

02-885-C
MARGARET J. SMEAL -vs- WILLIAM I. SMEAL

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

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2002- 885-CD
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 EXT. 5982

FILED

JUN 03 2002

William A. Shaw
Prothonotary

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

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2002-
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 I. 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.

COUNT I - IN CONTRACT

4. Plaintiff hereby incorporates Paragraphs 1 through 3 as fully as though set forth at length.
5. 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.
6. Subsequent to the negotiation and signing of the Post Nuptial Agreement plaintiff retained alternate counsel who conducted an investigation into the disclosures made by the defendant pertaining to the existence of marital property.
7. During the course of that investigation counsel learned

that the defendant had not made a full and complete disclosure of all assets included in the marital estate as a result of which the plaintiff suffered a shortfall of approximately \$80,000.00.

8. Counsel for the plaintiff entered into negotiations with counsel for the defendant in order to recover this shortfall in a lump sum or in an installment payment calculated to future value which was estimated to be in the range of \$120,000.00.

9. During the said negotiations both defendant and defendant's counsel complained that the defendant was unable to pay a lump sum and negotiated for the payment of this shortfall over a period of time with installments based upon a reasonable rate of return.

10. Counsel for the defendant and the defendant further requested the plaintiff to structure the said payments as alimony in order to provide a tax benefit to the defendant notwithstanding the fact that the structuring of the payments in this manner resulted in income tax consequences to the plaintiff and exposed the plaintiff to claims to extinguish alimony should she die, remarry or cohabit.

11. Knowing that certain limitations and restrictions were placed on the collection of alimony, plaintiff sought and received assurances from the defendant that these payments would be made in lieu of the payback of the shortfall and as part of the distribution of the marital estate notwithstanding the allocation or designation of the payments as alimony.

12. Defendant pursuant to the said agreement undertook to make these payments in a timely fashion and continued to make said

payments for a period for over five (5) years until certain business reversals occurred which prompted the defendant to institute suit to terminate the payment of alimony based upon the fact that the plaintiff had cohabited with an individual not her spouse.

13. The said matter was tried before Judge Ammerman of the Court of Common Pleas of Clearfield County, Pennsylvania, at the conclusion of which hearing the Judge issued an order terminating the alimony retroactive to the date of filing. A true and correct copy of said Opinion and Order is attached hereto as Exhibit B.

14. An appeal was filed by the plaintiff from that decision to the Superior Court of Pennsylvania which affirmed the ruling of the Lower Court by Opinion and Order dated April 26, 2002. A true and correct copy of said Opinion and Order is attached hereto as Exhibit C.

15. Notwithstanding the rulings by the Lower Court and the Appellate Court Plaintiff believes and therefore avers that the Post Nuptial Agreement and the Addendum to the Post Nuptial Agreement constitutes an integrated contract which is governed by contract principles and that the intentions of the parties to the written contract are clearly expressed within the writing itself and thereby are enforceable. Tuthill v. Tuthill, 763 A2d 417 (Pa. Super. 2000).

16. Since the said agreements are governed by contract law they are not affected by the limitations of the Divorce Code and must be determined based upon Rules of Contract Law and Rules of Equity dealing with the enforcement of such instruments.

17. It is believed and therefore averred that defendant entered into this agreement knowing full well that the amounts to be paid were not alimony, however, designated or classified but rather were payment of a shortfall calculated at an interest rate to provide a future value since the said defendant was financially unable to pay a lump sum to offset and equalize the equitable distribution of marital property at the time of the dissolution of the marriage.

18. It is believed and therefore averred that the payment of the sums necessary to equalize the distribution of the marital estate were classified as alimony in order to benefit the defendant who entered into performance of the contract and took advantage of the designation of alimony by claiming these alimony payments on his income tax returns for the years that these payments were made.

19. During those same years plaintiff was required to claim said alimony payments as income and thus suffered prejudice by having to pay income tax on these earnings when, in fact, said sums were paid in order to equalize her benefits distributable under the Equitable Distribution Provisions of the Divorce Code.

20. At the present time defendant is in default of his contractual agreement to pay installments to plaintiff in lieu of her equitable share of the marital estate and stands liable to the plaintiff in the amount of \$57,000.00 together with interest thereon and costs of this proceeding.

21. That the actions of the defendant are vexatious, obdurate and designed to cause burden and financial loss to the plaintiff as a result of which defendant should be held liable for counsel fees

maintenance, upkeep, repair and any such matter relating to the ongoing use of the subject premises.

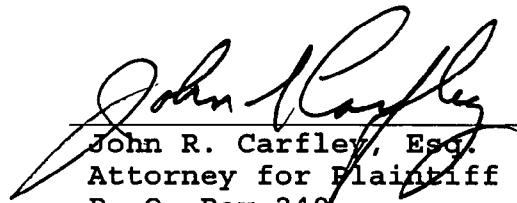
27. That the Addendum to the Post Nuptial Agreement entered into between plaintiff and defendant on June 9, 1995, provides a personal guarantee whereby William Smeal agreed to personally guarantee all contractual obligations of Smeal Enterprises, Inc. including the obligation to make monthly payments to the Lessor as provided in the basic lease agreement being signed contemporaneously with the execution of the Post Nuptial Agreement.

28. As a result defendant as an individual assumed a personal obligation to continue to make payments on the lease agreement notwithstanding the financial status of Smeal Enterprises, Inc.

29. At the present time approximately 48 months remain on the original term of the lease agreement at the rate of \$3500.00 per month or a total of \$ 168,000.00 in rental together with reasonable costs for upkeep, renovating, cleaning, maintaining, and repairing as well as other matters to refurbish the premises prior to reletting of the premises to a bonafide lessee for value.

WHEREFORE, Plaintiff requests that judgment be entered in favor of the plaintiff and against the defendant in a liquidated amount of \$168,000.00 with represents the rental due under the lease and an unliquidated sum not in excess of \$30,000.00 for

renovations, refurbishing and cleaning of the premises for purposes
of reletting the same.



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

Dated: May 24, 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.

A handwritten signature in black ink, appearing to read "Margaret J. Neal", is written over a horizontal line.

Dated: May 24, 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, Philipsburg, PA 16866, referred to hereinafter as "Husband",
Party of the First Part,

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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 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.

Per Bill
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 struck 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: 3-27-95

PARTY OF THE SECOND PART/
WIFE:

Margaret J. Smeal

DATE: 3-27-95

ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA:

:SS:

COUNTY OF ~~CENTER~~ CENTRE :

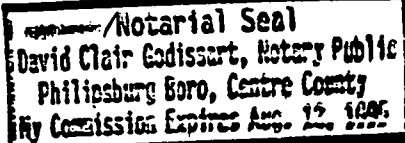
On this 27th day of March, 1995, before me, a

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.

David Clair Godissart
Notary Public



COMMONWEALTH OF PENNSYLVANIA:

~~CENTER~~ :SS:

COUNTY OF ~~CENTER~~ :

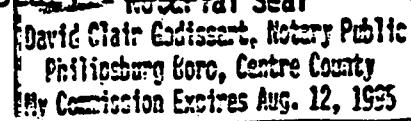
On this 27th day of March, 1995, before me, a

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.

David Clair Godissart
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-

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

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

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;

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;

EX 2

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 : No. 94-1163-CD

IN DIVORCE

vs.

William J. Smeal

FILED

JUL 25 2001

Opinion and OrderWilliam A. Shaw
Prothonotary

The parties were divorced by decree dated June 13, 1995. On March 27, 1995 a Post Nuptial Agreement was signed. Subsequently an Addendum to the Post Nuptial Agreement was entered into on June 9, 1995. According to the Addendum, Mr. Smeal was obligated to pay alimony to Ms. Smeal in the amount of One Thousand dollars (1,000.00) per month for ten (10) years. (Addendum at Paragraph 6a). A provision provided in Paragraph "c" states: "the obligation of payment will end upon Margaret J. Smeal's remarriage or co-habitation with another, or upon the death of either party."

Mr. Smeal suspected that Ms. Smeal was cohabitating with Kenneth Laich and filed a Petition to Terminate Alimony on September 27, 2000. On October 20, 2000 Ms. Smeal filed an Answer thereto containing a New Matter alleging that she was not cohabitating and that the alimony payments were actually not alimony but part of the overall equitable distribution.

The first issue is whether or not there has been cohabitation by Ms. Smeal as anticipated under Paragraph 6c of the parties Addendum to the Marriage Settlement Agreement. Paragraph 6 reads as follows:

EXHIBIT

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"6. Payment of Alimony—William Smith agrees to pay to Margaret J. Smeal alimony, within the meaning of the Internal Revenue Code §74 et seq. as follows:

- a. One Thousand (1,000.00) Dollars, payable in cash, in equal monthly installment 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 first day of each month thereafter totaling 120 separate payments.
- b. The payments described therein 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."

In order to be found in "cohabitation" for purposes of Pennsylvania Alimony Law, one must be at least doing so with a person of the opposite sex who is not a member of the family of the alimony recipient within the degrees of consanguinity. Title 23 Pa. C.S.A. §3706. "Cohabitation" for purposes of applying a bar to alimony, requires that two (2) persons of the opposite sex reside together in manner of husband and wife, mutually assuming those rights and duties usually attendant upon the marriage relationship; and cohabitation may be shown by evidence of financial, social and sexual interdependence, by sharing the same residence and by other means. Miller v. Miller, 352 Pa. Super.432, 508 A.2d 550 (1986).

In this case, Ms. Smeal's living arrangement is classified as "cohabitation." Ms. Smeal and Mr. Laich do not dispute the fact that they reside together in Morrisdale, Pennsylvania. Mr. Laich testified that he receives his mail at their Morrisdale residence, parks his vehicle there, receives telephone calls there, and has physically resided there

on a permanent basis since 1998. Testimony revealed that Mr. Laich also contributes to the household utilities and bills, has the telephone bill for the house in his name and does not pay rent to Ms. Smeal.

As well, Ms. Smeal and Mr. Laich are involved in a romantic relationship with each other that exhibits both affection and sexual relations. Each exhibit social interdependence by attending numerous social functions together which includes vacationing together, as well as various social functions and church. Therefore, this Court finds that Ms. Smeal is in fact engaged in cohabitation. This will entitle Mr. Smeal to a termination of alimony pursuant to the Addendum to the Post Nuptial Agreement.

Ms. Smeal next contends that the payments of \$1,000.00 every month for ten (10) years pursuant to Paragraph 6 of the addendum to the Post Nuptial agreement were not actually alimony, but in fact part of the equitable distribution settlement. Ms. Smeal maintains that the language as previously cited in Paragraph 6 was not intended to be interpreted as alimony payments but as part of the overall equitable distribution scheme. She thus claims that Mr. Smeal cannot cease making payments even if she is cohabitating. As evidence, Ms. Smeal offered various letters that were composed by their respective attorneys during negotiation of the Post Nuptial Agreement and Addendum.

The law is clear that a Marriage Settlement Agreement is a contract and should be evaluated by the Court under the same criteria as any other type of contract. Absent fraud, misrepresentation or duress the parties are bound by its terms. Mormello v. Mormello, 452 Pa. Super. 590, 682 A.2d 824 (1996). An agreement for alimony

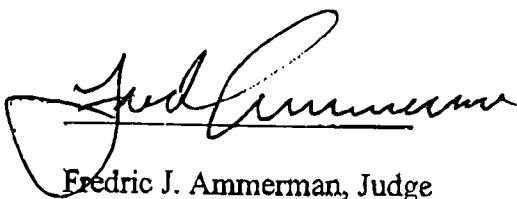
voluntarily entered into by the parties and incorporated into a divorce decree is binding and may not be modified. Reighard v. Reighard, 42 D&C 3d 356 (1985). In the absence of ambiguous language, a court cannot alter a Marriage Settlement Agreement; the parties are bound by its terms whether "good, bad, or indifferent." Chamberlain v. Chamberlain, ____ Pa. Super. ____, 693 A.2d 970 (1997).

There is no ambiguity in the agreement itself. The Addendum clearly states that Mr. Smeal was to pay alimony unless Ms. Smeal enters into cohabitation with another. This Court will look only to the four corners of the contract at issue. There is no reason for a court to search for intent of the parties outside the contract, and declare as valid subtle nuances of what the parties may or may not have meant during the course of negotiations. To do so would be for this court to rewrite the contract. There is no legal justification for doing so. Each party had the benefit of legal counsel during negotiations of the agreement. The agreement that was ultimately reached was the Addendum which the parties signed on the advice of counsel. The language in the Addendum stands, with the payment clearly being interpreted as alimony.

Mr. Smeal contends that he is entitled to retroactive termination and thus reimbursement of alimony payments dating back to July 1998, the date in which Ms. Smeal and Mr. Laich began cohabitating. Mr. Smeal states that he did not have knowledge of Ms. Smeal's cohabitation with Mr. Laich and was therefore delayed in filing his petition. He further indicates that Ms. Smeal failed in her duty to disclose this information under 23 Pa. C.S.A. §4352 and he therefore should not be punished for her failure to do so.

Mr. Smeal is entitled to retroactive relief beginning on September 27, 2000, the date on which the Petition to Terminate Alimony was filed. There is no case law or statute which would support Mr. Smeal's contention that he is entitled to be reimbursed upon the beginning of cohabitation.

By The Court,



A handwritten signature in black ink, appearing to read "Fred Ammerman". The signature is fluid and cursive, with "Fred" on top and "Ammerman" below it, enclosed in a small, roughly triangular outline.

Fredric J. Ammerman, Judge

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

Margaret J. Smeal

No. 94-1163-CD

vs.

IN DIVORCE

William J. Smeal

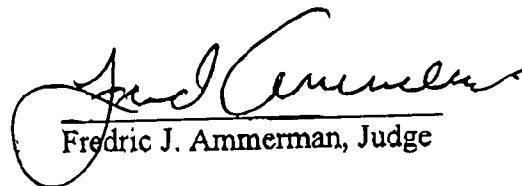
FILED

JUL 25 2001

William A. Shaw
ProthonotaryORDER

Now, this 23rd day of July, 2001 it is the Order of this Court that the right of the Plaintiff to receive alimony under the terms of the Post Nuptial Agreement and Addendum thereto is hereby terminated, effective September 27, 2000. Alimony is terminated due to the Plaintiff's cohabitation.

BY THE COURT,



Fredric J. Ammerman, Judge

MARGARET J. SMEAL, : IN THE SUPERIOR COURT OF
Appellant : PENNSYLVANIA
v. :
WILLIAM J. SMEAL, :
Appellee : No. 1462 WDA 2001

Appeal from the Judgment entered August 17, 2001
In the Court of Common Pleas of Clearfield
County, Civil No. 94-1163-CD

BEFORE: JOHNSON, KLETN and BROSKY, JJ.

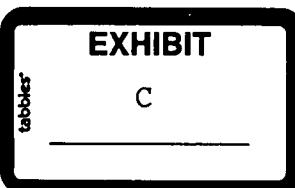
MEMORANDUM:

FILED APR 26 2002

Margaret J. Smeal (Wife) appeals from the judgment entered on an order terminating Wife's alimony payments. Judge Frederic J. Ammerman of the Court of Common Pleas of Clearfield County granted William J. Smeal's (Husband) petition to terminate his alimony payments to Wife due to the fact that Wife was co-habiting with another male. The trial court properly looked no further than the plain and unambiguous language of the parties' addendum to their post-nuptial marital agreement, and found that by cohabitating, Wife was no longer entitled to alimony.¹ We affirm.

Wife and Husband were divorced by court decree on June 13, 1995. The parties signed a post-nuptial agreement on March 27, 1995, that was later

¹ The court held that the alimony payments would terminate beginning on the date that Husband filed his petition, not the date that actual cohabitation began. **See Lobaugh v. Lobaugh**, 753 A.2d 834 (Pa. Super. 2000) (where Husband filed petition to terminate alimony due to Wife's cohabitation, trial court found that cohabitation existed and made termination of payments retroactive to the filing date of Husband's petition).



amended by an addendum dated June 9, 1995. Paragraph 6(c) of the Addendum pertains to the payment of alimony:

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.)**,² as follows:

² According to the addendum, alimony shall be defined by reference to Internal Revenue Code (IRC) § 71. Section 71 of the IRC, in pertinent part, states:

(b) Alimony or separate maintenance payments defined. For purposes of this section—

(1) In general. The term "alimony or separate maintenance payment" means any payment in cash if—

- (A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,
- (B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,
- (C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and
- (D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse.

I.R.C. § 71(b)(1).

* * *

c. The obligation of William Smeal to make payment 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.** [emphasis added]

Husband filed a petition to terminate alimony pursuant to paragraph (6) of the addendum, based upon his knowledge that Wife had been cohabitating with a Mr. Laich. At a hearing on Husband's petition, Mr. Laich testified that he had been living with Wife, in the parties' marital home, for three to four years. He also stated that he paid electric, phone, cleaning service, and pool service bills for Wife, as well as taxes. He classified their relationship, that had been ongoing for four to five years, as boyfriend-girlfriend. He claimed that the two were affectionate towards each other, that they occasionally share a bedroom, and that they periodically engage in sexual relations. Finally, he testified that they attend social events and vacation together on a regular basis.

Wife's attorney opposed the petition claiming that even if she were found to have been cohabitating, Husband's alimony payments should not have been terminated because the term "alimony" as used in the parties' marital agreement was not intended to be interpreted in the normal legal sense of the word. Rather, the periodic payments made pursuant to paragraph 6 were actually disbursements made by Husband, representing Wife's share of the

equitable distribution of the marital estate. Specifically, Wife claimed that these payments were fashioned in an attempt to compensate her for an earlier oversight in the distribution of the marital estate that had resulted in her receiving approximately \$80,000 less than she was equitably entitled under the parties' property settlement. Such payments, she alleges, are not the typical type of payments contemplated by common usage of the term "alimony." Wife also contends that the sole reason the parties' termed the payments as "alimony" in the addendum was so that Husband would not suffer negative tax consequences.

The court refused to accept Wife's allegation that she was being paid "non-alimony." Specifically, Judge Ammerman relied upon basic principles of contract law, and refused to look further than the four corners of the Addendum. Under the plain language of the parties' agreement Wife was cohabitating and, therefore, no longer entitled to alimony.

On appeal, Wife raises the following issues for our consideration:

- (1) Whether the trial court erred in determining that Wife engaged in cohabitation as anticipated under paragraph 6(C) of the addendum to the post-nuptial agreement, terminating Husband's obligation to make the periodic payments due under the agreement.
- (2) Whether the periodic payments pursuant to the terms contained in paragraph 6 of the addendum to the post-nuptial agreement, while styled as alimony, were, in fact, part of an equitable distribution settlement scheme negotiated by the parties.

(3) Whether the language contained in paragraph 6 of the addendum to the post-nuptial agreement should be interpreted as an overall equitable distribution scheme rather than as alimony in light of the parties' previous negotiations.

In **Lobaugh v. Lobaugh**, 753 A.2d 834 (Pa. Super. 2000), our Court redefined the term "cohabitation" for purposes of alimony:

[I]n order to be found in "cohabitation" [for purposes of Pennsylvania alimony law,] one must *at least* be doing so "with a person of the opposite sex who is not a member of the family of the petitioner [alimony recipient] within the degrees of consanguinity." 23 Pa.C.S. § 3706. We have elaborated further by holding that cohabitation, for purposes of barring alimony, occurs when:

two persons of the opposite sex reside together in the manner of husband and wife, mutually assuming those rights and duties usually attendant upon the marriage relationship. Cohabitation may be shown by evidence of financial, social, and sexual interdependence, by a sharing of the same residence, and by other means. An occasional sexual liaison, however, does not constitute cohabitation.

Lobaugh, 753 A.2d at 836 (citing **Miller v. Miller**, 508 A.2d 550, 554 (Pa. Super. 1986)).

The testimony at the hearing on Husband's petition clearly proved that Wife and Mr. Laich resided together for a long period of time, often sharing the same bedroom. Moreover, the two engaged in sexual relations and held themselves out as a couple by frequently attending social events and vacationing together. Mr. Laich took financial responsibility for many of the costs attendant to living with Wife in the parties' marital home. The two were involved in a relationship classified as much more than an occasional "liaison;" for all intents and purposes they resided together in the manner of husband

and wife. They were financially, socially and sexually dependent upon one another. **Miller, supra.** Therefore, the trial court properly determined that they were cohabitating as defined by the law of this Commonwealth.

Moreover, Judge Ammerman appropriately confined his review of the addendum to determine the interpretation of its term "alimony." It is well settled that the law of contracts governs marital settlement agreements. **Sorace v. Sorace**, 655 A.2d 125 (Pa. Super. 1995). When construing such agreements that involve clear and unambiguous terms, this Court need only examine the writing itself to give effect to the parties' understanding. The court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation. In other words, when the terms of a written contract are clear, this Court will not re-write it to give it a construction in conflict with the accepted and plain meaning of the language used. **Carosone v. Carosone**, 688 A.2d 733 (Pa. Super. 1997).

After reviewing the parties' briefs, the record and relevant case law, we find that Judge Ammerman's opinion adequately disposes of Wife's issues on appeal. We, therefore, rely upon this opinion, which has been attached for purposes of a petition for allowance of appeal, to affirm the trial court's judgment.

Judgment affirmed.

J. S27017/02

Judgment Entered:

Eleanor R. Valecko

Deputy Prothonotary

APR 26 2002
Date: _____

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

Margaret J. Smeal : No. 94-1163-CD

IN DIVORCE

vs.

William J. Smeal

FILED

JUL 25 2001

Opinion and OrderWilliam A. Shaw
Prothonotary

The parties were divorced by decree dated June 13, 1995. On March 27, 1995 a Post Nuptial Agreement was signed. Subsequently an Addendum to the Post Nuptial Agreement was entered into on June 9, 1995. According to the Addendum, Mr. Smeal was obligated to pay alimony to Ms. Smeal in the amount of One Thousand dollars (1,000.00) per month for ten (10) years. (Addendum at Paragraph 6a). A provision provided in Paragraph "c" states: "the obligation of payment will end upon Margaret J. Smeal's remarriage or co-habitation with another, or upon the death of either party."

Mr. Smeal suspected that Ms. Smeal was cohabitating with Kenneth Laich and filed a Petition to Terminate Alimony on September 27, 2000. On October 20, 2000 Ms. Smeal filed an Answer thereto containing a New Matter alleging that she was not cohabitating and that the alimony payments were actually not alimony but part of the overall equitable distribution.

The first issue is whether or not there has been cohabitation by Ms. Smeal as anticipated under Paragraph 6c of the parties Addendum to the Marriage Settlement Agreement. Paragraph 6 reads as follows:

8/9

"6. Payment of Alimony—William Smith agrees to pay to Margaret J. Smeal alimony, within the meaning of the Internal Revenue Code §74 et seq. as follows:

- a. One Thousand (1,000.00) Dollars, payable in cash, in equal monthly installment 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 first day of each month thereafter totaling 120 separate payments.
- b. The payments described therein 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."

In order to be found in "cohabitation" for purposes of Pennsylvania Alimony Law, one must be at least doing so with a person of the opposite sex who is not a member of the family of the alimony recipient within the degrees of consanguinity. Title 23 Pa. C.S.A. §3706. "Cohabitation" for purposes of applying a bar to alimony, requires that two (2) persons of the opposite sex reside together in manner of husband and wife, mutually assuming those rights and duties usually attendant upon the marriage relationship; and cohabitation may be shown by evidence of financial, social and sexual interdependence, by sharing the same residence and by other means. Miller v. Miller, 352 Pa. Super. 432, 508 A.2d 550 (1986).

In this case, Ms. Smeal's living arrangement is classified as "cohabitation." Ms. Smeal and Mr. Laich do not dispute the fact that they reside together in Morrisdale, Pennsylvania. Mr. Laich testified that he receives his mail at their Morrisdale residence, parks his vehicle there, receives telephone calls there, and has physically resided there

on a permanent basis since 1998. Testimony revealed that Mr. Laich also contributes to the household utilities and bills, has the telephone bill for the house in his name and does not pay rent to Ms. Smeal.

As well, Ms. Smeal and Mr. Laich are involved in a romantic relationship with each other that exhibits both affection and sexual relations. Each exhibit social interdependence by attending numerous social functions together which includes vacationing together, as well as various social functions and church. Therefore, this Court finds that Ms. Smeal is in fact engaged in cohabitation. This will entitle Mr. Smeal to a termination of alimony pursuant to the Addendum to the Post Nuptial Agreement.

Ms. Smeal next contends that the payments of \$1,000.00 every month for ten (10) years pursuant to Paragraph 6 of the addendum to the Post Nuptial agreement were not actually alimony, but in fact part of the equitable distribution settlement. Ms. Smeal maintains that the language as previously cited in Paragraph 6 was not intended to be interpreted as alimony payments but as part of the overall equitable distribution scheme. She thus claims that Mr. Smeal cannot cease making payments even if she is cohabitating. As evidence, Ms. Smeal offered various letters that were composed by their respective attorneys during negotiation of the Post Nuptial Agreement and Addendum.

The law is clear that a Marriage Settlement Agreement is a contract and should be evaluated by the Court under the same criteria as any other type of contract. Absent fraud, misrepresentation or duress the parties are bound by its terms. Mormello v. Mormello, 452 Pa. Super. 590, 682 A.2d 824 (1996). An agreement for alimony

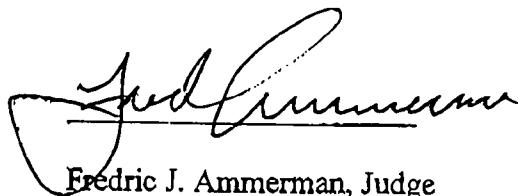
voluntarily entered into by the parties and incorporated into a divorce decree is binding and may not be modified. Reighard v. Reighard, 42 D&C 3d 356 (1985). In the absence of ambiguous language, a court cannot alter a Marriage Settlement Agreement; the parties are bound by its terms whether "good, bad, or indifferent." Chamberlain v. Chamberlain, ____ Pa. Super. ____, 693 A.2d 970 (1997).

There is no ambiguity in the agreement itself. The Addendum clearly states that Mr. Smeal was to pay alimony unless Ms. Smeal enters into cohabitation with another. This Court will look only to the four corners of the contract at issue. There is no reason for a court to search for intent of the parties outside the contract, and declare as valid subtle nuances of what the parties may or may not have meant during the course of negotiations. To do so would be for this court to rewrite the contract. There is no legal justification for doing so. Each party had the benefit of legal counsel during negotiations of the agreement. The agreement that was ultimately reached was the Addendum which the parties signed on the advice of counsel. The language in the Addendum stands, with the payment clearly being interpreted as alimony.

Mr. Smeal contends that he is entitled to retroactive termination and thus reimbursement of alimony payments dating back to July 1998, the date in which Ms. Smeal and Mr. Laich began cohabitating. Mr. Smeal states that he did not have knowledge of Ms. Smeal's cohabitation with Mr. Laich and was therefore delayed in filing his petition. He further indicates that Ms. Smeal failed in her duty to disclose this information under 23 Pa. C.S.A. §4352 and he therefore should not be punished for her failure to do so.

Mr. Smeal is entitled to retroactive relief beginning on September 27, 2000, the date on which the Petition to Terminate Alimony was filed. There is no case law or statute which would support Mr. Smeal's contention that he is entitled to be reimbursed upon the beginning of cohabitation.

By The Court,



A handwritten signature in black ink, appearing to read "Fred Ammerman". The signature is fluid and cursive, with "Fred" on top and "Ammerman" below it.

Fredric J. Ammerman, Judge

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

Margaret J. Smeal

No. 94-1163-CD

vs.

IN DIVORCE

William J. Smeal

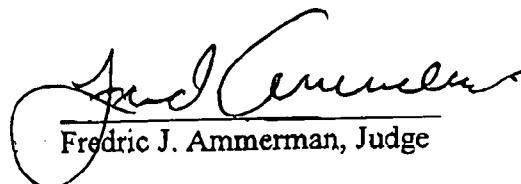
FILED

JUL 25 2001

William A. Shaw
ProthonotaryORDER

Now, this 23rd day of July, 2001 it is the Order of this Court that the right of the Plaintiff to receive alimony under the terms of the Post Nuptial Agreement and Addendum thereto is hereby terminated, effective September 27, 2000. Alimony is terminated due to the Plaintiff's cohabitation.

BY THE COURT,


Fredric J. Ammerman, Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,	*
	*
Plaintiff	*
	*
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, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

*

*

Plaintiff

* No. 02-885

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WILLIAM I. SMEAL,

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Defendant

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,	*
	*
Plaintiff	* No. 02-885
	*
vs.	*
	*
WILLIAM I. SMEAL,	*
	*
Defendant	*

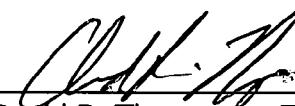
CERTIFICATE OF SERVICE

TO THE PROTHONOTARY:

I, **DAVID R. THOMPSON, ESQUIRE**, do hereby certify that I served a true and correct copy of the **PRELIMINARY OBJECTIONS TO PLAINTIFF'S COMPLAINT**, in the above captioned matter 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: 6-24-02

BY: 

David R. Thompson, Esquire

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

MARGARET J. SMEAL :
Plaintiff
vs. : No. 2002-885

WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

PLAINTIFF'S ANSWER TO DEFENDANT'S PRELIMINARY OBJECTIONS

AND NOW, comes the plaintiff, Margaret J. Smeal, who by and through her attorney, John R. Carfley, Esquire, files the following responses to Defendant's Preliminary Objections and in support thereof avers as follows:

COUNT I
A. DEMURRER TO PLAINTIFF'S COMPLAINT

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, as a result of which a decision was issued by this court. It is specifically denied that the issues now raised in plaintiff's complaint were litigated at that hearing. By way of further answer it is averred that this court specifically opined in its decision that the plaintiff could litigate the contractual rights specified under the contractual documents in a civil action filed outside the

FILED
JUL 15 2002
John R. Carfley
William A. Shaw
Prothonotary

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

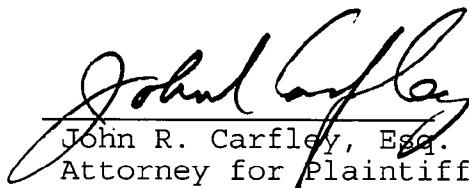
MARGARET J. SMEAL :
Plaintiff
vs. : No. 2002-885

WILLIAM I. SMEAL : Jury Trial Demanded
Defendant

CERTIFICATE OF SERVICE

AND NOW, this 12th day of July, 2002, I hereby certify that I served a true and correct copy of Plaintiff's Answer to Defendant's Preliminary Objections by depositing the same in the U.S. First Class Mail, postage prepaid, addressed to the following:

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


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

FILED

JUL 15 2002
m/1/11/no cc *WS*
William A. Shaw
Prothonotary

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 12591

SMEAL, MARGARET J.

02-885-CD

VS.

SMEAL, WILLIAM I.

COMPLAINT

SHERIFF RETURNS

**NOW JUNE 5, 2002 AT 10:16 AM DST SERVED THE WITHIN COMPLAINT ON
WILLIAM I. SMEAL, DEFENDANT AT RESIDENCE, RR#1 DEER CREEK ROAD,
MORRISDALE, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO WILLIAM
I. SMEAL A TRUE AND ATTESTED COPY OF THE ORGINIAL COMPLAINT AND
MADE KNOWN TO HIM THE CONTENTS THEREOF.**

SERVED BY: DAVIS/MORGILLO

Return Costs

Cost Description

26.79 SHFF. HAWKINS PAID BY: ATTY.

10.00 SURCHARGE PAID BY; ATTY.

Sworn to Before Me This
12th Day Of August 2002
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
My Manly Hawn
Chester A. Hawkins
Sheriff

FILED

AUG 12 2002

014:00

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,

Plaintiff

*
*
* No. 02-885

vs.

WILLIAM I. SMEAL,

Defendant

* TYPE OF CASE:
* Civil Division

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*
*
*
*

* TYPE OF PLEADING:
* Preliminary Objections

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* 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
* (814) 342-4100

FILED

JUN 24 2002

061A212 cc atty Thompson
William A. Shaw
Prothonotary

IN COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,	*
	*
Plaintiff	No. 02-885
	*
	*
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 to Plaintiff's Complaint within twenty (20) days from service hereof or a Default Judgment may be entered against you.

DATE: 6-24-02

By: 

David R. Thompson, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION - LAW

MARGARET J. SMEAL,	*
	*
Plaintiff	* No. 02-885
	*
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:

COUNT I

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 such, 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 23, 2001.

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

9. The Superior Court affirmed the Trial Court's Opinion and Order by Memorandum of that Court dated April 26, 2002, affirming the fact that the Trial Court properly determined the payments to be alimony as opposed to payments in the overall scheme of equitable distribution.

10. Plaintiff now files this Complaint, requesting enforcement of the Postnuptial Agreement and the Addendum to Postnuptial Agreement, basing her theory of recovery

again on contract law.

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

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

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

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

15. 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 Opinion and Order of a prior action.

COUNT II

A. DEMURRER TO COUNT II OF PLAINTIFF'S COMPLAINT

Paragraphs 1 through 15 of these Preliminary Objections are incorporated by reference as though the same were set forth at length herein.

16. Count II of Plaintiff's Complaint references a debt of Smeal Enterprise, Inc.,

a Pennsylvania Business Corporation, that is currently protected under the Chapter 11 of the United States Bankruptcy Code.

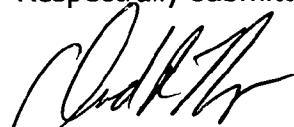
17. Any actions against said corporation are stayed under the Automatic Stay of the United States Bankruptcy Code.

18. Admittedly, the Addendum provides for a personal guarantee of William I. Smeal to the reference debt of the corporation.

19. Until said time that the debts of said corporation are decided upon by the United States Bankruptcy Court, liability of William I. Smeal under a personal guarantee for debts of the corporation are also subject to the Automatic Stay under the United States Bankruptcy Code.

Wherefore, Defendant respectfully requests this Honorable Court to stay this action pursuant to the Automatic Stay due to the bankruptcy of Smeal Enterprise, Inc.

Respectfully submitted,



David R. Thompson, Esquire
Attorney at Law

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

Margaret J. Smeal
Plaintiff

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*
*

Vs.

Case No. 2002-0885-CD

William I. Smeal
Defendant

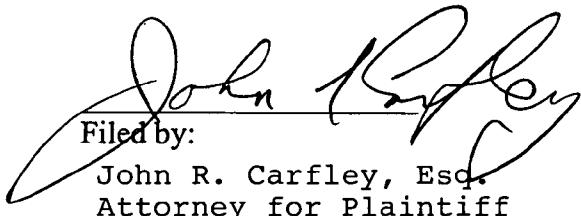
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Praeclipe to Discontinue

To the Prothonotary:

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

7/10/07
Date


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

FILED NO CC
M 11 15 2007 JUL 13 2007 No Certificate
William A. Shaw
Prothonotary/Clerk of Courts
Requested