADDENDUM TO POSTNUPTIAL AGREEMENT

AND NOW, this 9th day of June, 1995, this document is entered into by and between MARGARET J. SMEAL, an individual, of R. R. 2, Box 184, Morrisdale, Pennsylvania, 16858, Party of the First Part, referred to hereinafter as "Margaret J. Smeal" or "Lessor", as the case may be,

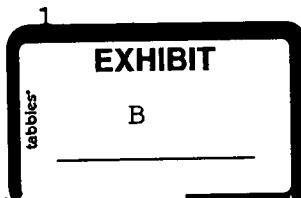
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WILLIAM I. SMEAL, an individual, of P. O. Box 583, Philipsburg, Pennsylvania, Party of the Second Part, referred to hereinafter as "William Smeal".

W I T N E S S E T H:

WHEREAS on March 27, 1995, the parties hereunto signed a Postnuptial Agreement between themselves, with the purpose of resolving all economic issues between themselves relative to the divorce proceedings initiated in Docket Number 94-1163-CD of the Court of Common Pleas of Clearfield County; and

WHEREAS, Margaret J. Smeal has challenged the legal sufficiency of the said agreement and has refused to proceed to settlement;



WHEREAS, the parties have determined to adjust the said Postnuptial Agreement so as to provide for alimony and a cash payment, thereby modifying parts 4 and 5 of the Postnuptial Agreement; and

WHEREAS, included in the said Postnuptial Agreement was the requirement that William Smeal cause Smeal's Enterprises, Inc., to enter into a certain lease agreement with Lessor, as set forth in paragraph 5 of the Postnuptial Agreement; and

WHEREAS, the Parties have entered into negotiations with one another, and Lessor has indicated that in order to cause her to voluntarily sign the proposed Lease Agreement between herself and Smeal's Enterprises, Inc., it will be necessary for the Lease Agreement to be personally guaranteed by William Smeal, and it will be necessary to have a specific provision in the lease requiring that fire insurance, which Smeal's Enterprises, Inc., maintains on the said premises covered by the lease, shall insure the premises at a value sufficient to pay for the cost of rebuilding the structures, located on said premises; and

WHEREAS, the parties have concluded that it is in their best interest to resolve this matter amicably, and have therefore determined that they will enter into the present agreement;

NOW THEREFORE, in consideration of their mutual covenants, and with the intention of being legally bound, the parties hereunto agree as follows:

1. Acknowledgement Pertaining to Postnuptial Agreement -

The parties hereunto agree that with the exception of the terms set forth in this Addendum, the Postnuptial Agreement remains in full force and effect, without deficiency.

2. Personal Guarantee - William Smeal hereby agrees to

personally guarantee all contractual obligations to Smeal's Enterprises, Inc., including the obligation to make monthly payments to Lessor, as provided in the basic Lease Agreement being signed at this time between Lessor and Smeal's Enterprises, Inc.

3. Fire Insurance - William Smeal agrees that the type

of fire insurance that Smeal's Enterprises, Inc., is obligated to maintain shall be such insurance which covers the cost of replacement of the premises that are subject to the lease therein, and not just in the fair market value of the said premises.

4. Effect of Guarantee - The purpose of this Addendum

is to impose a personal guarantee on William Smeal and to verify the type of fire insurance that will be maintained on the premises leased by Smeal's Enterprises by Lessor. To the extent that it is necessary to do so, the basic Lease Agreement between Smeal's

Enterprises, Inc., and Lessor shall be determined to be modified to conform to these terms.

5. Cash Payment - Within fifteen (15) days of the date of the signing of this agreement, William Smeal shall pay to Margaret J. Smeal the sum of \$10,000.00.

6. Payment of Alimony - William Smeal agrees to pay to Margaret J. Smeal alimony, within the meaning of the Internal Revenue Code (I.R.C. §71, et seq.), as follows:

a. One Thousand (\$1,000.00) Dollars, payable in cash, in equal monthly installments for a period of ten (10) years, with the first payment to be made on or before July 1, 1995, with each monthly payment to be made on the 1st day of each month thereafter totalling 120 separate payments.

b. The payments described herein are not modifiable, unless agreed to in writing by both parties.

c. The obligation of William Smeal to make payments under these terms will end and he will be released upon Margaret J. Smeal's remarriage or cohabitation with another, or upon the death of either party. Cohabitation, for purposes of this term, shall be defined in accordance with Pennsylvania legal standards.

6. Final Resolution of Claims - It is the intent of the parties in signing this Addendum to terminate with finality any claim, argument or contention that there is any remaining issue whatsoever pertaining to the final termination of the bonds of matrimony between the parties and all economic issues related thereto, including alimony, equitable distribution, attorney's

fees, costs, support, and any other claim which could conceivably be made under the provisions of the Divorce Code.

IN WITNESS WHEREOF, the parties hereunto have set forth their signatures and the date shown below, doing so with the intention of being legally bound.

PARTY OF THE FIRST PART/
LESSOR:

By: Margaret J. Smeal
Dated: _____

PARTY OF THE SECOND PART/
WILLIAM I. SMEAL
(Individually):

By: William I. Smeal
Dated: _____

Send the 5 Kips.

Set out the

79,850 left

and paid a lump sum

etc. 80,000 at

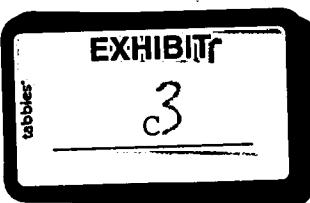
12% (same
rate w/corp)

over not more

than 10 yrs
paying + penalty

we will the 3,500⁰⁰ for the

guaranteed by Bill
Perryman (in the name
of a firm)



9/5/95

Peggy Smeal

11:45

12:30

Bill Dives 177,000 ±
on the Mellon Natl Bl mtg
on the marital home.

He said he could come up w/
\$100,000 but ~~she~~ have to eat
the 77,000 ±

I told her no way we can force
the payoff of this 177,000

But she could take a note
from him for the 77,000 ±
pay the bank off out of the
proceeds of the sale of the
house

5/28/95

eggy

the guarantee for the
#3500 ~~no.~~

1. Life Ins. on Wm. Small
2. Personal guarantee by Wm ⁵
3. Points to be considered in the
nature of alimony.

5/20/95 John Mause CPA

Rentals 120.00 mo. 720.00
Warehouse 3,425.00 mo.

Ass'ts

Rents

rental 500.00

house 300.00

apt 425.00

shop

each activity Budget Plan
own CPA

1450.300
190.000 net 8% 100.000

Warehouse

100.000 CPA

FILED

SEP 12 2001
Sue A. H. Conley
William A. Shaw
Prothonotary
Pd \$80.00
1cc atty

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

*

Plaintiff

*

No. 01-210

vs.

*

WILLIAM I. SMEAL,

*

Defendant

*

TYPE OF PLEADING:

*

Praecipe for Entry of
Appearance

*

FILED ON BEHALF OF:

*

Defendant

*

*

COUNSEL OF RECORD FOR

*

THIS PARTY:

*

David R. Thompson, Esquire
Supreme Court I.D. No. 73053
Attorney at Law
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

*

FILED

NOV 08 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

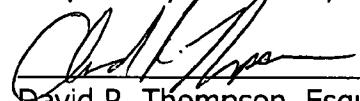
MARGARET J. SMEAL,	*
	*
Plaintiff	* No. 01-210
	*
vs.	*
	*
WILLIAM I. SMEAL,	*
	*
Defendant	*

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance in the above-captioned matter on behalf of the
Defendant, **WILLIAM I. SMEAL.**

Respectfully submitted,



David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

*

No. 01-210-CD

01-1601-CJ

Plaintiffs

*

*

vs.

*

*

*

WILLIAM I. SMEAL,

*

*

*

TYPE OF CASE:

Civil

Defendant

*

*

*

*

*

TYPE OF PLEADING:

Preliminary Objections

*

*

*

FILED ON BEHALF OF:

Defendant

*

*

*

COUNSEL OF RECORD

FOR THIS PARTY:

David R. Thompson, Esquire

Attorney at Law

Supreme Court I.D. 73053

308 Walton Street, Suite 4

P.O. Box 587

Philipsburg PA 16866

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William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,	*
	*
Plaintiff	* No. 01-210
	*
vs.	*
	*
WILLIAM I. SMEAL,	*
	*
Defendant	*

NOTICE TO PLEAD

TO JOHN R. CARFLEY, ATTORNEY FOR PLAINTIFF:

You are hereby notified to file a written response to the enclosed Preliminary Objections within twenty (20) days from service hereof or a Default Judgment may be entered against you.

DATE: 11-8-01

By: 

David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,	*
	*
Plaintiff	* No. 01-210
	*
VS.	*
	*
WILLIAM I. SMEAL,	*
	*
Defendant	*

PRELIMINARY OBJECTIONS

AND NOW, comes the Defendant, William I. Smeal, by and through his attorney David R. Thompson, Esquire, and files the following Preliminary Objections to the Plaintiff's Complaint and in support hereof alleges as follows:

A. DEMURRER TO PLAINTIFF'S COMPLAINT

1. Plaintiff filed a Complaint in Divorce containing counts for Equitable Distribution, Alimony, and Counsel Fees, docketed in this Court to No. 94-1163.
2. The parties reached and executed a Postnuptial Agreement dated March 27, 1995, which was entered into the record as a Court Order to docket no. 94-1163.
3. Subsequent to that, the parties reached and entered into an Addendum to Postnuptial Agreement dated June 9, 1995, which was entered into the record as a Court Order to docket no. 94-1163.

4. Plaintiff has attached both contractual documents to her Complaint as Exhibits thereto.

5. Pursuant to the terms of the Addendum to Postnuptial Agreement, Defendant filed a Petition to Terminate Alimony against Plaintiff to docket no. 94-1163 on or about September 27, 2000.

6. The Plaintiff, through John Carfley, Esquire, as counsel, filed an Answer to the Petition, as well as New Matter, alleging that the alimony was actually not alimony, although labeled as that, but rather was part of the scheme of equitable distribution in the referenced divorce case.

7. A hearing was held on May 29, 2001, on the Petition to Terminate Alimony, during which Plaintiff's issue that "the alimony payments were actually part of the equitable distribution," was raised by Plaintiff, litigated before the Court, and decided upon in the Opinion and Order of the Honorable Frederic Ammerman, dated July 25, 2001.

8. Plaintiff appealed that decision to the Pennsylvania Superior Court on or about August 20, 2001, which is pending.

9. Plaintiff now files this Complaint, requesting enforcement of the Postnuptial Agreement and the Addendum to Postnuptial Agreement, basing her theory of recovery on equitable distribution in the divorce case.

10. Pursuant to Pa. R. Civ. P. Rule 1028 (a)(4), Plaintiff's Complaint is legally insufficient.

11. Pursuant to Pa. R. Civ. P. Rule 1028 (a)(6), Plaintiff's Complaint is barred by the pendency of a prior action.

12. Defendant demurs to Plaintiff's Complaint as the same is barred by the doctrine of res judicata.

13. Defendant demurs to Plaintiff's Complaint as the same is barred by the doctrine of collateral estoppel.

14. Defendant demurs to Plaintiff's Complaint as the same is barred by the applicable statute of limitations.

WHEREFORE, Defendant William I. Smeal respectfully requests this Honorable Court to grant the requested Demurrer, dismissing the Complaint as filed against him, as Plaintiff's Complaint is legally insufficient and is barred by the pendency of a prior action.

Respectfully submitted,



David R. Thompson, Esquire
Attorney at Law

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

Plaintiff

VS.

WILLIAM I. SMEAL,

Defendant

*

*

* No. 01-210

* 01-1601-ed

*

*

*

*

* TYPE OF CASE:

* Civil Division

*

*

* TYPE OF PLEADING:

* Certificate of Service

*

*

*

*

*

*

*

* FILED ON BEHALF OF:

* Defendant

*

*

* COUNSEL OF RECORD FOR

* THIS PARTY:

* David R. Thompson, Esquire

* Attorney at Law

* Supreme Court 73053

* P.O. Box 587

* 308 Walton Street, Suite 4

* Philipsburg PA 16866

* (814) 342-4100

FILED

NOV 08 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

*

*

Plaintiff

* No. 01-210

*

VS.

*

*

WILLIAM I. SMEAL,

*

*

Defendant

*

CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the **PRAECIPE FOR ENTRY OF APPEARANCE AND PRELIMINARY OBJECTIONS**, in the above captioned matter on the following by fax and by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

John R. Carfley, Esquire
P.O. Box 249
Philipsburg PA 16866

DATE: 11/8/01

BY:



David R. Thompson, Esquire

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 11572

SMEAL, MARGARET J.

01-1601-CD

VS.

SMEAL, WILLIAM I.

COMPLAINT

SHERIFF RETURNS

**NOW OCTOBER 5, 2001 DENNY NAU, SHERIFF OF CENTRE COUNTY WAS
DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN COMPLAINT ON WILLIAM I. SMEAL, DEFENDANT.**

**NOW OCTOBER 16, 2001 SERVED THE WITHIN COMPLAINT ON WILLIAM I.
SMEAL, DEFENDANT BY DEPUTIZING THE SHERIFF OF CENTRE COUNTY.
THE RETURN OF SHERIFF NAU IS HERETO ATTACHED AND MADE A PART OF
THIS RETURN.**

Return Costs

Cost	Description
37.83	SHFF. HAWKINS PAID BY: ATTY.
44.00	SHFF. NAU PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

FILED

NOV 21 2001

William A. Shaw
Prothonotary

So Answers,

*Chester Hawkins
by Marilyn Hause*

Chester A. Hawkins
Sheriff

JKS

Sworn to Before Me This

21 Day Of Nov 2001

Clearfield Co. Clearfield, PA.
1st Monday in Jan. 2002
My Commission Expires
Prothonotary
WILLIAM A. SHAW

SHERIFF'S OFFICE

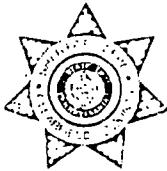
CENTRE COUNTY

Rm 101 Court House, Bellefonte, Pennsylvania, 16823 (814) 355-6803

SHERIFF SERVICE PROCESS RECEIPT, AND AFFIDAVIT OF RETURN

INSTRUCTIONS FOR SERVICE OF PROCESS: You must file one instruction sheet for each defendant. Please type or print legibly. Do not detach any copies.

1. Plaintiff(s) <i>MARGARET J. SMEAL</i>	2. Case Number <i>01-1601-CD</i>								
3. Defendant(s) <i>William J. SMEAL</i>	4. Type of Writ or Complaint: <i>COMPLAINT</i>								
<p>SERVE → 5. Name of Individual, Company, Corporation, Etc., to Serve or Description of Property to be Levied, Attached or Sold. <i>William SMEAL</i></p> <p>AT 6. Address (Street or RFD, Apartment No., City, Boro, Twp., State and Zip Code) <i>230 N. 4th St. Philipsburg, Pa. 16861</i></p>									
<p>7. Indicate unusual service: <input type="checkbox"/> Reg Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Deputize <input type="checkbox"/> Post <input type="checkbox"/> Other</p> <p>Now, <u>20</u> I SHERIFF OF CENTRE COUNTY, PA., do hereby depose the Sheriff of County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____ Sheriff of Centre County</p>									
<p>8. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE</p> <p>NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN – Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.</p>									
9. Print/Type Name and Address of Attorney/Originator	10. Telephone Number	11. Date							
	12. Signature								
SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE									
13. I acknowledge receipt of the writ or complaint as indicated above.	SIGNATURE of Authorized CCSD Deputy of Clerk and Title	14. Date Filed	15. Expiration/Hearing Date						
TO BE COMPLETED BY SHERIFF									
<p>16. Served and made known to <u>Deborah Weaver</u>, on the <u>16</u> day of <u>Oct</u>,</p> <p>20 <u>01</u>, at <u>1:05</u> o'clock, <u>P</u> m., at <u>SAME AS ABOVE ADDRESS</u>, County of Centre Commonwealth of Pennsylvania, in the manner described below:</p>									
<p><input type="checkbox"/> Defendant(s) personally served. <input type="checkbox"/> Adult family member with whom said Defendant(s) resides(s). Relationship is _____ <input type="checkbox"/> Adult in charge of Defendant's residence. <input type="checkbox"/> Manager/Clerk of place of lodging in which Defendant(s) resides(s). <input checked="" type="checkbox"/> Agent or person in charge of Defendant's office or usual place of business. <input type="checkbox"/> _____ and officer of said Defendant company. <input type="checkbox"/> Other _____</p>									
<p>On the _____ day of _____, 20_____, at _____ o'clock, _____ M.</p>									
<p>Defendant not found because:</p> <p><input type="checkbox"/> Moved <input type="checkbox"/> Unknown <input type="checkbox"/> No Answer <input type="checkbox"/> Vacant <input type="checkbox"/> Other _____</p>									
<p>Remarks:</p>									
Advance Costs <i>75.00</i>	Docket <i>9.00</i>	Service <i>9.00</i>	Sur Charge <i>—</i>	Affidavit <i>2.50</i>	Mileage <i>21.00</i>	Postage <i>.50</i>	Misc. <i>2.00</i>	Total Costs <i>44.00</i>	Costs Due or Refund <i>31.00</i>
17. AFFIRMED and subscribed to before me this _____				So Answer.					
20. day of _____ 20_____				<p>18. Signature of Dep. Sheriff <i>Deborah Weaver</i></p> <p>21. Signature of Sheriff</p>					19. Date <i>10-17-01</i>
23. _____ Notary Public									22. Date
My Commission Expires				SHERIFF OF CENTRE COUNTY					
24. I ACKNOWLEDGE RECEIPT OF THE SHERIFF'S RETURN SIGNATURE OF AUTHORIZED AUTHORITY AND TITLE.									25. Date Received



CHESTER A. HAWKINS
SHERIFF

**Sheriff's Office
Clearfield County**

COURTHOUSE
1 NORTH SECOND STREET, SUITE 116
CLEARFIELD, PENNSYLVANIA 16830

#1828
OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533
CLEARFIELD COUNTY FAX
(814) 765- 5915

DARLENE SHULTZ
CHIEF DEPUTY
MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK
PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARGARET J. SMEAL

TERM & NO. 01-1601-CD

vs
WILLIAM I. SMEAL

SERVE BY: 10/26/01
or
HEARING DATE:

DOCUMENT TO BE SERVED:
COMPLAINT

MAKE REFUND PAYABLE TO: JOHN R. CARFLEY, Attorney

SERVE: WILLIAM I. SMEAL

ADDRESS: Owner of Smeal Enterprises, Philipsburg, Pa.

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby depelize the SHERIFF of CENTRE County Pennsylvania to execute this writ.

This Deputation being made at the request and risk of the Plaintiff this 5th day of OCTOBER 2001.

Respectfully,

CHESTER A. HAWKINS,
SHERIFF OF CLEARFIELD COUNTY

PA 1810-PA
PD.75-10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2001-1601-CD

WILLIAM I. SMEAL : Jury Trial Demanded
Defendant : Document filed:
: Plaintiff's Answers to
: Defendant's Preliminary
: Objections
: Counsel for this party:
: John R. Carfley, Esq.
: Attorney for Plaintiff
: P. O. Box 249
: Philipsburg, Pa., 16866
: (814) 342-5581
: ID# 17621

FILED

NOV 27 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2001-1601-CD
WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

PLAINTIFF'S ANSWERS TO DEFENDANT'S PRELIMINARY OBJECTIONS

AND NOW, comes the plaintiff, Margaret J. Smeal, an adult individual, who by and through her attorney, John R. Carfley, Esquire, answers Defendant's Preliminary Objections in the following manner:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.

7. It is admitted that a hearing was held on May 29, 2001, on the Petition to Terminate Alimony. It is specifically denied that the issues pertaining to whether the alimony payments were part of the equitable distribution portion of the agreement was litigated by this court. By way of further answer it is averred that this court based its decision on the fact that the Divorce Code provides for the termination of alimony when a woman cohabits with another individual not her spouse in a meretricious relationship. What the plaintiff has now asserted is a breach of a contractual agreement wherein the defendant agreed to pay certain sums as part of an equitable distribution of the marital estate and styled that

payment alimony for purposes advantageous to the defendant, to wit: favorable Federal Income Tax and State Income Tax consequences. It is further averred that an agreement which does not merge with a divorce decree is governed by contract law. (See Jones v. Jones, 438 Pa. Super. 26, 651 A.2d 157 (1994). By way of further answer it is averred that a written contract must be construed as a whole and the parties intentions must be ascertained from the entire agreement: effect must be given to each part of the contract. Carosene v. Carosene 455 Pa. Super. 450, 688 A.2d 733 (1997) Alloc. Denied, 704 A.2d 633. Moreover a contract is ambiguous if it is reasonably susceptible to different construction and is capable of being understood in more than one sense. Hutchinson v. Sunbeam Coal Corp. 513 Pa. 192, 519 A.2d 385 (1986).

8. Admitted.

9. Admitted in part. It is denied, however, that the theory for enforcement of the Postnuptial Agreement and the Addendum is identical to that litigated by this court. By way of further answer it is averred that the court's decision in this case was based entirely on its finding that the plaintiff cohabited with another individual. The court's decision had nothing to do with any theory of contract law under which the defendant would have incurred liability to the plaintiff as a result of promises made during the course of the dissolution of the marriage and the negotiation for the division of marital property.

10. Paragraph 10 states a conclusion of law as to which no response is necessary.

11. Paragraph 11 states a conclusion of law as to which no

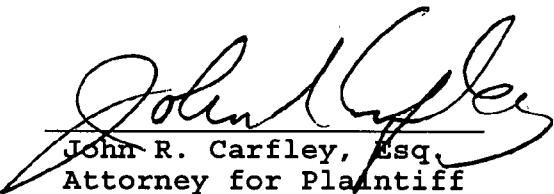
response is necessary.

12. It is denied that plaintiff's complaint is barred by the doctrine of res judicata for those reasons more fully set forth hereinabove which averments are incorporated herein by reference as fully as though set forth at length.

13. It is denied that plaintiff's complaint is barred by the doctrine of collateral estoppel for those reasons more fully set forth hereinabove which averments are incorporated herein by reference as fully as though set forth at length.

14. It is denied that plaintiff's complaint is barred by the doctrine of the statute of limitations for those reasons more fully set forth hereinabove which averments are incorporated herein by reference as fully as though set forth at length.

WHEREFORE, Plaintiff requests that judgment be entered in favor of the plaintiff and that Defendant's Preliminary Objections be dismissed.



John R. Carfley, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: November 26, 2001

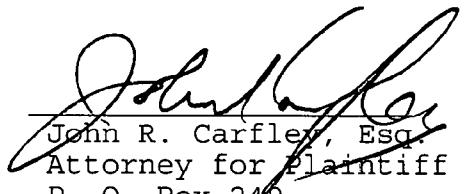
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2001-1601-CD
WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the within Plaintiff's Answers to Defendant's Preliminary Objections by regular United States mail, postage prepaid on November 27, 2001, to the following counsel:

David Thompson, Esq.
P. O. Box 587
Philipsburg, Pa., 16866


John R. Carflex, Esq.
Attorney for Plaintiff
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

John R. Carflex
Attorney for Plaintiff

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NOV 27 2001

0112:26

William A. Shaw
Prothonotary

One (1) cc to Attys

Shaw

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2001-1601

WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

ORDER

AND NOW, this 25 day of January, 2002, the court
being satisfied that the defendant may attempt to dissipate
assets or conceal assets which may be otherwise used to satisfy
obligations legally due the plaintiff, IT IS THE ORDER OF THIS
COURT that the defendant shall cease and desist from the transfer,
alienation, sale or other disposition of any real or personal
assets until hearing has been conducted by this court. This order
shall not prohibit the defendant from making payments in the due
course of business provided that they are justifiable in the
conduct of the day to day business activities.

THIS ORDER SHALL remain in effect until otherwise determined
by this court after hearing on plaintiff's motion.

The defendant is further directed to file an answer to the
within petition within twenty (20) days and to appear and show
cause why the prayer of said petition should not be granted, Rule
returnable the 25 day of Feb, 2002, at 3:15 o'clock ^{A.M.} in
Courtroom No. 1, Clearfield County Courthouse, Clearfield, Pa.

FILED

BY THE COURT:

Jed Cunneen

JAN 25 2002
William A. Shaw
Prothonotary

FILED

cc

O 3:46
JAN 25 2002

Castley

cc

William A. Shaw
Prothonotary

cc

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2001- 1601

WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

PETITION

AND NOW, comes the petitioner, Margaret J. Smeal, the plaintiff herein, who by and through her attorney, John R. Carfley, Esquire, petitions this Honorable Court as follows:

1. Petitioner is Margaret J. Smeal, who presently resides at R. R. 2, Box 184, Morrisdale, Pa., 16858.

2. The Respondent is William J. Smeal, who presently resides at Morrisdale, Clearfield County, Pa.

3. The parties formerly were husband and wife they having been divorced on June 13, 1995.

4. During the pendency of this divorce action, the said parties negotiated a post nuptial agreement and addendum, copies of which are attached hereto as Exhibit A and B.

5. As part of the agreement William Smeal agreed to pay Margaret Smeal as reasonable rental for the use of certain real estate and buildings the sum of \$3,500.00 per month.

6. The said William Smeal recently defaulted in the payment of the rental due despite the fact that the said William Smeal has significant assets available to him through his business activities, his personal bank accounts and his IRA's retained

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through Mellon Bank.

7. It is believed and therefore averred that the defendant

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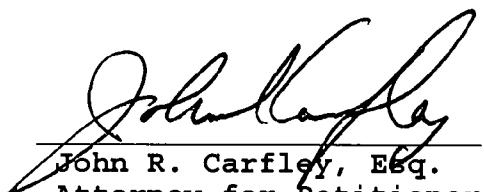
William A. Shaw
Prothonotary

William Smeal may attempt to dissipate or conceal assets which he could use to satisfy obligations to Margaret Smeal.

8. Margaret Smeal, therefore, requests this Honorable Court to exercise its equitable powers and enter an order freezing all assets available to the defendant until such time as this matter can be heard.

9. That the court has equitable powers available to it pursuant to the Divorce Code of 1980 as amended, including the right to freeze assets and property that may be dissipated or otherwise concealed from a spouse or ex-spouse for no legitimate or legal purpose.

WHEREFORE, Petitioner requests this Honorable Court to enter an order ex parte directing the defendant to cease and desist from the transfer of any sums of money in personal bank accounts at County National Bank, IRA's at Mellon Bank or any other assets real or personal whether owned individually or jointly pending the outcome of the hearing on this matter.



John R. Carfley, Esq.
Attorney for Petitioner
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: January 4 , 2002

VERIFICATION

I hereby verify that the statements made in this instrument are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Magomed J. Saev

Dated: January 4, 2002

LUF

POSTNUPTIAL AGREEMENT

AND NOW, this 27 day of March, 1995,

THIS AGREEMENT is by and between WILLIAM I. SMEAL, of P. O. Box 583, Philipsburg, PA 16866, referred to hereinafter as "Husband", Party of the First Part,

A
N
D

MARGARET J. SMEAL, of R. R. 2, Box 184, Morrisdale, PA 16858, referred to hereinafter as "Wife", Party of the Second Part.

W I T N E S S E T H :

WHEREAS, the parties hereunto were married on June 26, 1971;

and

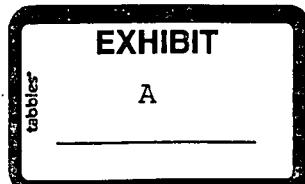
WHEREAS, two sons were born to the marriage, named Brad Smeal and William N. Smeal, with both sons now being emancipated;

and

WHEREAS, unfortunate and irreconcilable differences have arisen between the parties, giving rise to the parties living separate and apart and further giving rise to the filing of a Divorce Complaint by Wife on September 6, 1994, before the Court of Common Pleas of Clearfield County, in Docket No. 94-1163-CD;

and

WHEREAS, the parties have engaged in meetings between



themselves and with their attorneys, have had numerous discussions with one another, and have determined that they will reach a mutual settlement in this case rather than expending the time, expense and anxiety associated with further litigation in the divorce proceeding; and

WHEREAS, the parties have entered into negotiations with one another so as to seek to resolve all issues involving their divorce proceeding, and have determined that they will enter into this agreement;

NOW THEREFORE, in consideration of their mutual covenants and with the intention of being legally bound, the parties hereunto agree as follows:

1. Resolution of All Issues - The parties expressly agree that through the signing of this agreement, they are addressing all issues relating to their divorce proceeding, including the entry of a no-fault divorce and the resolution of all property rights issues. Among the matters which have been reviewed and discussed between the parties are the matters of equitable distribution of all marital assets and liabilities, costs, attorney's fees, alimony, spousal support, and in general their present, past and future financial and personal relationships. These discussions have led to the decision to resolve this case without the necessity of litigating the various issues that could be addressed before the court, including a divorce master, as relative to their divorce proceeding in Docket No. 94-1163-CD of

the Court of Common Pleas of Clearfield County.

2. No-Fault Divorce - The parties hereunto have concluded that there has been an irretrievable and irreparable breakdown of their marriage, and as a result, they have determined to agree upon the entry of a no-fault divorce under Section 3301(c) of the Divorce Code. Attached hereto as Appendix A are Affidavits of Consent which the parties each agree to sign so that a no-fault divorce may be entered in this proceeding.

3. Entry of No-Fault Divorce - It is agreed that counsel for Husband shall prepare and cause to be filed with the Prothonotary of the Court of Common Pleas of Clearfield County a praecipe directing that a Divorce Decree be entered, with such decree to specifically refer to the present Postnuptial Agreement which the parties are signing herewith and to specify that the terms and conditions are expressly approved.

4. Comprehensive Decision - The parties hereby acknowledge that in view of the terms of equitable distribution set forth below, that there shall be no award of alimony, costs, or counsel fees to wife, as the assets and income stream provided for under equitable distribution are sufficient to meet her economic needs. The parties hereby acknowledge that they have considered elements that could be considered in a claim for alimony, costs, and counsel fees among the factors that have prompted the terms and conditions that have been set forth pertaining to equitable distribution.

5. Equitable Distribution to Wife - The parties agree that the following assets shall be distributed to Wife:

(a) Full ownership of the marital domicile, with Husband assuming the complete responsibility for paying the existing mortgage on the premises. Husband shall indemnify and hold Wife harmless for any payment obligations owed under the said mortgage.

(b) Ownership of the commercial rental property in Philipsburg, with this being the property on which the building is located in which Smeal Enterprises operates. Such property shall be free and clear of any liens or encumbrances.

(c) With respect to the commercial real estate mentioned in part (b) above, Husband agrees that he shall cause Smeal Enterprises to sign a ten-year lease, obligating the company to make rental payments to Wife for the said commercial property at the rate of \$3,500.00 per month. Besides the monthly rental term, the lease shall have those terms and conditions which are consistent with the present leasing arrangement on the property. In addition, there shall be an option in the lease which shall give Wife at the conclusion of the ten-year rental term the option to require Smeal Enterprises to purchase the said commercial property at that point shall consist of payments at the rate of \$1,000.00 per month for a total of ten (10) years thereafter. Title to the real estate shall be free and clear of any liens and encumbrances, and in conjunction with the transfer of title to Smeal Enterprises, if Wife elects to pursue her option, it shall be the requirement that a mortgage evidencing the terms of payment for the property shall be executed.

(d) The ownership of the residential rental property which the parties now jointly own, such property being adjacent to the marital domicile. Such property shall be free and clear of any liens or encumbrances.

(e) Ownership of the real estate which the parties jointly own which currently houses the gift shop and a rental apartment. Such property shall be free and clear of any liens or encumbrances.

(f) Ownership of the lot and trailer located on it.

which is in the Allport area. Such property is subject to a mortgage of approximately \$15,000.00, and Wife shall have the obligation to make payments of that mortgage and indemnify and hold Husband harmless for any claim made against him for payments of such mortgage.

(g) Ownership of all household goods, furnishings and items of personality now located at the marital domicile.

(h) Ownership of the Lincoln Town Car which is currently in Wife's name, with the understanding that Wife shall be obligated to make payment of any installment payments that may be owed on the said automobile.

(i) Ownership of the IRA currently in Wife's name.

(j) Ownership of all inventory and assets for gift shop which Wife operates.

(k) Full entitlement to money which heretofore has been in the joint savings accounts of the parties and distributions made to her covering the sale in 1994 of real estate owned by the parties.

6. Equitable Distribution to Husband - The parties agree that the following assets shall be distributed to Husband:

(a) Ownership of 100% of the stock of Smeal Enterprises. It is understood that currently 60% of the outstanding shares of stock of the said company is issued in the name of Husband and 40% of the outstanding shares of stock of the said company is issued in the name of Wife. Husband shall also be responsible for insuring that all debt of the corporation which may have been jointly guaranteed by the parties shall be fully paid, and Husband shall indemnify and hold Wife harmless for any claim made against her for any such claim.

(b) Ownership of the IRA currently in Husband's name.

(c) Ownership of the profit sharing plan with Smeal Enterprises.

(d) Ownership of the life insurance policy with

Nationwide in Husband's name.

(e) Ownership of the debt (account receivable to Husband and Wife) now owed by Smeal Enterprises to Husband and Wife jointly, such debt representing dividends which Smeal Enterprises has declared in the past but has not actually distributed to the parties, but instead has retained such dividends for use in the operation of the business.

(f) Those items which are now in Husband's possession, consisting essentially of those items utilized at his apartment in Philipsburg, Pennsylvania.

7. 1994 Income Tax Return - The parties agree to jointly file a 1994 income tax return for local, state and federal taxes. Any additional taxes owed or refund due shall be shared jointly by the parties.

8. Settlement - Settlement shall occur no later than May 1, 1995, at a time and place mutually agreeable to the parties. At the time of settlement, the following shall occur:

(a) The parties shall execute deeds to all real estate transferring ownership of such real estate to Wife as provided in part 5 of this agreement.

(b) Title to the Lincoln Town Car shall be executed by Husband.

(c) Wife shall sign her stock certificates transferring ownership of her shares in Smeal Enterprises to Husband. In the event that such stock certificates are not located, Wife shall sign a Power of Attorney authorizing Husband to take all steps necessary to have the stock certificate(s) reissued and transferred to his name.

(d) Wife shall sign an assignment transferring her interest in the debt owed by Smeal Enterprises to Husband and Wife, as described in part 5(c) of this agreement.

(e) Lease between Smeal Enterprises and Wife, as

covered by part 5(c) of this agreement.

(f) Any other document reasonably necessary to implement the terms of the distribution of assets and assumption of liabilities as provided under this agreement; in particular, section 4 of this agreement.

9. Review of Documentation - Both parties agree that they have had full and complete opportunity to review the present document that they are now signing. The parties further warrant that they have had an opportunity to discuss with legal counsel any terms, conditions or provisions of this agreement with which they have any questions or may have any uncertainty pertaining to the meaning thereof.

10. Mutual Release - By this agreement each party does for himself or herself and his or her heirs, legal representatives, executors, administrators and assigns, release the other from all claims, liabilities, debts, obligations, actions and all causes of action of every kind and nature whatsoever that have been or will be incurred relating to or arising out of the marriage between the parties. However, neither party is relieved nor discharged from any obligation under this agreement or under any instrument or document executed pursuant to this agreement.

11. Entire Agreement and Effective Date - This agreement contains the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein. This agreement shall take

effect upon the date that it is signed by both parties.

12. Separability - If any terms, conditions, clause or provisions of this agreement shall be determined or declared to be void or invalid or otherwise, then only that term, condition, clause or provision shall be stricken from this agreement, and in all other respects this agreement shall be valid and continue in full force and effect. Likewise, the failure of any party to meet his or her obligation under any one or more of the paragraphs herein shall in no way alter the remaining obligations of the parties.

13. Construction - This agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. Those headings used in the text of this agreement are solely for the convenience of reference, and do not have any effect in meaning or construction.

14. Waiver 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 hereafter acquire, under the present or future laws of any jurisdiction; the right to share in the property or the estate of the other as a result of the marital relationship, including without limitation, dower, courtesy, statutory allowance, widow's allowance; the right to take property under equitable distribution; the right to take under the intestacy laws; the right to take against the Will of

the other, and the right to act as an administrator or executor 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 interests, rights and claims.

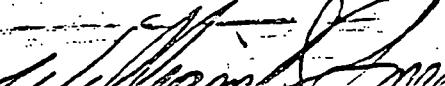
15. Survival of Agreement - The parties agree that this agreement shall survive entry of a Divorce Decree.

16. Incorporation in Decree - The terms and conditions of this Postnuptial Agreement shall be and are hereby merged and incorporated by reference into the Divorce Decree to be entered as the court's adjudication of those issues as though the same were set forth herein at length, verbatim; and the parties shall be directed to comply in all respects with the terms and provisions of the said Postnuptial Agreement, the same being enforceable by further order of court, if necessary.

17. Enforcement of Agreement - If either party breaches any provision of this Postnuptial Agreement, either prior to or subsequent to the entry of a Divorce Decree, without just cause as determined by court, the party breaching the same shall be responsible for payment of any and all legal fees and costs incurred by the other in enforcing his/her rights under the same.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals on the day and year written below.

PARTY OF THE FIRST PART/
HUSBAND:


William I. Smeal
DATE: 2-27-95

PARTY OF THE SECOND PART/
WIFE:


Margaret J. Smeal
DATE: 3-27-95

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF ~~Centre~~ :SS:

on this 27th day of March, 1995, before me, a
Notary Public, the undersigned officer, personally appeared
WILLIAM I. SHEAL, known to me (or satisfactorily proven) to be
the person whose name is subscribed to the within instrument, and
acknowledged that he executed the same for the purposes therein
contained.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial
seal.

David Clair Gadissart
Notary Public

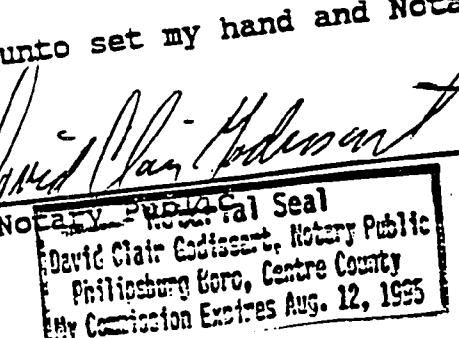


ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF ~~Centre~~ :SS:

on this 27th day of March, 1995, before me, a
Notary Public, the undersigned officer, personally appeared
MARGARET J. SHEAL, known to me (or satisfactorily proven) to be
the person whose name is subscribed to the within instrument, and
acknowledged that she executed the same for the purposes therein
contained.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial
seal.



APPENDIX A

Attached hereto are the Affidavits of Consent to be signed
by the parties.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL,
Plaintiff

-vs-

Docket No. 94-1163-CD
IN DIVORCE

WILLIAM I. SMEAL,
Defendant

AFFIDAVIT OF CONSENT

1. A Complaint in Divorce under Section 3301(c) of the Divorce Code was filed on September 6, 1994.
2. The marriage of Plaintiff and Defendant is irretrievably broken and ninety (90) days have elapsed from the date of the filing of the Complaint.
3. I consent to the entry of a final Decree of Divorce.
4. I understand that if a claim for alimony, alimony pendente lite, marital property or counsel fees or expenses has not been filed with the Court before the entry of a final Decree of Divorce, the right to claim any of them will be lost.
5. This Affidavit of Consent is being executed with the understanding that there is no reservation of jurisdiction over any property rights matters pertaining to the divorce proceeding herein, including equitable distribution, temporary alimony, permanent alimony, costs and counsel fees.

I verify that the statements made in this Affidavit are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

DATE: _____

Margaret J. Smeal, Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL,
Plaintiff

-vs-

Docket No. 94-1163-CD
IN DIVORCE

WILLIAM I. SMEAL,
Defendant

AFFIDAVIT OF CONSENT

1. A Complaint in Divorce under Section 3301(c) of the Divorce Code was filed on September 6, 1994.
2. The marriage of Plaintiff and Defendant is irretrievably broken and ninety (90) days have elapsed from the date of the filing of the Complaint.
3. I consent to the entry of a final Decree of Divorce.
4. I understand that if a claim for alimony, alimony pendente lite, marital property or counsel fees or expenses has not been filed with the Court before the entry of a final Decree of Divorce, the right to claim any of them will be lost.
5. This Affidavit of Consent is being executed with the understanding that there is no reservation of jurisdiction over any property rights matters pertaining to the divorce proceeding herein, including equitable distribution, temporary alimony, permanent alimony, costs and counsel fees.

I verify that the statements made in this Affidavit are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

DATE: _____

William I. Smeal, Defendant

ADDENDUM TO POSTNUPTIAL AGREEMENT

AND NOW, this 9th day of June, 1995, this document is entered into by and between MARGARET J. SMEAL, an individual, of R. R. 2, Box 184, Morrisdale, Pennsylvania, 16858, Party of the First Part, referred to hereinafter as "Margaret J. Smeal" or "Lessor", as the case may be,

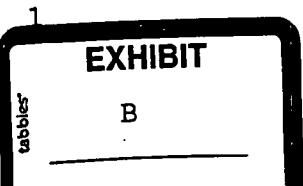
A
N
D

WILLIAM I. SMEAL, an individual, of P. O. Box 583, Philipsburg, Pennsylvania, Party of the Second Part, referred to hereinafter as "William Smeal".

W I T N E S S E T H:

WHEREAS on March 27, 1995, the parties hereunto signed a Postnuptial Agreement between themselves, with the purpose of resolving all economic issues between themselves relative to the divorce proceedings initiated in Docket Number 94-1163-CD of the Court of Common Pleas of Clearfield County; and

WHEREAS, Margaret J. Smeal has challenged the legal sufficiency of the said agreement and has refused to proceed to settlement;



WHEREAS, the parties have determined to adjust the said Postnuptial Agreement so as to provide for alimony and a cash payment, thereby modifying parts 4 and 5 of the Postnuptial Agreement; and

WHEREAS, included in the said Postnuptial Agreement was the requirement that William Smeal cause Smeal's Enterprises, Inc., to enter into a certain lease agreement with Lessor, as set forth in paragraph 5 of the Postnuptial Agreement; and

WHEREAS, the Parties have entered into negotiations with one another, and Lessor has indicated that in order to cause her to voluntarily sign the proposed Lease Agreement between herself and Smeal's Enterprises, Inc., it will be necessary for the Lease Agreement to be personally guaranteed by William Smeal, and it will be necessary to have a specific provision in the lease requiring that fire insurance, which Smeal's Enterprises, Inc., maintains on the said premises covered by the lease, shall insure the premises at a value sufficient to pay for the cost of rebuilding the structures, located on said premises; and

WHEREAS, the parties have concluded that it is in their best interest to resolve this matter amicably, and have therefore determined that they will enter into the present agreement;

NOW THEREFORE, in consideration of their mutual covenants, and with the intention of being legally bound, the parties hereunto agree as follows:

1. Acknowledgement Pertaining to Postnuptial Agreement -

The parties hereunto agree that with the exception of the terms set forth in this Addendum, the Postnuptial Agreement remains in full force and effect, without deficiency.

2. Personal Guarantee - William Smeal hereby agrees to personally guarantee all contractual obligations to Smeal's Enterprises, Inc., including the obligation to make monthly payments to Lessor, as provided in the basic Lease Agreement being signed at this time between Lessor and Smeal's Enterprises, Inc.

3. Fire Insurance - William Smeal agrees that the type of fire insurance that Smeal's Enterprises, Inc., is obligated to maintain shall be such insurance which covers the cost of replacement of the premises that are subject to the lease therein, and not just in the fair market value of the said premises.

4. Effect of Guarantee - The purpose of this Addendum is to impose a personal guarantee on William Smeal and to verify the type of fire insurance that will be maintained on the premises leased by Smeal's Enterprises by Lessor. To the extent that it is necessary to do so, the basic Lease Agreement between Smeal's

Enterprises, Inc., and Lessor shall be determined to be modified to conform to these terms.

5. Cash Payment - Within fifteen (15) days of the date of the signing of this agreement, William Smeal shall pay to Margaret J. Smeal the sum of \$10,000.00.

6. Payment of Alimony - William Smeal agrees to pay to Margaret J. Smeal alimony, within the meaning of the Internal Revenue Code (I.R.C. §71, et seq.), as follows:

a. One Thousand (\$1,000.00) Dollars, payable in cash, in equal monthly installments for a period of ten (10) years, with the first payment to be made on or before July 1, 1995, with each monthly payment to be made on the 1st day of each month thereafter totalling 120 separate payments.

b. The payments described herein are not modifiable, unless agreed to in writing by both parties.

c. The obligation of William Smeal to make payments under these terms will end and he will be released upon Margaret J. Smeal's remarriage or cohabitation with another, or upon the death of either party. Cohabitation, for purposes of this term, shall be defined in accordance with Pennsylvania legal standards.

6. Final Resolution of Claims - It is the intent of the parties in signing this Addendum to terminate with finality any claim, argument or contention that there is any remaining issue whatsoever pertaining to the final termination of the bonds of matrimony between the parties and all economic issues related thereto, including alimony, equitable distribution, attorney's

fees, costs, support, and any other claim which could conceivably be made under the provisions of the Divorce Code.

IN WITNESS WHEREOF, the parties hereunto have set forth their signatures and the date shown below, doing so with the intention of being legally bound.

PARTY OF THE FIRST PART/
LESSOR:

By: Margaret J. Smeal
Dated: _____

PARTY OF THE SECOND PART/
WILLIAM I. SMEAL
(Individually):

By: William I. Smeal
Dated: _____

FILED

JAN 08 2002
01/12:41 P.M.

2cc *Atty Caskey*
William A. Shaw
Prothonotary
caskey

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL
Plaintiff

vs. : No. 2001-1601

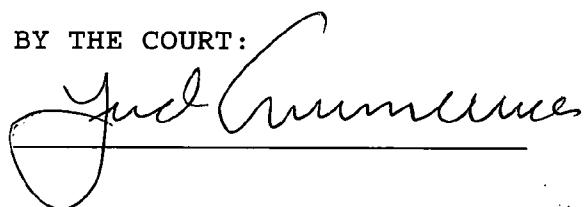
WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

RULE RETURNABLE

AND NOW, this 25 day of January, 2002, upon
consideration of Plaintiff's Petition a Rule is granted upon the
defendant to appear and show cause why the prayer of said petition
should not be granted.

Rule returnable the 25 day of February, 2002, at
3:15 o'clock P.M. in Courtroom No. 2, Clearfield County
Courthouse, Clearfield, Pennsylvania.

BY THE COURT:



FILED

JAN 25 2002

William A. Shaw
Prothonotary

FILED

013:45 AM
JAN 25 2002

1cc Atty ~~Geoffrey~~
G

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL
Plaintiff

vs. : No. 2001-1601

WILLIAM I. SMEAL
Defendant

NOTICE

A petition or motion has been filed against you in Court. If you wish to defend against the claims set forth in the following pages, you must take action on or before _____ by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the matter set forth against you. You are warned that if you fail to do so the case may proceed without you and an order may be entered against you by the court without further notice for relief requested by the petitioner or movant. You may lose rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT FIND ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
COURTHOUSE
CLEARFIELD, PENNSYLVANIA, 16830
(814) 765-2641

FILED

JAN 23 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2001-1601

WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

PETITION

AND NOW, comes the petitioner, Margaret J. Smeal, the plaintiff herein, who by and through her attorney, John R. Carfley, Esquire, petitions this Honorable Court as follows:

1. Petitioner is Margaret J. Smeal, who presently resides at R. R. 2, Box 184, Morrisdale, Pa., 16858.

2. The Respondent is William J. Smeal, who presently resides at Morrisdale, Clearfield County, Pa.

3. The parties formerly were husband and wife they having been divorced on June 13, 1995.

4. During the pendency of this divorce action, the said parties negotiated a post nuptial agreement and addendum, copies of which are attached hereto as Exhibit A and B.

5. As part of the agreement William Smeal agreed to pay Margaret Smeal as reasonable rental for the use of certain real estate and buildings the sum of \$3,500.00 per month.

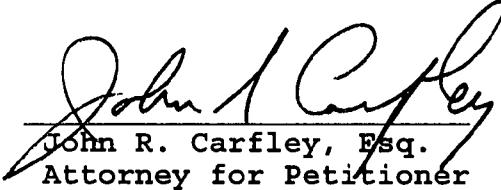
6. The said William Smeal recently defaulted in the payment of the rental due despite the fact that the said William Smeal has significant assets available to him through his business activities, his personal bank accounts and his IRA's retained through Mellon Bank.

7. Defendant is in breach of the property settlement

agreement as a result of his failure to make payments in a timely fashion for the rental of the property as a result of which he is placing Plaintiff in severe economic hardship.

8. The said William Smeal continues to occupy the said premises without payment of rental further jeopardizing the economic position of the plaintiff since she is unable to re-rent or otherwise dispose of the said real estate in order to recover part or all of the economic value therein.

WHEREFORE, Petitioner requests this Honorable Court to enter an order accelerating the debt owed by the defendant to the plaintiff for rental of the said premises and/or in the alternative to enter an order to cause the said defendant to vacate the premises so as to permit plaintiff free access thereto for purposes of re-renting and/or sale of the said property.



John R. Carfley, Esq.
Attorney for Petitioner
P. O. Box 249
Philipsburg, Pa., 16866
(814) 342-5581

Dated: January 21, 2002

POSTNUPTIAL AGREEMENT

AND NOW, this 27 day of March, 1995,

THIS AGREEMENT is by and between WILLIAM I. SMEAL, of P. O. Box 583, Phillipsburg, PA 16866, referred to hereinafter as "Husband", Party of the First Part,

A
N
D

MARGARET J. SMEAL, of R. R. 2, Box 184, Morrisdale, PA 16258, referred to hereinafter as "Wife", Party of the Second Part.

WITNESSETH:

WHEREAS, the parties hereunto were married on June 26, 1971;

and

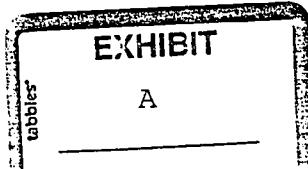
WHEREAS, two sons were born to the marriage, named Brad Smeal and William N. Smeal, with both sons now being emancipated;

and

WHEREAS, unfortunate and irreconcilable differences have arisen between the parties, giving rise to the parties living separate and apart and further giving rise to the filing of a Divorce Complaint by Wife on September 5, 1994, before the Court of Common Pleas of Clearfield County, in Docket No. 94-1163-CD;

and

WHEREAS, the parties have engaged in meetings between



themselves and with their attorneys, have had numerous discussions with one another, and have determined that they will reach a mutual settlement in this case rather than expending the time, expense and anxiety associated with further litigation in the divorce proceeding; and

WHEREAS, the parties have entered into negotiations with one another so as to seek to resolve all issues involving their divorce proceeding, and have determined that they will enter into this agreement;

NOW THEREFORE, in consideration of their mutual covenants and with the intention of being legally bound, the parties hereunto agree as follows:

1. Resolution of All Issues - The parties expressly agree that through the signing of this agreement, they are addressing all issues relating to their divorce proceeding, including the entry of a no-fault divorce and the resolution of all property rights issues. Among the matters which have been reviewed and discussed between the parties are the matters of equitable distribution of all marital assets and liabilities, costs, attorney's fees, alimony, spousal support, and in general their present, past and future financial and personal relationships. These discussions have led to the decision to resolve this case without the necessity of litigating the various issues that could be addressed before the court, including a divorce master, as relative to their divorce proceeding in Docket No. 94-1163-CD of

the Court of Common Pleas of Clearfield County.

2. No-Fault Divorce - The parties hereunto have concluded that there has been an irretrievable and irreparable breakdown of their marriage, and as a result, they have determined to agree upon the entry of a no-fault divorce under Section 3301(c) of the Divorce Code. Attached hereto as Appendix A are Affidavits of Consent which the parties each agree to sign so that a no-fault divorce may be entered in this proceeding.

3. Entry of No-Fault Divorce - It is agreed that counsel for Husband shall prepare and cause to be filed with the prothonotary of the Court of Common Pleas of Clearfield County a praecipe directing that a Divorce Decree be entered, with such decree to specifically refer to the present Postnuptial Agreement which the parties are signing herewith and to specify that the terms and conditions are expressly approved.

4. Comprehensive Decision - The parties hereby acknowledge that in view of the terms of equitable distribution set forth below, that there shall be no award of alimony, costs, or counsel fees to Wife, as the assets and income stream provided for under equitable distribution are sufficient to meet her economic needs. The parties hereby acknowledge that they have considered elements that could be considered in a claim for alimony, costs, and counsel fees among the factors that have prompted the terms and conditions that have been set forth pertaining to equitable distribution.

5. Equitable Distribution to Wife - The parties agree that

the following assets shall be distributed to Wife:

(a) Full ownership of the marital domicile, with Husband assuming the complete responsibility for paying the existing mortgage on the premises. Husband shall indemnify and hold Wife harmless for any payment obligations owed under the said mortgage.

(b) Ownership of the commercial rental property in Philipsburg, with this being the property on which the building is located in which Smeal Enterprises operates. Such property shall be free and clear of any liens or encumbrances.

(c) With respect to the commercial real estate mentioned in part (b) above, Husband agrees that he shall cause Smeal Enterprises to sign a ten-year lease, obligating the company to make rental payments to Wife for the said commercial property at the rate of \$3,500.00 per month. Besides the monthly rental term, the lease shall have those terms and conditions which are consistent with the present leasing arrangement on the property. In addition, there shall be an option in the ten-year rental term the option to require Smeal Enterprises to purchase the said commercial property from her. The payment for the commercial property at that point shall consist of payments at the rate of \$1,000.00 per month for a total of ten (10) years thereafter. Title to the real estate shall be free and clear of any liens and encumbrances, and in conjunction with the transfer of title to Smeal Enterprises, if Wife elects to pursue her option, it shall be the requirement that a mortgage evidencing the terms of payment for the property shall be executed.

(d) The ownership of the residential rental property which the parties now jointly own, such property being adjacent to the marital domicile. Such property shall be free and clear of any liens or encumbrances.

(e) Ownership of the real estate which the parties jointly own which currently houses the gift shop and a rental apartment. Such property shall be free and clear of any liens or encumbrances.

(f) Ownership of the lot and trailer located on it.

which is in the Allport area. Such property is subject to a mortgage of approximately \$15,000.00, and Wife shall have the obligation to make payments of that mortgage and indemnify and hold Husband harmless for any claim made against him for payments of such mortgage.

(g) Ownership of all household goods, furnishings and items of personality now located at the marital domicile.

(h) Ownership of the Lincoln Town Car which is currently in Wife's name, with the understanding that Wife shall be obligated to make payment of any installment payments that may be owed on the said automobile.

(i) Ownership of the IRA currently in Wife's name.

(j) Ownership of all inventory and assets in gift shop which Wife operates.

(k) Full entitlement to money which heretofore has been in the joint savings accounts of the parties and distributions made to her covering the sale in 1984 of real estate owned by the parties.

6. Equitable Distribution to Husband - the parties agree that the following assets shall be distributed to Husband:

(a) Ownership of 100% of the stock of Smeal Enterprises. It is understood that currently 50% of the outstanding shares of stock of the said company is issued in the name of Husband and 40% of the outstanding shares of stock of the said company is issued in the name of Wife. Husband shall also be responsible for insuring that all debt of the corporation which may have been jointly guaranteed by the parties shall be fully paid, and Husband shall indemnify and hold Wife harmless for any claim made against her for any such claim.

(b) Ownership of the IRA currently in Husband's name.

(c) Ownership of the profit sharing plan with Smeal Enterprises.

(d) Ownership of the life insurance policy with

Nationwide in Husband's name.

(e) Ownership of the debt (account receivable to Husband and Wife) now owed by Smeal Enterprises to Husband and Wife jointly, such debt representing dividends which Smeal Enterprises has declared in the past but has not actually distributed to the parties, but instead has retained such dividends for use in the operation of the business.

(f) Those items which are now in Husband's possession, consisting essentially of those items utilized in his apartment in Philipsburg, Pennsylvania.

7. 1994 Income Tax Return - The parties agree to jointly file a 1994 income tax return for local, state and federal taxes. Any additional taxes owed or refund due shall be shared jointly by the parties.

8. Settlement - Settlement shall occur no later than May 1, 1995, at a time and place mutually agreeable to the parties. At the time of settlement, the following shall occur:

(a) The parties shall execute deeds to all real estate transferring ownership of such real estate to Wife as provided in part 5 of this agreement.

(b) Title to the Lincoln Town Car shall be assumed by Husband.

(c) Wife shall sign her stock certificates transferring ownership of her shares in Smeal Enterprises to Husband. In the event that such stock certificates are not located, Wife shall sign a Power of Attorney authorizing Husband to take all steps necessary to have the stock certificate(s) reissued and transferred to his name.

(d) Wife shall sign an assignment transferring her interest in the debt owed by Smeal Enterprises to Husband and Wife, as described in part 6(c) of this agreement.

(e) Lease between Smeal Enterprises and Wife, as

covered by part 5(c) of this agreement.

(f) Any other document reasonably necessary to implement the terms of the distribution of assets and assumption of liabilities as provided under this agreement; in particular, section 4 of this agreement.

9. Review of Documentation - Both parties agree that they have had full and complete opportunity to review the present document that they are now signing. The parties further warrant that they have had an opportunity to discuss with legal counsel any terms, conditions or provisions of this agreement with which they have any questions or may have any uncertainty pertaining to the meaning thereof.

10. Mutual Release - By this agreement each party does for himself or herself and his or her heirs, legal representatives, executors, administrators and assigns, release the other from all claims, liabilities, debts, obligations, actions and all causes of action of every kind and nature whatsoever that have been or will be incurred relating to or arising out of the marriage between the parties. However, neither party is relieved nor discharged from any obligation under this agreement or under any instrument or document executed pursuant to this agreement.

11. Entire Agreement and Effective Date - This agreement contains the entire understanding of the parties and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein. This agreement shall take

effect upon the date that it is signed by both parties.

12. Separability - If any terms, conditions, clause or

provisions of this agreement shall be determined or declared to be void or invalid or otherwise, then only that term, condition, clause or provision shall be stricken from this agreement, and in all other respects this agreement shall be valid and continue in full force and effect. Likewise, the failure of any party to meet his or her obligation under any one or more of the paragraphs herein shall in no way alter the remaining obligations of the parties.

13. Construction - This agreement shall be construed in

accordance with the laws of the Commonwealth of Pennsylvania.

Those headings used in the text of this agreement are solely for the convenience of reference, and do not have any effect in meaning or construction.

14. Waiver 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 hereafter acquire, under the present or future laws of any jurisdiction; the right to share in the property or the estate of the other as a result of the marital relationship, including without limitation, dower, curtesy, statutory allowance, widow's allowance; the right to take property under equitable distribution; the right to take under the intestacy laws; the right to take against the Will of

the other, and the right to act as an administrator or executor 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 interests, rights and claims.

15. Survival of Agreement - The parties agree that this agreement shall survive entry of a Divorce Decree.

16. Incorporation in Decree - The terms and conditions of this Postnuptial Agreement shall be and are hereby merged and incorporated by reference into the Divorce Decree to be entered as the court's adjudication of those issues as though the same were set forth herein at length, verbatim; and the parties shall be directed to comply in all respects with the terms and provisions of the said Postnuptial Agreement, the same being enforceable by further order of court, if necessary.

17. Enforcement of Agreement - If either party breaches any provision of this Postnuptial Agreement, either prior to or subsequent to the entry of a Divorce Decree, without just cause as determined by court, the party breaching the same shall be responsible for payment of any and all legal fees and costs incurred by the other in enforcing his/her rights under the same.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals on the day and year written below.

PARTY OF THE FIRST PART/
HUSBAND: William I. Smeal

DATE: 2-27-95

PARTY OF THE SECOND PART/
WIFE: Margaret J. Smeal

DATE: 3-27-95

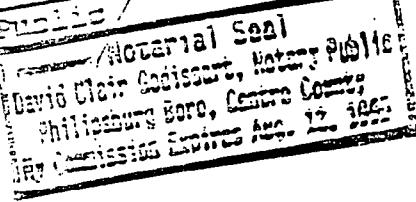
ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF ~~Centre~~ : SS:

on this 27th day of March, 1995, before me, a Notary Public, the undersigned officer, personally appeared WILLIAM J. SHEAL, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal.

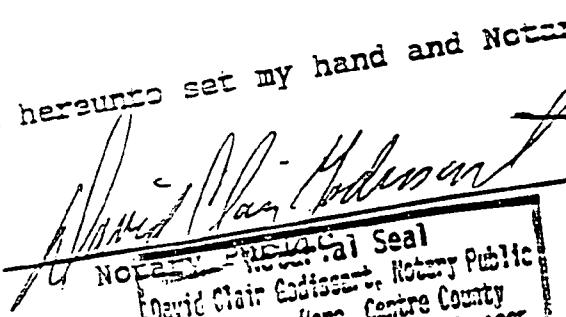
Notary Public
ACKNOWLEDGEMENT



COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF ~~Centre~~ : SS:

on this 27th day of March, 1995, before me, a Notary Public, the undersigned officer, personally appeared MARGARET J. SHEAL, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial seal.



APPENDIX A

Attached hereto are the Affidavits of Consent to be signed
by the parties.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL,
Plaintiff

-vs-

WILLIAM I. SMEAL,
Defendant

Docket No. 94-1163-CD
IN DIVORCE

AFFIDAVIT OF CONSENT

1. A Complaint in Divorce under Section 3301(c) of the Divorce Code was filed on September 6, 1994.
2. The marriage of Plaintiff and Defendant is irretrievably broken and ninety (90) days have elapsed from the date of the filing of the Complaint.
3. I consent to the entry of a final Decree of Divorce.
4. I understand that if a claim for alimony, alimony pendente lite, marital property or counsel fees or expenses has not been filed with the Court before the entry of a final Decree of Divorce, the right to claim any of them will be lost.
5. This Affidavit of Consent is being executed with the understanding that there is no reservation of jurisdiction over any property rights matters pertaining to the divorce proceeding herein, including equitable distribution, temporary alimony, permanent alimony, costs and counsel fees.

I verify that the statements made in this Affidavit are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

DATE: _____

Margaret J. Smeal, Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL,
Plaintiff

-vs-

WILLIAM I. SMEAL,
Defendant

Docket No. 94-1163-CD
IN DIVORCE

AFFIDAVIT OF CONSENT

1. A Complaint in Divorce under Section 3301(c) of the Divorce Code was filed on September 6, 1994.
2. The marriage of Plaintiff and Defendant is irretrievably broken and ninety (90) days have elapsed from the date of the filing of the Complaint.
3. I consent to the entry of a final Decree of Divorce.
4. I understand that if a claim for alimony, alimony pendente lite, marital property or counsel fees or expenses has not been filed with the Court before the entry of a final Decree of Divorce, the right to claim any of them will be lost.
5. This Affidavit of Consent is being executed with the understanding that there is no reservation of jurisdiction over any property rights matters pertaining to the divorce proceeding herein, including equitable distribution, temporary alimony, permanent alimony, costs and counsel fees.

I verify that the statements made in this Affidavit are true and correct. I understand that false statements made herein are subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

DATE: _____

William I. Smeal, Defendant

ADDENDUM TO POSTNUPTIAL AGREEMENT

AND NOW, this 9th day of June, 1995, this document is entered into by and between MARGARET J. SMEAL, an individual, of R. R. 2, Box 184, Morrisdale, Pennsylvania, 16858, Party of the First Part, referred to hereinafter as "Margaret J. Smeal" or "Lessor", as the case may be,

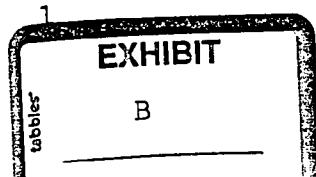
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WILLIAM I. SMEAL, an individual, of P. O. Box 583, Philipsburg, Pennsylvania, Party of the Second Part, referred to hereinafter as "William Smeal".

W I T N E S S E T H:

WHEREAS on March 27, 1995, the parties hereunto signed a Postnuptial Agreement between themselves, with the purpose of resolving all economic issues between themselves relative to the divorce proceedings initiated in Docket Number 94-1163-CD of the Court of Common Pleas of Clearfield County; and

WHEREAS, Margaret J. Smeal has challenged the legal sufficiency of the said agreement and has refused to proceed to settlement;



WHEREAS, the parties have determined to adjust the said Postnuptial Agreement so as to provide for alimony and a cash payment, thereby modifying parts 4 and 5 of the Postnuptial Agreement; and

WHEREAS, included in the said Postnuptial Agreement was the requirement that William Smeal cause Smeal's Enterprises, Inc., to enter into a certain lease agreement with Lessor, as set forth in paragraph 5 of the Postnuptial Agreement; and

WHEREAS, the Parties have entered into negotiations with one another, and Lessor has indicated that in order to cause her to voluntarily sign the proposed Lease Agreement between herself and Smeal's Enterprises, Inc., it will be necessary for the Lease Agreement to be personally guaranteed by William Smeal, and it will be necessary to have a specific provision in the lease requiring that fire insurance, which Smeal's Enterprises, Inc., maintains on the said premises covered by the lease, shall insure the premises at a value sufficient to pay for the cost of rebuilding the structures, located on said premises; and

WHEREAS, the parties have concluded that it is in their best interest to resolve this matter amicably, and have therefore determined that they will enter into the present agreement;

NOW THEREFORE, in consideration of their mutual covenants, and with the intention of being legally bound, the parties hereunto agree as follows:

1. Acknowledgement Pertaining to Postnuptial Agreement -

The parties hereunto agree that with the exception of the terms set forth in this Addendum, the Postnuptial Agreement remains in full force and effect, without deficiency.

2. Personal Guarantee - William Smeal hereby agrees to personally guarantee all contractual obligations to Smeal's Enterprises, Inc., including the obligation to make monthly payments to Lessor, as provided in the basic Lease Agreement being signed at this time between Lessor and Smeal's Enterprises, Inc.

3. Fire Insurance - William Smeal agrees that the type of fire insurance that Smeal's Enterprises, Inc., is obligated to maintain shall be such insurance which covers the cost of replacement of the premises that are subject to the lease therein, and not just in the fair market value of the said premises.

4. Effect of Guarantee - The purpose of this Addendum is to impose a personal guarantee on William Smeal and to verify the type of fire insurance that will be maintained on the premises leased by Smeal's Enterprises by Lessor. To the extent that it is necessary to do so, the basic Lease Agreement between Smeal's

Enterprises, Inc., and Lessor shall be determined to be modified to conform to these terms.

5. Cash Payment - Within fifteen (15) days of the date of the signing of this agreement, William Smeal shall pay to Margaret J. Smeal the sum of \$10,000.00.

6. Payment of Alimony - William Smeal agrees to pay to Margaret J. Smeal alimony, within the meaning of the Internal Revenue Code (I.R.C. §71, et seq.), as follows:

a. One Thousand (\$1,000.00) Dollars, payable in cash, in equal monthly installments for a period of ten (10) years, with the first payment to be made on or before July 1, 1995, with each monthly payment to be made on the 1st day of each month thereafter totalling 120 separate payments.

b. The payments described herein are not modifiable, unless agreed to in writing by both parties.

c. The obligation of William Smeal to make payments under these terms will end and he will be released upon Margaret J. Smeal's remarriage or cohabitation with another, or upon the death of either party. Cohabitation, for purposes of this term, shall be defined in accordance with Pennsylvania legal standards.

6. Final Resolution of Claims - It is the intent of the parties in signing this Addendum to terminate with finality any claim, argument or contention that there is any remaining issue whatsoever pertaining to the final termination of the bonds of matrimony between the parties and all economic issues related thereto, including alimony, equitable distribution, attorney's

fees, costs, support, and any other claim which could conceivably
be made under the provisions of the Divorce Code.

IN WITNESS WHEREOF, the parties hereunto have set forth
their signatures and the date shown below, doing so with the
intention of being legally bound.

PARTY OF THE FIRST PART/
LESSOR:

By: Margaret J. Smeal
Dated: _____

PARTY OF THE SECOND PART/
WILLIAM I. SMEAL
(Individually):

By: William I. Smeal
Dated: _____

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL

:

vs.

: No. 01-1601-CD

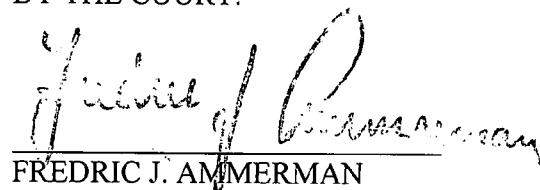
WILLIAM J. SMEAL

:

ORDER

AND NOW, this 25th day of January, 2001, it is the ORDER of the Court that hearing on Defendant's Preliminary Objections in the above-captioned matter is hereby scheduled for Monday, February 25, 2002 at 3:15 P.M. in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDERIC J. AMMERMAN

Judge

FILED

JAN 25 2002

William A. Shaw
Prothonotary

FILED

013:43 2002

JAN 25 2002 2 CC
Atty Thompson

William A. Shaw
Prothonotary

IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

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* No. 01-1601

Plaintiff

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Defendant

TYPE OF CASE:
Civil Division

TYPE OF PLEADING:
Certificate of Service

FILED ON BEHALF OF:
Defendant

COUNSEL OF RECORD FOR
THIS PARTY:
David R. Thompson, Esquire
Attorney at Law
Supreme Court 73053
P.O. Box 587
308 Walton Street, Suite 4
Philipsburg PA 16866
(814) 342-4100

FILED

FEB 22 2002

8/100/2002
William A. Shaw
Prothonotary
No C/C

IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

*
* No. 01-1601

Plaintiff

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vs.

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WILLIAM I. SMEAL,

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Defendant

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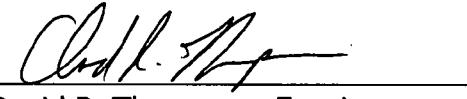
CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the **PRELIMINARY OBJECTIONS TO PETITION TO ACCELERATE AND PETITION FOR EXPARTE RELIEF**, in the above captioned matter on the following by fax and by depositing the same in the U.S. First Class Mail, postage prepaid, addressed as follows:

John R. Carfley, Esquire
P.O. Box 249
Philipsburg PA 16866

DATE: 2-20-02

BY: 

David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

MARGARET J. SMEAL

:

VS.

: NO. 01-1601-CD

WILLIAM J. SMEAL

:

O R D E R

NOW, this 25th day of February, 2002, this being the date set for hearing on the Plaintiff's Petition to Prevent Dissipation of Marital Assets and Petition to Enforce Property Settlement Agreement; the Petition is relating to a cause of action for alleged breach of contract of the parties' marriage settlement agreement as will appear of record; the Court believing that the proper procedure would be for the Plaintiff to file an amended complaint raising the said issues as an alleged breach of contract, it is the ORDER of this Court that the Petition filed on January 8, 2002, the Court's Order of January 25, 2002 and the Petition filed on behalf of the Defendant on January 23, 2002, be and are hereby dismissed.

Plaintiff shall have no more than twenty (20) days from this date in which to file an amended complaint raising the issues in the said amended complaint.

BY THE COURT,

FILED

FEB 26 2002



Judge

William A. Shaw
Prothonotary

FILED

cc Amy Casper
cc Amy Thompson
FEB 26 2002

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

MARGARET J. SMEAL

:

VS.

: NO. 01-1601-CD

WILLIAM J. SMEAL

:

O R D E R

NOW, this 25th day of February, 2002, following argument on the Preliminary Objections filed on behalf of the Defendant; with the Court noting that the items set forth in the Plaintiff's complaint are the same as the Court handled to the divorce action to No. 94-1163-CD that is currently on appeal to the Superior Court; the Court believing that the case on appeal is res judicata to the issues in the complaint, the Preliminary Objections are hereby granted and the request for relief set forth in the complaint are dismissed.

BY THE COURT,



Judge

FILED

FEB 26 2002

William A. Shaw
Prothonotary

FILED *acc Atty Castley*
01/31/02 *2 cc Atty Thompson*
FEB 26 2002

William A. Shaw
Prothonotary

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IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

*
* No. 01-1601

Plaintiff

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vs.

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WILLIAM I. SMEAL,

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Defendant

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IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

*

No. 01-1601

Plaintiff

*

vs.

*

WILLIAM I. SMEAL,

*

*

Defendant

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NOTICE TO PLEAD

TO JOHN R. CARFLEY, ATTORNEY FOR PLAINTIFF:

You are hereby notified to file a written response to the enclosed Preliminary Objections to Petition to Accelerate within twenty (20) days from service hereof or a Default Judgment may be entered against you.

DATE: 2-21-07

By:



David R. Thompson, Esquire

IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL, *
Plaintiff * No. 01-1601
*
*
vs. *
*
WILLIAM I. SMEAL, *
Defendant *
*

PRELIMINARY OBJECTIONS TO PETITION TO ACCELERATE

AND NOW, comes the Defendant, William I. Smeal, by and through his attorney, David R. Thompson, Esquire, and files the following Preliminary Objections to the Petition filed by the Plaintiff and in support thereof alleges as follows:

A. DEMURRER TO PLAINTIFF'S PETITION TO ACCELERATE RENTALS AND ENTER ORDER TO VACATE.

1. Plaintiff filed a Complaint in Divorce containing counts for equitable distribution, alimony and counsel fees docketed in this Court to No. 94-1163.
2. The parties reached and executed a Post-Nuptial Agreement dated March 27, 1995, which was entered into the record as a Court Order to Docket No. 94-1163.
3. Subsequent to that the parties reached and entered into an Addendum to Post-Nuptial Agreement dated June 9, 1995 which was entered into the record as a Court Order to Docket No. 94-1163.
4. Plaintiff filed a new Complaint, docketed in this Court to No. 2001-1601, for the most part alleging that Plaintiff did not receive enough assets in the parties equitable

distribution count to No. 94-1163.

5. The Defendant filed Preliminary Objections to the Complaint filed by Plaintiff to Docket Number 2001-1601, which are hereby incorporated by reference as though the same were set forth at length herein.

6. On or about January 23, 2002, the Plaintiff to Docket No. 2001-1601, filed a Petition to Accelerate debt allegedly owed by the Defendant to the Plaintiff pursuant to the Post-Nuptial Agreement and Addendum thereto.

7. Pursuant to Pa. R.C.P. Rule 1028(A)4, Plaintiff's Petition is legally insufficient.

8. Pursuant to Pa. R.C.P. Rule 1028(A)6, Plaintiff's Petition is barred by the pendency of a prior action.

9. To the extent that Plaintiff's Petition constitutes a new action for breach of contract, the same is barred by the applicable statute of limitations.

10. Defendant avers that the Preliminary Objections against Plaintiff's Complaint must first be decided upon before the Petition to Accelerate need be answered and/or decided upon by this Court.

WHEREFORE, Defendant William I. Smeal respectfully requests this Honorable Court to grant the request to Demurrer, dismissing the Petition to Accelerate as the same is legally insufficient and is barred by the pendency of a prior action.

Respectfully submitted,



David R. Thompson, Esquire
Attorney for Defendant

IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

*
* No. 01-1601

Plaintiff

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VS.

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WILLIAM I. SMEAL,

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Defendant

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IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

*

No. 01-1601

Plaintiff

*

vs.

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WILLIAM I. SMEAL,

*

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Defendant

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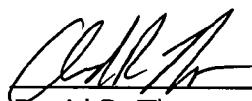
NOTICE TO PLEAD

TO JOHN R. CARFLEY, ATTORNEY FOR PLAINTIFF:

You are hereby notified to file a written response to the enclosed Preliminary Objections to Petition for ExParte Relief within twenty (20) days from service hereof or a Default Judgment may be entered against you.

DATE: 2-21-02

By:



David R. Thompson, Esquire

IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL, *
Plaintiff *
*
VS. *
*
WILLIAM I. SMEAL, *
*
Defendant *

PRELIMINARY OBJECTIONS TO PETITION FOR EXPARTE RELIEF

AND NOW, comes the Defendant, William I. Smeal, by and through his attorney, David R. Thompson, Esquire, and files the following Preliminary Objections to the Petition filed by the Plaintiff and in support thereof alleges as follows:

A. DEMURRER TO PLAINTIFF'S PETITION FOR EXPARTE RELIEF.

1. Plaintiff filed a Complaint in Divorce containing counts for equitable distribution, alimony and counsel fees docketed in this Court to No. 94-1163.
 2. The parties reached and executed a Post-Nuptial Agreement dated March 27, 1995, which was entered into the record as a Court Order to Docket No. 94-1163.
 3. Subsequent to that the parties reached and entered into an Addendum to Post-Nuptial Agreement dated June 9, 1995 which was entered into the record as a Court Order to Docket No. 94-1163.
 4. Plaintiff filed a new Complaint, docketed in this Court to No. 2001-1601, for the most part alleging that Plaintiff did not receive enough assets in the parties equitable distribution count to No. 94-1163.

5. The Defendant filed Preliminary Objections to the Complaint filed by Plaintiff to Docket Number 2001-1601, which are hereby incorporated by reference as though the same were set forth at length herein.

6. On or about January 8, 2002, the Plaintiff to Docket No. 2001-1601, filed a Petition for Ex parte Relief allegedly owed by the Defendant to the Plaintiff pursuant to the Post-Nuptial Agreement and Addendum thereto.

7. Pursuant to Pa. R.C.P. Rule 1028(A)4, Plaintiff's Petition is legally insufficient.

8. Pursuant to Pa. R.C.P. Rule 1028(A)6, Plaintiff's Petition is barred by the pendency of a prior action.

9. To the extent that Plaintiff's Petition constitutes a new action for breach of contract, the same is barred by the applicable statute of limitations.

10. Defendant avers that the Preliminary Objections against Plaintiff's Complaint must first be decided upon before the Petition for Ex parte Relief need be answered and/or decided upon by this Court.

WHEREFORE, Defendant William I. Smeal respectfully requests this Honorable Court to grant the request to Demurrer, dismissing the Petition for Ex parte Relief as the same is legally insufficient and is barred by the pendency of a prior action.

Respectfully submitted,



David R. Thompson, Esquire
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL

vs. : No. 01-1601-CD

WILLIAM J. SMEAL

ORDER

AND NOW, this 20 day of March, 2002, it is the ORDER of the Court that argument on Defendant's Preliminary Objections to Petition to Accelerate Relief in the above-captioned matter is hereby scheduled for Wednesday, April 3, 2002 at 11:00 A.M. in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
Judge

FILED

MAR 21 2002

William A. Shaw
Prothonotary

FILED

01/29/02
MAR 21 2002

cc

Atty Thompson

William A. Shaw
Prothonotary

WAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

MARGARET J. SMEAL :
vs. : No. 01-1601-CD
WILLIAM J. SMEAL :

ORDER

AND NOW, this 20 day of March, 2002, it is the ORDER of the Court that argument on Defendant's Preliminary Objections to Petition for Ex parte Relief in the above-captioned matter is hereby scheduled for Wednesday, April 3, 2002 at 11:00 A.M. in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


FREDRIC J. AMMERMAN
Judge

FILED

MAR 21 2002

William A. Shaw
Prothonotary

FILED

01/24/02
MAR 21 2002
2 CC
Amy Thompson
for service

William A. Shaw
Prothonotary

WAS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

Margaret J. Smeal
Plaintiff

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*
*
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Case No. 2001-1601-CD

Vs.

William I. Smeal
Defendant

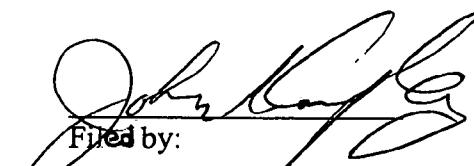
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Praecipe to Discontinue

To the Prothonotary:

Please mark the above-referenced case Settled, Discontinued, and Ended.

7/10/07
Date


Filed by:
John R. Carfley, Esq.
Attorney for Plaintiff

FILED ^{NOCC}
M 1:09 AM
JUL 13 2007
No Certificate
Requested
William A. Shaw
Prothonotary/Clerk of Courts