IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

WALTER T. BROWN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 3273-VCP
	)	
MARILYN REMBERT,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

Submitted: August 1, 2008
Decided: December 11, 2008

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PARSONS, Vice Chancellor.

Presently before the Court is Defendant's motion to dismiss for lack of subject matter jurisdiction. Defendant first presented her motion on the eve of trial. After hearing argument on the motion at the pretrial conference, the Court denied it without prejudice to Defendant's ability to pursue the motion after trial, which she did.

For the reasons stated below, Defendant's motion is granted. In particular, I conclude that Brown's claims fall within the exclusive jurisdiction of the Delaware Family Court. Thus, Brown must transfer his claims to Family Court or suffer dismissal.

I. BACKGROUND

A. The Parties

Plaintiff, Walter T. Brown, inherited two properties located in Townsend, Delaware from his parents upon their passing. One is located at 705 South Street and the other at 697 South Street.[1]

In the summer of 2005, Defendant, Marilyn Rembert, was appointed pastor of the Lee Haven United Methodist Church ("Lee Haven Church"), which Brown attended.[2] The parties' relationship dates back to 2002 when they began dating.[3] After Rembert's appointment to the Lee Haven Church, they rekindled their relationship, and in the fall of

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1 Pretrial Stipulation ("Stip.") § II, Facts that are Admitted and Require No Proof, ¶ 3.

2 Trial Transcript ("T. Tr.") at 52.

3 *Id.* at 8, 52.

2005 Brown and Rembert announced their engagement.[4] The parties were married on May 13, 2006.[5]

B. The Facts

The parties came to agree that Brown should sell his two properties in light of their impending marriage.[6] They made this decision at a time when Rembert was orchestrating a plan to establish a new church.[7] Around that same time, the Lee Haven Church congregation was engaged in discussions regarding the possible sale of another church, which they owned, located at 640 South Street in Townsend.[8] Rembert was a member of the pastor parish relations committee formed to explore the matter.[9] Based on a recommendation from Rembert's sister, a realtor in Pennsylvania, Lee Haven Church hired another realtor, Traci Wallace, to handle the transaction.[10] Wallace also was hired to handle the sale of Brown's two properties.[11]

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4 *Id.* at 9, 52.

5 Stip. § II, ¶ 24.

6 T. Tr. at 10.

7 *Id.* at 52-53.

8 *Id.* at 56.

9 *Id.* at 57.

10 *Id.* at 57-58.

11 *Id.* at 58-59.

On February 16, 2006, Brown granted Rembert a power-of-attorney to represent him in the sale of his 705 South Street property.[12] The sale of that property closed on February 27, 2006 with Rembert in attendance on Brown's behalf.[13] Rembert knew she occupied a position of trust and was to look out for Brown's best interest, and accepted those responsibilities.[14] She collected the payment and brought the check for the net proceeds of the sale in the amount of $56,701.57[15] to Brown, who endorsed the check.[16]

Rembert deposited the check from the sale of Brown's property at 705 South Street in a joint savings account she opened in both of their names at the Delaware Alliance Federal Credit Union ("DAFCU").[17] Rembert opened the joint account, but it is unclear whether Brown accompanied her.[18] The account statements were sent only to Rembert's residence at 99 Buena Vista Drive, New Castle, Delaware.[19]

Brown again named Rembert as his attorney-in-fact on March 25, 2006 to represent him in the sale of his 697 South Street property.[20] The closing on that property

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12 Pl.'s Trial Ex. ("PX") 18.

13 Stip. § II, ¶ 6; T. Tr. at 61.

14 T. Tr. at 60-61.

15 Stip. § II, ¶ 8.

16 T. Tr. at 12, 63-64.

17 Stip. § II, ¶ 15; T. Tr. at 64.

18 T. Tr. at 66, 113-14.

19 *Id.* at 70-71, 112.

20 Stip. § II, ¶ 9.

occurred on March 31 with Rembert attending as Brown's agent.[21] She signed the settlement sheet on his behalf, took possession of a check for $104,870.47,[22] and then showed it to Brown without giving him possession.[23] Whether Brown endorsed that check is disputed.[24] In any event, it was deposited into the parties' joint account at DAFCU.[25]

The net proceeds from the combined sales of Brown's properties totaled $161,572.04.[26] The entire sum initially was held in the parties' joint savings account.[27] Brown denies ever being to DAFCU[28] or knowing about the joint account.[29] Susan Corey, the DAFCU teller who opened the account, had no recollection of ever having seen Brown in the credit union.[30]

On six separate occasions between March 13 and June 6, 2006, Rembert transferred funds from the parties' joint account to an individual DAFCU checking

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21 *Id.* ¶ 10.

22 *Id.* ¶¶ 11, 12.

23 T. Tr. at 79.

24 *Id.* at 16-17.

25 Stip. § II, ¶ 17.

26 *Id.* ¶ 18.

27 *Id.*

28 T. Tr. at 18.

29 *Id.* at 18-19.

30 *Id.* at 114.

account in her name.[31] The amounts and dates of those transfers, totaling $162,500, were: $6,700 on March 13; $1,000 on April 13; $800 and $2,000 on April 27; $50,000 on April 28; and $102,000 on June 6.[32]

Brown expressly authorized Rembert to spend a significant amount of money from the sales proceeds on things in anticipation of or related to their marriage.[33] He admitted, for example, to authorizing Rembert to use the proceeds to pay off a home equity line of credit of approximately $40,000 on her house, where the couple intended to live after their wedding.[34] Tammy Lindsay, Brown's niece, recalled that when Rembert mentioned to Brown things she needed for their home, such as a stove, a refrigerator, and den furniture, he frequently told Rembert to "[t]ake it out the money. Just take it out the money."[35] On one of those occasions, Rembert replied, "[w]e can't keep taking it out the money. That's how you do your business, but we can't do our business like that."[36] Brown also authorized a number of payments from the sales proceeds for various

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31 *Id.* at 87-88.

32 Stip. § II, ¶¶ 16, 19-22, 25.

33 T. Tr. at 21-22.

34 *Id.*

35 *Id.* at 211-12. According to Lindsay, Brown made essentially the same statement with regard to paying Rembert's mortgage and "countless [other] things." *Id.* Lindsay helped care for Brown for several weeks at Rembert's home, while he was recuperating from an operation he had the day after the May 13 wedding. *Id.* at 215-18.

36 *Id.* at 212.

expenses pertaining to the wedding, including the costs of the invitations, wedding cake, flowers, and decorations.[37]

Immediately after the wedding, Brown moved in with Rembert at her residence in New Castle.[38] This arrangement did not last long. On June 17, after one month of cohabitation, Brown moved out and he never moved back.[39] Eleven days earlier, on June 6, 2006, Rembert transferred $102,000 from the joint account to her individual account.[40]

On or about August 22, 2006, Rembert obtained a cashier's check drawn on her account at DAFCU in the amount of $61,711.90, which she used to make a down payment on a church building that would become the home of her new church, called the "Church of New Beginnings."[41] By the end of the summer of 2006, the entire $161,572.04 in proceeds from the sale of Brown's two properties was depleted.[42] Brown filed for divorce on January 9, 2007, and the divorce became final on April 5, 2007.[43]

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37 *Id.* at 247-48.

38 *Id.* at 25.

39 Stip. § II, ¶ 26.

40 *Id.* ¶ 25.

41 *Id.* ¶ 29; T. Tr. at 105.

42 T. Tr. at 96.

43 Stip. § II, ¶¶ 30-31.

C. Procedural History

On October 4, 2007, Brown filed this action against Rembert, his former wife, in the Court of Chancery, claiming a breach of fiduciary duty and unjust enrichment. In her Answer, Rembert denied any wrongdoing in her capacity as attorney-in-fact, or otherwise. On March 6, 2008, less than two weeks before trial, Rembert moved to dismiss for lack of subject matter jurisdiction. On March 14, in connection with the pretrial conference, I heard argument on the motion to dismiss, but denied it based on the incomplete state of the record at that time. Because the motion depended heavily on Brown's intent and other disputed factual issues, however, the denial was without prejudice to Rembert's ability to renew her motion after trial, which she did.

The trial of this matter took place on March 18 and 19, 2008. Thereafter, the parties submitted their respective post-trial briefs, addressing, among other things, the subject matter jurisdiction issue. The Court heard post-trial oral argument on August 1, 2008.

Because I have determined that this Court lacks subject matter jurisdiction over Brown's claims, this opinion addresses only that issue and does not reach the merits of Brown's claims.

D. Parties' Contentions

Brown couched his Complaint in terms of the parties' fiduciary relationship.[44] His allegations stem from Rembert's actions as his attorney-in-fact for the sale of his two

[44] Compl. ¶ 1; Transcript of Post-Trial Oral Argument ("8/1 Tr.") at 3.

residential properties.[45] Brown alleges that Rembert breached her fiduciary duties of good faith and loyalty through a pattern of self-dealing, and unjustly enriched herself at his expense.[46] Yet, he admittedly authorized Rembert to spend at least $45,500 of the sales proceeds to pay off her mortgage and purchase certain furniture. Brown contends the remaining sales proceeds from both transactions are his, and his alone, because he never intended to transform them into marital property.[47] He further contends that Rembert continually refused his demands for the return of the remaining proceeds.[48]

According to Brown, Rembert concealed the whereabouts of the sales proceeds and spent most of them without his consent.[49] He denies granting Rembert permission to use the sales proceeds to pay for anything other than her mortgage and the new furniture.[50] Brown further claims that he never received any money from the sales proceeds.[51]

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45 Compl. ¶ 1; 8/1 Tr. at 1.

46 Compl. ¶¶ 22, 29; 8/1 Tr. at 3.

47 T. Tr. at 17-18.

48 *Id.* at 18.

49 *Id.* at 18, 22.

50 *Id.* at 22-24, 49.

51 *Id.* at 37; 8/1 Tr. at 1.

Defendant, Rembert, argues the disputed matters relate to payments made in anticipation of her wedding to Brown or in connection with their marriage.[52] She claims that her fiduciary duties were limited to conveying title and collecting the sales proceeds, and that she executed these duties fully and properly.[53] Rembert further contends that she could not have breached her fiduciary duty because Brown's claims involve events that occurred after she satisfied her duties, which concluded when the sales proceeds were deposited into the parties' joint savings account.[54]

Rembert avers Brown knew the location of the proceeds and could have accessed them at any time.[55] She also claims Brown authorized every payment she made using the sales proceeds.[56] According to Rembert, Brown was willing to contribute the entirety of the sales proceeds towards their marriage.[57] Before they married, Brown allegedly told her, "Well, when this is over [the sale of his two properties], then I'll straighten you out. Look, I can take care of you. I can take care of you. I can do this."[58]

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52 Def.'s Answering Post-Trial Br. ("DAPTB") at 1. Plaintiff's Opening and Reply Post-Trial Briefs are referenced in similar fashion as "POPTB" and "PRPTB," respectively.

53 DAPTB at 21; T. Tr. 76-77.

54 DAPTB at 21.

55 T. Tr. at 95.

56 *Id*. at 97.

57 *Id.* at 238.

58 *Id.* at 244.

Citing 10 *Del. C.* § 921(11) and 13 *Del. C.* § 507(a) for support, Rembert contends this Court lacks subject matter jurisdiction over this controversy because the sales proceeds are marital property.[59] She acknowledges that the sales proceeds initially may have been premarital property, but argues they were transformed into marital property because they were held in a joint bank account and spent on matters related to the parties' marriage.[60] As a result, Rembert asserts any enrichment on her part was justified.[61]

Rembert further argues that Brown should have raised his present complaints during their divorce proceedings and that his failure to do so does not vest the Court of Chancery with jurisdiction over this action.[62] She claims that absent a ruling by the

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59 Def.'s Mot. to Dismiss Pl.'s Claims for Lack of Subject Matter Jurisdiction ("Mot. to Dismiss") ¶¶ 13-14. Section 921(11) of Title 10 of the Delaware Code imbues the Family Court with exclusive original civil jurisdiction in all proceedings relative to divorce and annulment. Section 507(a) of Title 13 is discussed in detail *infra*.

60 *Id.* ¶ 12.

61 DAPTB at 23. As discussed in the Analysis section *infra*, Rembert also contends that the question of whether the sales proceeds represent marital or premarital property falls within the exclusive jurisdiction of the Family Court. Brown disputes that contention based on *In re Real Estate of Manning*, 1985 WL 44697, at *1 (Del. Ch. May 28, 1985). Pl.'s Opening Pretrial Br. and Opp'n to Def.'s Mot. to Dismiss Pl.'s Claims for Lack of Subject Matter Jurisdiction ("PAB") at 28.

62 Mot. to Dismiss ¶ 16 (citing *Savage v. Savage*, 920 A.2d 403 (Del. Ch. 2006) and *Benge v. Oak Grove Motor Court, Inc.*, 2006 WL 345006 (Del. Ch. Feb. 7, 2006)).

Family Court that it lacks jurisdiction or otherwise cannot provide Brown with an adequate remedy at law, his claim cannot proceed in this Court.[63]

The linchpin of Brown's opposition to Rembert's Motion to Dismiss is his contention that the sales proceeds are premarital property. Brown argues that the Family Court lacks jurisdiction to decide disputes over nonmarital property[64] and, therefore, cannot provide him with an adequate remedy at law.[65]

According to Brown, the proceeds generated from the sale of his two properties constitute his premarital property because the sales occurred before the parties' marriage.[66] He submits that the only way the sales proceeds could cease to be his individual property would be if he intended to transform them into marital property, which he did not. Brown denies that he ever intended the proceeds to be deposited in a joint bank account or gifted into the marriage; the fact that they were deposited in a joint account resulted solely from Rembert's abuse of her powers-of-attorney.[67] Further, Brown contends that the mere placement or holding of funds in a joint account does not make them marital property.[68]

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63 DAPTB at 15-17 (citing 10 *Del. C.* § 342) ("The Court of Chancery shall not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of this State.").

64 PAB at 27.

65 PRPTB at 20.

66 PAB at 21.

67 *Id.* at 25.

68 *Id.* at 21-22.

Hence, one key issue presented by the Motion to Dismiss is whether the sales proceeds held in the parties' joint savings account at DAFCU constituted marital property. If they did, the parties agree the Family Court has exclusive jurisdiction over this matter. Even if the sales proceeds are held to be nonmarital property, however, Rembert asserts that this case involves the construction and enforcement of agreements made between future spouses and spouses concerning matters incident to marriage, and, therefore, falls within the exclusive original jurisdiction of the Family Court under 13 *Del. C.* § 507.

II. ANALYSIS

A. Court of Chancery Jurisdiction

The Court of Chancery is a court of limited jurisdiction.[69] By statute, the Court has jurisdiction "to hear and determine all matters and causes in equity."[70] Pursuant to 10 *Del. C.* § 342, however, the Court of Chancery does not have jurisdiction over "any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of this State." As the court announced in *Christiana Town Center, LLC v. New Castle County*:

> If the court is asked to exercise its equitable jurisdiction to remedy a legal wrong, the critical jurisdictional question is whether an adequate remedy at law exists. If a litigant can seek a remedy in a law court, or other adequate venue, that would provide full, fair, and practical relief, the Court of

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69 The issue of subject matter jurisdiction is so crucial that it may be raised at any time before final judgment. *See Appoquinimink Educ. Ass'n v. Appoquinimink Sch. Dist.*, 2003 WL 1794963, at *3 (Del. Ch. Mar. 31, 2003).

70 10 *Del. C.* § 341.

> Chancery is without subject matter jurisdiction to hear the matter.[71]

Whether a claim comes within the Court of Chancery's jurisdiction is a matter of substance, not form.[72]

As Plaintiff, Brown has the burden to demonstrate that equitable subject matter jurisdiction exists.[73] Also, the court has an independent duty to ensure that it has subject matter jurisdiction. "Judges in the Delaware Court of Chancery are obligated to decide whether a matter comes within the equitable jurisdiction of this Court regardless of whether the issue has been raised by the parties."[74]

In cases like this one, involving a dispute over whether jurisdiction should lie in this court or the Family Court, the plaintiffs will not be permitted to circumvent legislative intent in their efforts to gain access to the Court of Chancery. "[Plaintiffs] cannot . . . bypass the statutorily proper court to press claims in the Court of Chancery that are, by law, exclusively the province of the Family Court."[75] As the court in *Savage v. Savage* recently stated:

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71 2003 WL 21314499, at *3 (Del. Ch. June 6, 2003).

72 *Prestancia Mgmt. Group, Inc. v. Va. Heritage Found., II LLC*, 2005 WL 1364616, at *3 (Del. Ch. May 27, 2005) ("In determining whether equitable jurisdiction exists, this Court will look beyond the language of a complaint and examine the substance and nature of the relief being sought.").

73 *Id.* at *3.

74 *Christiana Town Ctr.*, 2003 WL 21314499, at *3 (quoting *IBM Corp. v. Comdisco, Inc.*, 602 A.2d 74, 77 n.5 (Del. Ch. 1991)) (internal quotations omitted).

75 *Savage v. Savage*, 920 A.2d 403, 413 (Del. Ch. 2006).

> The creation of the Family Court largely flowed from the General Assembly's desire to create a court that could address all of the difficult issues attendant to the break-up of marriages. In that creative process, the General Assembly relieved this court of its jurisdiction over matters like [those involved in *Savage*] and it is this court's duty to respect that legislative decision.[76]

This pronouncement echoes the recognition by the Superior Court of Delaware of the importance of not "undermin[ing] the legislative intent of creating a special court uniquely trained in the handling of family matters and the resolution of such disputes."[77]

Moreover, a plaintiff's failure to seek review in the Family Court cannot be the premise for jurisdiction in this Court.[78] "If a litigant fails to avail himself of a remedy provided by law and is subsequently barred from pursuing that remedy because of his own lack of diligence, he cannot then rely on the absence of a remedy at law as a basis of equitable jurisdiction."[79] "The reasons for [a plaintiff's] failure to seek relief earlier in the Family Court is irrelevant to whether this court has jurisdiction."[80]

B. Family Court Jurisdiction

The Family Court is the primary forum for the adjudication of family matters in the State of Delaware. Pursuant to 10 *Del. C.* § 921, "The [Family] Court shall have exclusive original civil jurisdiction in all proceedings in this State concerning . . . (11) All

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76 *Id.*

77 *Matthaeus v. Matthaeus*, 2003 WL 1826285, at *5 (Del. Super. Apr. 7, 2003).

78 *See Savage*, 920 A.2d at 412.

79 *In re Wife, K.*, 297 A.2d 424, 425 (Del. Ch. 1972).

80 *Savage*, 920 A.2d at 412.

proceedings relative to divorce and annulment under Chapter 15 of Title 13." In terms of jurisdiction, 13 *Del. C.* § 507 further states:

> The Family Court of the State shall have exclusive original jurisdiction over all actions arising under this chapter. The Court shall have exclusive jurisdiction over the construction, reformation, enforcement and rescission of agreements made between future spouses, spouses and former spouses concerning the payment of support or alimony, the payment of child support or medical support, the division and distribution of marital property and marital debts *and any other matters incident to a marriage, separation or divorce*.

(Emphasis added). Section 507 was amended to eliminate any doubt as to the Family Court's role as the primary forum for these matters by entrusting it with exclusive jurisdiction over the construction and enforcement of agreements between spouses or former spouses concerning matters incident to their marriage, separation, or divorce and concurrently ending the Court of Chancery's involvement in such controversies.[81]

In carrying out its legislatively prescribed charges, "[t]he Family Court has assumed many of the duties that both this court and the Superior Court used to perform involving families."[82] To facilitate this end, the General Assembly equipped the Family Court with powers particularly designed to accomplish its specialized tasks. For instance, the Family Court can grant an array of remedies to fit the particular requirements of a given case. In particular, "the [Family] Court and each Judge shall have authority . . . (15) In any civil action where jurisdiction is otherwise conferred upon the Family Court,

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[81] *Id.* at 410.

[82] *Id.* at 409.

[to] enter such orders against any party to the action as the principles of equity appear to require."[83] Based on its plain meaning, "this section has been invoked by the courts to grant the Family Court authority to order . . . equitable relief when equity appears to require it."[84]

In addition, pursuant to Chapter 15 of Title 13 of the Delaware Code, the Family Court has authority to resolve property disputes between former spouses as the need arises. The General Assembly has instructed that "[Chapter 15] shall be liberally construed and applied to promote its underlying purposes, which [include]: (1) To promote the amicable settlement of disputes that have arisen between parties to a marriage."[85]

C. Whether The Court of Chancery Has Subject Matter Jurisdiction Over Brown's Claims

The question whether this Court has subject matter jurisdiction over Brown's claims presents at least three issues. One is whether the sales proceeds represent marital property or the premarital property of Brown. Before addressing that issue, however, the Court logically should confront Rembert's contention that the Family Court has exclusive jurisdiction to determine whether disputed property in litigation between a former husband and wife is marital or nonmarital property. According to Rembert, this Court lacks jurisdiction over that important threshold question. Yet another issue, largely

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83 10 *Del. C.* § 925.

84 *Benge*, 2006 WL 345006, at *2.

85 13 *Del. C.* § 1502(1).

independent of the other two, is whether this dispute comes within the exclusive jurisdiction of the Family Court under 10 *Del. C.* § 507(a) in that, according to Rembert, it involves an agreement made between future spouses, spouses, or former spouses concerning a matter incident to a marriage, separation or divorce.

In the interest of deciding this controversy on the narrowest ground available, I address those issues in reverse order. That is, I focus first on the Section 507(a) argument, because it arguably applies even if the sales proceeds are premarital property. As to that issue, I conclude, for the reasons explained below, that this action does involve the construction and enforcement of an agreement between future spouses or spouses concerning matters incident to a marriage, and that it, therefore, falls within the exclusive jurisdiction of the Family Court.

Although I could stop there, the unusual procedural posture of this case supports providing an alternative holding in the interests of judicial efficiency and the effective administration of justice. In particular, I am mindful that the challenge to subject matter jurisdiction did not arise until the eve of trial and is being decided after trial, and that there is no clear expression of legislative intent to preclude this Court from deciding whether property in issue in litigation among former spouses represents marital property. I, therefore, hold, in the alternative, that the disputed sales proceeds, at least in part, constitute marital property.

1. Does this matter come within 13 *Del. C.* § 507(a)?

The relevant portion of 13 *Del. C.* § 507(a) states: "The [Family] Court shall have exclusive jurisdiction over the construction, reformation, enforcement and rescission of

agreements made between future spouses, spouses and former spouses concerning . . . any other matters incident to a marriage, separation or divorce." During the time period germane to this controversy, Brown and Rembert had the status of future spouses initially and, then, of spouses. The parties dispute, however, whether they had reached any agreements as to the nature or disposition of the sales proceeds from Brown's two properties. To resolve that dispute, I must review the facts regarding the creation and handling of those proceeds.

The two power-of-attorney agreements, which enabled Rembert to represent Brown in both real estate transactions, were executed in 2006, well after the parties announced their engagement in September 2005. Brown decided to sell both of his properties after consulting with Rembert on their marital living arrangements. Brown hired real estate professionals to perform certain aspects of these sales, but chose Rembert, who lacks any real estate training, to stand in for him as his attorney-in-fact.[86] I infer from this that Brown gave Rembert power-of-attorney based on his trust in her and his anticipation of their marriage. In that sense, the power-of-attorney documents represent agreements between future spouses.

Roughly contemporaneously with receiving each check for the sales proceeds, Rembert took them to Brown and he signed them. Brown denies signing one of the

[86] I find that Brown appointed Rembert his attorney-in-fact for the property sales simply to suit his convenience. Nothing in the record suggests that Brown was mentally or physically incompetent to handle his own affairs at any time relevant to this dispute.

checks,[87] but the preponderance of the evidence indicates that he signed both of them.[88] Furthermore, Brown had no clear idea as to what Rembert was going to do with the checks.[89] In that and other respects, Brown took a fairly lax approach to his and Rembert's finances throughout the relevant time period. Although he may have asked Rembert on occasion about the location of the funds and received a less than informative response,[90] there is no credible evidence that Brown did anything more to ensure that he received an answer to his question.

After Brown signed the checks for the sales proceeds, Rembert deposited them in a joint savings account she opened for herself and Brown at DAFCU. That Rembert opened such an account does not seem suspicious in and of itself. The evidence showed that Brown had a poor credit history and could not obtain a checking account or a credit card in his own name.[91] Consequently, Rembert opened a joint savings, as opposed to

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87 Specifically, Brown avers that he never saw nor signed the check for the sale of the 697 South Street property. T. Tr. at 16-17.

88 Brown admits signing at least one of the checks from the property sales. *Id.* at 45. Rembert testified that Brown signed both checks, while Isaiah Pates testified that Rembert delivered the check for the sale of the 697 South Street property to Brown shortly after settlement. *Id.* at 176-78, 284. On this issue, I find the testimony of Rembert and Pates credible.

89 Brown provided vague responses when asked about his intentions for the sales proceeds; he seemed satisfied Rembert "was putting it somewhere" and would retain it for "safekeeping." *Id.* at 13, 45.

90 For example, Brown testified that Rembert would not reveal the location of the sales proceeds when he inquired about the subject. *Id.* at 18.

91 *Id.* at 107-08, 163, 239-40, 245, 262-63.

checking, account in her and Brown's names.[92] In addition, because Brown admittedly agreed that Rembert could pay certain debts from the sales proceeds, namely, Rembert's home equity line of credit and the cost of certain furniture,[93] it is not surprising that Rembert transferred some funds from the joint savings account to her own savings and checking account.[94]

Although Brown authorized Rembert to use approximately $40,000 of the sales proceeds to pay off the mortgage from her home equity loan and another $5,500 for furniture, he urges the Court simply to ignore this portion of the sales proceeds and focus on the disposition of the remaining amount, all of which Brown contends represents premarital property.[95] The evidence shows, however, that the money Brown authorized for the mortgage and furniture related to matters incident to the anticipated marriage of Brown and Rembert. In that sense, I find that Brown and Rembert, as future spouses, had an agreement concerning matters incident to their marriage that would fall within the Family Court's exclusive jurisdiction under 13 *Del. C.* § 507(a).

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92 Stip. § II, ¶ 14; T. Tr. at 262-63.

93 Stip. §II, ¶ 23.

94 Rembert sometimes made payments by check and other times by using her credit card and then replenishing her checking account, if the payment was to have been made from the sales proceeds. T. Tr. at 238-39, 243-44, 246, 263, 273-74.

95 For purposes of this discussion of the applicability of the fourth category of agreement listed in 13 *Del. C.* § 507(a), I assume arguendo that the disputed $116,000 constituted premarital property of Brown. Whether those funds could be deemed marital property is analyzed *infra* Part II.C.2.

The parties dispute many of the facts regarding the expenditure of the remainder of the sales proceeds. Based on the evidence presented at trial, I find that Brown explicitly authorized a number of expenditures from those proceeds for items related to the upkeep of Rembert's home, where the couple intended to, and did briefly, live as husband and wife. Those items include a stove, a refrigerator, and various home improvements.[96] One such improvement was the construction of a shed with a raised floor for storing chemicals Brown used in his cleaning business.[97] In most cases, Brown approved these expenditures by telling Rembert to "take [them] out the money."[98] In others, such as the shed, Brown's authorization may have been more implicit in that he knew about the work while it was being done, the purpose of it, and that it probably would be paid for from the sales proceeds, but never objected to it.[99] Indeed, Brown never became actively involved in the decisions Rembert was making as to the home they would share or how they would pay for it. He merely approved various expenditures in

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96 T. Tr. at 211-12.

97 *Id.* at 179-81.

98 *Id.* at 212.

99 Brown was at the house and witnessed much of the home improvement work performed by Pates, including the construction of a separate room in the basement. *Id.* at 183-84, 188. In fact, Brown assisted Pates in building a closet and the storage shed. *Id.* at 179, 182-83. Factual disputes exist as to the exact amount Rembert spent on various items pertaining to her home in New Castle and other contested items. There also are questions about the sufficiency of the documentation she placed in evidence regarding those expenditures. But for purposes of this opinion, I need not address those matters.

the offhand way noted earlier. Moreover, there is no evidence he ever refused to approve an expenditure related to the couple's living arrangements.

In addition to these home-related expenditures, Brown authorized a number of other items regarding the parties' wedding. Between February and March 2006, when Brown's properties were sold, and the wedding on May 13 that year, Rembert planned and arranged for the wedding. Brown occasionally accompanied her in investigating aspects of it.[100] The record shows Rembert discussed various wedding-related expenditures with Brown, including the wedding cake, the invitations, the photographer, and several others.[101] Brown clearly agreed to pay for at least some of the wedding cost.[102] Rembert testified that he agreed to pay virtually all of it, which totaled approximately $36,000, from the sales proceeds.[103]

The record suggests that Rembert may have taken advantage of Brown's inattention to his affairs and of his trust to use the sales proceeds to spend unreasonable amounts of money on the wedding and other things. I do not need to resolve that issue,

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100 For example, Brown testified he met with an employee of the Christiana Hilton about the wedding reception. *Id.* at 47. Brown also met with the wedding photographer at Rembert's house and with a private wedding coordinator. *Id.* at 249, 253.

101 *Id.* at 247-50.

102 Brown admitted that he agreed to "help pay for the wedding bills." *Id.* at 47. In addition, Brown gave a down payment to the wedding photographer and approved of the exchange of a laptop for the services of a wedding planner. *Id.* at 149-50, 253.

103 *Id.* at 239, 258. Brown argues that Rembert has failed to prove the wedding expenditures she claims, and believes the true cost is more in the range of $15,000. *Id.* at 47.

however, to decide Defendant's Motion to Dismiss. Rather, I find that Brown authorized the expenditure of a substantial amount of money, in the range of at least $15,000, from the sales proceeds for the wedding. Once again, the evidence shows that, in that regard, the parties had an agreement as future spouses concerning matters incident to their marriage.

The most problematic of the expenditures Brown challenges is Rembert's use of approximately $61,000 in sales proceeds to purchase a church for her new congregation. Although Rembert alleges that Brown also approved that use of the proceeds, the sufficiency and credibility of her evidence on that point is dubious, at best.[104] In fact, a

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[104] Rembert filed a motion in limine to exclude the presentation at trial of evidence sought to be introduced by Brown pursuant to D.R.E. 404(b), and I reserved decision on that motion until after the post-trial briefing. The evidence in question is Plaintiff's Exhibit ("PX") 37 and the trial testimony elicited about it. Having considered the parties' arguments, I hereby grant the motion in limine and exclude PX 37 and any testimony concerning it for several reasons. First, Brown failed to identify PX 37 or to raise the issue of its admissibility in the pretrial order or during the pretrial conference, as required by Court of Chancery Rule 16 and this Court's practice. Brown also offered no justification for his dilatory identification of the proposed exhibit. Consequently, the evidence is untimely and prejudicial to Rembert in that she was deprived of an adequate opportunity to meet it. Second, the evidence presents hearsay problems in that it reflects out-of-court statements offered to prove the truth of the matters asserted, and Brown has failed to provide an adequate foundation to overcome the resulting presumption of inadmissibility. See D.R.E. 802. Third, although D.R.E. 404(b) would permit the admission of evidence of other crimes, wrongs, or acts committed by Rembert to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, Brown has not shown that PX 37 and the related testimony is relevant to any of these permissible purposes. Thus, the proffered evidence is inadmissible under Rule 404(b). Similarly, Brown's reliance on D.R.E. 405(b) is unavailing. Rule 405(b) provides that, "[i]n cases in which a character or a trait of character of a person is an essential element of a charge, claim or defense, proof may also be made of specific instances of that person's conduct." D.R.E. 405(b). Yet, Brown has not asserted any claim or defense based on the conduct that is the subject of

plausible inference from the evidence presented is that Rembert unscrupulously transferred those funds from the joint savings account and used them for her own purposes without Brown's consent. Nevertheless, a material factual issue exists as to whether the parties had an agreement on that point. If the ultimate factfinder accepts Rembert's argument that there was such an agreement, it conceivably could be an agreement incident to their marriage.

The essence of Brown's claims is that Rembert breached her fiduciary duty to him under the powers-of-attorney and improperly used the cash proceeds from the sale of his inherited properties for her own benefit without his knowledge or consent. Rembert's misdeeds allegedly deprived Brown of more than $100,000 of his sales proceeds.

Based on these facts, I consider Brown's claims inextricably related to the agreements Brown and Rembert reached as future spouses or spouses concerning matters incident to their May 2006 marriage. Under 13 *Del. C.* § 507(a), the Family Court has exclusive jurisdiction over cases of this nature. The Court of Chancery must honor the General Assembly's express intention that the Family Court be the forum for the

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PX 37 or demonstrated how the disputed evidence meets the requirements of Rule 405(b). I therefore grant Rembert's motion in limine and exclude PX 37 and the related testimony from consideration.

I further note, however, that even if I had admitted PX 37 and the challenged testimony into evidence, they would not have caused me to alter the decisions reflected in this opinion.

resolution of such matters.[105] Thus, Brown's claims fall within the exclusive jurisdiction of the Family Court.

Rembert was the couple's de facto banker. Though the parties may have paid separately for certain incidental expenses, the more costly expenses were paid out of the sales proceeds. Rembert wrote checks to cover many of these costs from her individual account, to which she periodically transferred funds from the joint account. On other occasions, she used her credit card and then used some of the sales proceeds to pay down her credit card balances. While Brown may not have been familiar with the details of the couple's finances, seemingly out of disinterest, I find that he knew Rembert continually was making purchases for the purported benefit of their marital union, many of them at significant cost relative to their combined budget.[106]

Brown also argues that § 507(a) has no application here, because "even if this dispute were construed as being over an agreement, it is not over the division and

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[105] As the court noted in the *Savage* case, "the General Assembly explicitly amended § 507 to entrust the Family Court with jurisdiction over . . . agreements [between former spouses not incorporated in a divorce or annulment proceeding] and to end [the Court of Chancery]'s involvement in such matters." 920 A.2d at 410. In finding that the Court of Chancery lacked subject matter jurisdiction over property disputes between former spouses, the court also observed that the amendment of § 507 exemplified a legislative intent to establish the Family Court's "broad and exclusive" authority over such matters. *Id.* at 411.

[106] Brown's claimed lack of awareness that Rembert was spending the sales proceeds is untenable. Over the course of several months and numerous discussions, Brown explicitly or implicitly authorized the use of those proceeds for things related to their marriage. The parties may not have communicated as often or as clearly as Brown now wishes they had. Nevertheless, they had an oral agreement regarding the use of at least a substantial portion of the sales proceeds.

distribution of marital property."[107] In advancing that narrow construction of § 507(a), Brown emphasizes the importance of considering the entirety of the applicable sentence, which states:

> The [Family] Court shall have exclusive jurisdiction over the construction, reformation, enforcement and rescission of agreements made between future spouses, spouses and former spouses concerning [1] the payment of support or alimony, [2] the payment of child support or medical support, [3] the division and distribution of marital property and marital debts and [4] any other matters incident to a marriage, separation or divorce.[108]

As Brown notes, the statute was broadened in 1990 to add to the preexisting first listed category of agreements, the second and third and a fourth catch-all category, as well. According to Brown, however, the catch-all provision should be limited to "other matters" related to one of the first three categories, such as "the division and distribution of marital property."[109]

Yet, nothing in the plain language of Section 507(a), its legislative history, or the case law supports Brown's position. The statute expressly confers upon the Family Court exclusive jurisdiction over "the construction, reformation, enforcement and rescission of agreements made between future spouses, spouses and former spouses concerning . . . matters incident to a marriage, separation or divorce."[110] It does not limit that category of

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107 PRPTB at 12 (internal quotations omitted).

108 13 *Del. C.* § 507(a).

109 PRPTB at 6-13.

110 13 *Del. C.* § 507(a).

agreement to matters involving marital property, and I see no reason to import such a limitation into the statute. Nor has Brown identified anything in the legislative history that suggests an intent to so limit § 507(a). Instead, Brown notes that the *Savage* case, relied on by Rembert, is distinguishable from the present controversy in that it did involve an alleged agreement regarding marital property, while here, Brown characterizes the sales proceeds as his premarital property.[111] Although the distinction is correct, *Savage* involved the third category of agreement listed in § 507(a), not the fourth catch-all provision.[112] Furthermore, the reasoning of *Savage* comports with my decision that the dispute in this case falls within the exclusive jurisdiction of the Family Court under § 507(a). Thus, I reject Brown's argument for a narrow construction of 13 *Del. C.* § 507(a).

The decision in *Benge v. Oak Grove Motor Court, Inc.*[113] supports the conclusion that § 507(a) applies to an agreement between future spouses or spouses concerning matters incident to their marriage, even if the agreement concerns nonmarital property.[114] The facts in *Benge* differ from those presented here in that the agreement at issue involved what had been marital property.[115] In reaching its decision, however, the court in *Benge* recognized that § 507(a) is not limited to agreements concerning marital

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111 920 A.2d at 408.

112 *See id.*

113 2006 WL 345006.

114 *Id.* at *1.

115 *See id.*

property.[116] In that case, the petitioner/ex-husband contended that because his ex-wife had sold the assets she received pursuant to their oral marital property division agreement and had used the proceeds to purchase replacement nonmarital assets, the Family Court could not grant the equitable relief he sought in Chancery to reclaim his share of the marital property.[117] Vice Chancellor Strine dismissed the case for lack of subject matter jurisdiction.

The dispute in *Benge* arose from an alleged oral agreement between former spouses.[118] As Vice Chancellor Strine stated, "if [a former spouse] should dispute the existence of a valid oral agreement, § 507(a) includes the Family Court's exclusive jurisdiction over any matters incident to a . . . divorce and the jurisdiction to resolve any issues resulting from the construction, reformation, enforcement or rescission of an agreement."[119] Citing both 13 *Del. C.* § 507(a) and 10 *Del. C.* § 902, the court in *Benge* further observed that, "the Family Court has exclusive jurisdiction over marital property division agreements, and *more broadly*, 'any other matters incident to a marriage, separation, or divorce.'"[120] Applying those principles in this case leads to the conclusion that, despite Brown's denial of the existence of an agreement as extensive as Rembert

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116 *Id.*

117 *Id.*

118 *Id.* at *2.

119 *Benge*, 2006 WL 345006, at *2 (Del. Ch. Feb. 7, 2006) (internal quotations omitted).

120 *Id.* at *3 (quoting 13 *Del. C.* § 507(a)) (emphasis added).

alleges and his contention that the agreement involves premarital property, § 507(a) gives the Family Court exclusive jurisdiction over his claims.

2. Were the sales proceeds from Brown's properties marital property?

As to whether the sales proceeds constitute marital property, a threshold question is whether the Court of Chancery has jurisdiction to decide that issue. Rembert contends the Court does not, because it previously has declined to exercise subject matter jurisdiction in cases that indisputably involved marital property.[121] None of the cases relied upon by Rembert, however, squarely addresses this Court's jurisdiction to determine whether or not disputed property is marital. Moreover, the parties have not cited and the Court is not aware of any statutory provision that divests this Court of jurisdiction to decide that issue in the context of determining its own subject matter jurisdiction over a dispute. Thus, Rembert's position is questionable, at best. Because I do not have to decide the validity of that position to resolve the motion before me, I assume without deciding that this Court could determine, if necessary, whether or not the disputed property constitutes marital property.

Turning to that issue, I first note that under 13 *Del. C.* § 1513(b), "marital property" is defined as "all property acquired by either party subsequent to the

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[121] DAPTB at 13-17 (citing *Savage*, 920 A.2d 403 and *Benge*, 2006 WL 345006). Rembert also cites *Matthaeus*, 2003 WL 1826285, at *4-5, for the proposition that Delaware courts have recognized the broad and exclusive jurisdiction of the Family Court to adjudicate matters related to the family unit. That case, however, does not rule out the possibility that other courts could determine the status of property as marital or nonmarital property in an appropriate context.

marriage."[122] There is no dispute the proceeds from the sales of Brown's two properties were acquired before the marriage. Thus, they do not meet the strict definition of § 1513(b), and initially, at least, were premarital property.

The Delaware Supreme Court, however, has held that the status of premarital property as such is not immutable.[123] Delaware courts may examine the intent of the parties regarding specific property to determine if it constitutes marital property.[124] For example, premarital property, *i.e.*, property acquired before the marriage, can become marital property if the owner spouse places it in both spouses' names, effectively gifting the property to the nonowner spouse.[125] In addition, commingling funds in a joint account may render one spouse's monies marital property.[126] The key issue in each case is the parties' intent for the use and disposition of the property.

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122 Section 1513(b) identifies a few specific exceptions to this definition, but none of them applies to the sales proceeds at issue here. *See* 13 *Del. C.* § 1513(b)(1)-(4).

123 *Husband T.N.S. v. Wife A.M.S.*, 407 A.2d 1045, 1048 (Del. 1979).

124 *See, e.g.*, *Daugherty v. Sterns*, 2008 WL 4698563, at *4-5 (Del. Fam. Sept. 29, 2008) (holding that real estate did not constitute marital property because the parties did not intend it to be at the time of acquisition); *see also Fielitz v. Fielitz*, 1997 WL 297086, at *5 (Del. Fam. Jan. 15, 1997) (finding that proceeds from sale of one spouse's house constituted marital property where they were used to purchase another house in both spouses' names).

125 *Husband T.N.S.*, 407 A.2d at 1048. *See also K.T. v. Y.T.*, 2008 WL 1952476, at *4 (Del. Fam. Feb. 8, 2008) (finding that house constituted marital property where husband refinanced it in both his and wife's names despite premarital acquisition of property by husband).

126 *See Wilm. Sav. Fund Soc'y, FSB v. Kaczmarczyk*, 2007 WL 704937, at *9 (Del. Ch. Mar. 1, 2007).

In arguing that the sales proceeds constitute marital property, Rembert relies on a line of cases recognizing that marital property may include property acquired before marriage, but "in contemplation of marriage."[127] In particular, Rembert invokes the four-pronged test articulated by the Family Court in *Wilson v. Lynn* and applied by the Supreme Court in *Battaglia v. Battaglia*, for determining whether property was acquired "in contemplation of marriage" and therefore should be considered marital property.[128] *Wilson*, *Battaglia*, and the other cases Rembert relies upon, however, all dealt with real property, not personal property, such as the sales proceeds at issue here. Hence, the *Wilson* test is not controlling in this case.[129]

Instead, I must determine from the circumstances whether the sales proceeds that initially were the premarital property of Brown became marital property as a result of the way in which the parties dealt with them. Although the question is not free from doubt, I

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127 DAPTB at 17-18, citing *Battaglia v Battaglia*, 882 A.2d 761, 2005 WL 2149337 (Del. Aug. 24, 2005) (ORDER); *F.Z. v. D.Z.*, 2006 WL 2388797, at *2 (Del. Fam. Feb. 17, 2006); *Wilson v. Lynn*, 1993 WL 331899, at *3 (Del. Fam. June 15, 1993).

128 The four factors identified in *Wilson v. Lynn* are: (1) that the property was acquired within three months of the marriage; (2) that the wedding date had been set at the time of the acquisition; (3) that there was a compelling legal or financial reason why title was not placed in both parties' names; and (4) that both parties were actively involved in the selection of the property. *Wilson*, 1993 WL 331899, at *3; *Battaglia*, 2005 WL 2149337, at *1.

129 Delaware courts resolve disputes over whether property is marital or nonmarital based on their facts, and not by rigid application of the *Wilson* test. *See*, *e.g.*, F.Z., 2006 WL 2388797, at *3 (noting that the facts of the case did not strictly satisfy the parameters of the *Wilson* test); *Bennett v. Bennett*, 1995 WL 775118, at *2 (Del. Fam. Jan. 3, 1995) (declining to adopt the *Wilson* test because "[e]ach case must be decided on its facts")).

find that the sales proceeds did become marital property, because Brown's actions and, in some cases, failures to act reflect an intent to treat the proceeds as such and to use them to meet his and Rembert's needs as a married couple. First, Brown signed each of the two checks for the proceeds and allowed Rembert to deposit them in a jointly titled savings account. While Brown denies ever giving such authorization, his actions prove otherwise. He knew at all relevant times that the funds were accessible to Rembert in a joint account until such time as she drew upon them. In addition, the property sales that generated the proceeds occurred less than three months before the date the parties previously had set for their wedding and at a time when they had decided to live as a couple in Rembert's home in New Castle. As discussed earlier, Brown admittedly authorized at least two expenditures from the proceeds in an amount of approximately $45,500 to pay off a home equity line of credit on Rembert's home and for furniture. The evidence further shows that Brown approved the payment of numerous other expenses related to the parties' wedding and to renovations to and maintenance of Rembert's home by telling her to "take it out the money," meaning the sales proceeds.[130]

For these reasons, I conclude that Brown intended at least part of the sales proceeds and, perhaps, all of them to be marital property. Still, serious conflicts exist in the testimony and other evidence regarding Rembert's use of a large portion of the proceeds to purchase a church for her new congregation and for certain other disputed items. I am dubious about Rembert's contentions as to that purchase and Brown's having

[130] *See* T. Tr. at 212.

acquiesced in it. Similarly, I remain skeptical about some of the other expenditures Rembert claims to have made with Brown's alleged consent. For purposes of the jurisdictional motion before me, however, I need not reach the merits of these issues. Rather, consistent with "the legislative intent of creating a special court uniquely trained in the handling of family matters and the resolution of such disputes,"[131] I hold, in the alternative, that this controversy involves marital property or an agreement concerning the division and distribution of marital property to such an extent that determining where the line should be drawn as to the disputed expenditures and how those matters should be handled falls within the exclusive jurisdiction of the Family Court.

III. CONCLUSION

For the foregoing reasons, I conclude that this Court lacks jurisdiction to hear Brown's claims and that they are subject to the exclusive jurisdiction of the Family Court. Therefore, this case shall be dismissed automatically unless Brown transfers it in a timely manner to the Family Court under 10 *Del. C.* § 1902.

IT IS SO ORDERED.

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131 *Matthaeus*, 2003 WL 1826285, at *5.