NOT DESIGNATED FOR PUBLICATION

LULA MAE JENNINGS	*	**NO. 2000-CA-0762**
VERSUS	*	**COURT OF APPEAL**
JOHNNY E. TURNER, JR.	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 90-19747, DIVISION "C-DRS 1"
Honorable Roland L. Belsome, Judge
* * * * * *
Chief Judge William H. Byrnes III
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Charles R. Jones,
Judge Dennis R. Bagneris Sr.)

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AFFIRMED

Paintiff-appellant, Lula Mae Jennings, appeals a judgment in favor of her former husband, Johnny E. Turner, Jr., denying her attempt to assert a community property interest in his pension benefits. We affirm.

The primary question this Court is called upon to address is whether the community property settlement/partition agreement entered into by the parties on October 25, 1990, is conclusive in the matter of the pension benefits. Subsidiary to that question is whether plaintiff's claim has prescribed. The trial court found that it had.

The parties married in 1968. Plaintiff filed for separation on October 1, 1990. On October 25, 1990, the parties executed a "Community Property Partition/Settlement of Community." A judgment of separation was signed on November 13, 1990. The judgment of divorce was signed on December 30, 1991. Plaintiff filed a petition entitled "Petition for Partition of Community Property" directed solely at defendant's pension benefits on

November 22, 1995.

In the community property settlement/partition agreement, plaintiff transferred to the defendant her interest in the property and improvements, appliances and household furniture located at 4418 Knight Drive; all personal articles and items, jewelry, clothing and other personal effects belonging to the defendant; a 1983 Lincoln Continental; and a 1976 Ford Pick-Up Truck. The agreement then provides that: "In consideration of the foregoing transfer by Wife **and her covenants** elsewhere set forth in this agreement, Husband does hereby pay to Wife, the full sum of THIRTY THOUSAND ($30,000.00) DOLLARS, cash . . ." The agreement then contains the following covenants:

> Husband and Wife agree that they have accomplished a complete liquidation of the community of acquets and gains existing between them, and they do accordingly **hereby mutually release and forever discharge each other from any and all further claims, demands and any and all further accountings** between them of the above mentioned property. It is the intention of the parties that henceforth there should be, as between them, only such rights and obligations as are specifically provided for in this agreement, and the parties acknowledge that the allocation made to each of them has resulted in each party receiving an equal share of the listed community property.

> Husband and Wife further acknowledge and agree that both Husband and Wife have been furnished all financial information, appraisals, financial statements and other financial data requested each of the other, and that **each has had an opportunity to make a full and complete investigation of the value of each and every community asset. . . . .**
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> The parties hereto confirm that, based on the mutual covenants, undertakings and acknowledgements contained herein, that they have each received an equal share of the community property which was acquired during their marriage, and, thay [sic] relieve and release each other from any further accounting relative to any items which have not been specifically mentioned herein, **including, but not being limited to bank accounts, checking accounts, IRA accounts and the like**, and they acknowledge that they have each received an equal share of the community property which was acquired during the marriage, and that they discharge each other from any further accounting to the community which formerly existed between them or to each other, the same being **fully liquidated** as set forth above.

It is clear from the provisions quoted above, and especially those highlighted portions, that the settlement/partition agreement was intended to encompass the disposition of the entire community. Plaintiff seizes on the language referring to an accounting to argue that the agreement was intended to serve more as an accounting than as a liquidation of the community. But

such a reading would require this Court to take the accounting language out of context and ignore a reading of the agreement as a whole. When viewed in context, the reference to an "accounting" must be read in conjunction with the language saying that the community was "fully liquidated" by the agreement; that the parties had "accomplished a complete liquidation of the community"; that they had "each received an equal share of the community property which was acquired during their marriage"; that both parties had been furnished all financial information and that each had had the opportunity of investigation of "each and every community asset"; and most significantly, that "they do accordingly mutually release and forever discharge each other from any and all further claims, demands and any and all further accountings between them of the above mentioned property." Of perhaps equally great significance is that the agreement specifies that it covers "items not specifically mentioned herein, including, but not limited to bank accounts, checking accounts, IRA accounts **and the like** . . ." An IRA is a form of retirement plan. The phrase "and the like" is broad enough any way it is read to encompass the retirement plan at issue here, even though it is not specifically referred to in the agreement. It is undisputed that the agreement was confected with the assistance of the plaintiff's attorney, even if, for purposes of argument, we do not accept defendant's contention that

his (the defendant's) attorney played no role in the confection and review of the agreement.

Based on the foregoing, we conclude that the language of the agreement is broad enough under any reasonable reading to demonstrate an intention to effect a partition of the entire community. The conclusion of this Court is consistent with the findings of the lower court. The deference owed to the findings of the lower court under our three-tiered court system even in matters of documentary evidence only serves to reinforce the conclusion we would arrive at even were we to employ a *de novo* standard of review. *Virgil v. Amer. Guar. And Liab. Ins.,* 507 So.2d 825, 826 (La.1987).

As plaintiff has failed to show that the defendant's pension benefits were not covered by the agreement, she may only prevail by showing some reason why the agreement should not be enforced. Where it is undisputed that she was represented by counsel in the confection of the agreement and the agreement was freely entered into, she bears a heavy burden, indeed, to convince this court that we should not enforce this agreement.

Plaintiff brought this action styling it a "Petition for Partition of Community Property." The petition alleges that: "There exists community property of the marriage between petitioner and defendant which has not yet been partitioned." The petition then goes on to define the property that has

yet to be partitioned as the pension benefits that are the subject of this suit. There is no allegation that the defendant fraudulently concealed the existence of his pension benefits or that the plaintiff executed the settlement agreement as the result of some mistake of fact or law. "In pleading fraud or mistake, the circumstances constituting fraud or mistake shall be alleged with particularity. . . ." LSA-C.C.P. art. 856.

Croft v. Croft, 93-2145 (La.App. 4 Cir. 3/15/94), 634 So.2d 76, *writ den.* 94-0956 (La. 6/3/94), 637 So.2d 506 does not support plaintiff's position. *Croft* suggests "that parties have the right to litigate pension issues subsequent to a community settlement, where that settlement failed to apportion the pension right." 634 So.2d at 77. In the instant case we have found that the community settlement did encompass the pension right. See *Hare v. Hodgins*, 567 So.2d 670 (La.App. 5 Cir.1990), *affirmed in part and reversed in part*, 586 So.2d 118 (La.1991), to the same effect.

As plaintiff's pleadings do not permit her to make a case for fraud or mistake, and as she has failed to establish any other basis upon which this Court

might refuse to give effect to the agreement, we affirm the judgment of the

trial court. Plaintiff is to bear all court costs.

AFFIRMED