

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D18-3039

KRISTI D. PACK, Former Wife,

Appellant,

v.

IAN P. WIECHERT, Former
Husband,

Appellee.

On appeal from the Circuit Court for Okaloosa County.
Mary K. Polson, Judge.

December 10, 2019

WOLF, J.

The former wife challenges the trial court's order denying her motion to dismiss and granting the former husband's motion to compel the former wife to sign leasing documents under the terms of the parties' Marital Settlement Agreement. We find the trial court erred as a matter of law by granting the former husband's motion to compel and ordering the former wife to sign the lease, contrary to the unambiguous terms of the Final Judgment of Dissolution which ratified the parties' Marital Settlement Agreement. The trial court erred by denying the former wife's motion to dismiss.

FACTS

On June 17, 2013, the parties entered into a marital settlement agreement in anticipation of divorce. On July 2, 2013, the trial court entered a Final Judgment of Dissolution of Marriage, ratifying and incorporating the parties' Marital Settlement Agreement (MSA). At the time of the dissolution of marriage, the parties jointly owned real property located at 9148 Pauly Drive, Owings, Maryland ("the Maryland property"). The MSA and judgment addressed the Maryland property.

In the MSA, the parties agreed to set up a "joint rental checking account" for the Maryland property, into which "all rental income shall be deposited" and from which all property expenses were to be paid; the parties agreed to share the expenses of the Maryland property for one year: "commencing on July 1, 2013, *and continuing for no more than 12 months.*" (Emphasis in original.) Further, the parties agreed that "[u]nder no circumstances shall either party have any obligation to contribute to this joint rental account or to directly make any mortgage payments on this property after July 1, 2014." The parties agreed that the court should retain jurisdiction in regard to the sale of the property: "The court approving this agreement shall have continuing jurisdiction to compel either party to accept any bona fide fair offer to purchase this residence and to execute all documents required for the actual sale of this residence."

The Maryland property was listed for sale as required by the terms of the MSA. However, the property did not sell within 12 months, and the parties continued to lease the property through June 12, 2018, when the underlying action was initiated by the former husband to compel the former wife to sign a rental listing agreement to continue to rent the Maryland property.

In his motion to compel, the former husband argued that the current lease on the Maryland property was due to expire on June 30, 2018, and the former wife refused to sign the rental agreement for the Maryland home even though she had signed all other rental agreements until then. The former husband also argued that he could not afford to pay the expenses of the Maryland property

without the rental income, and he did not want it to go into foreclosure.

The former wife filed a motion to dismiss the former husband's motion to compel, arguing that as a matter of law the court may not modify the equitable distribution scheme in the Final Judgment/MSA to compel the former wife to sign a lease. She argued that under the terms of the MSA the parties agreed only to sell the Maryland property, and continuing to lease the property could deter a sale.

On June 20, 2018, the trial court convened a hearing to address both motions. At the hearing, the court heard argument from the attorneys for both parties. No evidence was taken at the hearing.

On June 27, 2018, the trial court denied the former wife's motion to dismiss and granted the former husband's motion to compel the former wife to sign the lease agreement. The court ordered the former wife to sign the rental listing agreement for the Maryland property "on or before June 30, 2018." And provided that if she failed to sign the agreement within the specified time, the court "will sign the rental listing agreement in the Former Wife's stead." The final order also stated, "The Court's intent is to provide income to the Former Husband while the sale is still pending."

ANALYSIS

It is well settled that where a contract is clear and unambiguous, the parties are bound by the plain terms of their agreement. *See, e.g., Crawford v. Barker*, 64 So. 3d 1246, 1255 (Fla. 2011); *Rosenthal v. Rosenthal*, 199 So. 3d 541, 542 (Fla. 1st DCA 2016). Florida courts will not rewrite the terms of a marital settlement agreement or any other contract in which the terms are clear and unambiguous. *See Wilcoxon v. Moller*, 132 So. 3d 281, 288 (Fla. 4th DCA 2014) (citing *Cole v. Cole*, 95 So. 3d 369, 371 (Fla. 3d DCA 2012)). In this case, the terms of the Final Judgment and MSA clearly state the parties' agreement in regard to the Maryland property:

- The parties agreed to lease the property for no more than 12 months and to share the expenses of the Maryland property “commencing on July 1, 2013, *and continuing for no more than 12 months.*” (Emphasis in original.)
- The parties agreed that “[u]nder no circumstances shall either party have any obligation to contribute to this joint rental account or to directly make any mortgage payments on this property after July 1, 2014.”

Thus, the language of the Final Judgment and MSA is plain and unambiguous in that it requires the parties to cooperate to sell the property, but there was no obligation to continue to lease the property after the period outlined in the agreement. Although the Maryland property was still being leased in 2018, neither party was given a right under the MSA to lease the property after July 1, 2014. Despite the clear and unambiguous language of the parties’ agreement, the court ordered the former wife to “sign the rental listing agreement for the property . . . on or before June 30, 2018.” There is nothing in the clear and unambiguous terms of the parties’ agreement to support the trial court’s order granting the former husband’s motion to compel.

Furthermore, the trial court lacked jurisdiction under the MSA to readdress the rights of the parties in regard to the Maryland property. Property rights established by a marital settlement agreement incorporated into a final judgment of dissolution are fixed as a matter of law unless jurisdiction has been reserved to modify those terms of the MSA. *Seawell v. Hargarten*, 28 So. 3d 152, 155 (Fla. 1st DCA 2010); *Fort v. Fort*, 951 So. 2d 1020, 1022 (Fla. 1st DCA 2007). Here, the trial court’s jurisdiction was reserved for the specific and limited purpose of assisting a *sale* of the property:

The court approving this agreement shall have continuing jurisdiction to compel either party to accept any bona fide fair *offer to purchase* this residence and to execute all documents required for the *actual sale* of this residence.

(Emphasis added.) No other provision of the Final Judgment or the MSA expressly permits the trial court to modify or enforce the terms of the parties' equitable distribution. Thus, the trial court erred by ordering the former wife to sign the rental listing agreement and assuming jurisdiction to sign the agreement in her stead if she "fails to sign the listing agreement within the specified time."*

Because the trial court's order is in direct conflict with the express terms of the parties' agreement, the court erred as a matter of law by granting the former husband's motion to compel and ordering the former wife to sign the lease, contrary to the terms of the Final Judgment of Dissolution and the MSA.

We REVERSE the order granting the former husband's motion to compel and REMAND for the trial court to grant the former wife's motion to dismiss.

BILBREY, J., concurs; MAKAR, J., dissents with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

MAKAR, J., dissenting.

Kristi Pack and Ian Wiechert own a house in Maryland that for many years has generated about \$3000 monthly in rental income, which falls short of the \$3500 monthly mortgage payment. When they divorced, they agreed in their marital settlement agreement to continue jointly renting the property with the goal of selling the house for \$590,000 and splitting the proceeds equally

* We would note that the husband's remedies are limited to those that are available to any party who is involved in a dispute between tenants in common.

between them. They agreed to set up a joint rental checking account to which each were required to make monthly deposits equaling one-half of the mortgage payments, home owners' association fees, flood insurance, and repair costs (subtracting any rental income), a requirement that began July 1, 2013, and continued "for no more than 12 months" (i.e., through July 1, 2014). Both agreed that they shall "make good faith efforts to effectuate the sale of this residence by any means possible, including short sale where the parties will incur liability of no more than \$10,000 each."

Each year since July 2013, Pack and Wiechert jointly signed an annual rental listing agreement that authorized a Maryland realtor to continue renting the house, which had an ongoing tenant. As the marital settlement agreement allows, Pack discontinued making any financial contribution to the mortgage and related expenses after July 1, 2014. Wiechert chose to continue making such payments, offset in part by the rental income, incurring a monthly \$500 shortfall. This arrangement, whereby Pack signed the rental listing agreement and Wiechert incurred all financial obligations, continued five years without the sale of the house.

In 2018, however, Pack refused to sign the annual rental listing agreement for the house, leading Wiechert to move the trial court for an order requiring her to do so under the "good faith efforts" clause in the marital settlement agreement.* Signing the rental listing agreement did not require Pack to make any financial contribution or expose her to legal or financial risk; it simply allowed the house to continue to be rented as before and, if lightning were to strike, to be sold. Absent the ongoing rental income, the house would quickly become another zombie property

* Wiechert also relied on the "Execution of Instruments" clause, which states: "Each party shall timely execute and deliver to the other party whatever documents and instruments may be required in order to fully implement the provisions of this agreement." A party's failure to execute a required document empowers a special master to "execute and deliver such instruments in the place and stead of such non-performing party."

in the foreclosure process with neither party benefiting from its eventual sale.

Under these circumstances, where the parties' marital settlement agreement required the parties to "*make good faith efforts to effectuate the sale of this residence by any means possible,*" it was appropriate to require Pack to sign the rental listing agreement as she had done the previous five years. This is not a case where one party seeks to rewrite a marital settlement agreement to reduce that party's financial obligation to make a payment of a specific amount or to transfer an asset, such as occurred in *Seawell v. Hargarten*, 28 So. 3d 152, 154 (Fla. 1st DCA 2010), which involved a husband's obligation to transfer 50% of the shares from a mutual fund. Because the husband failed to timely transfer the funds and failed to establish that a novation to the couple's marital agreement had been established, the trial court's modification of the parties' agreement was nullified. *Id.* at 156.

In sharp contrast, this case involves a mutually required good faith effort by the parties to dispose of a rental property. No question exists that Pack and Wiechert have an ongoing obligation to effectuate the sale of the Maryland house "by any means possible," placing the trial court's order that Pack sign the rental listing agreement squarely within the terms of the "good faith" clause in the marital settlement agreement.

It is important to note that Pack's ongoing duty to make good faith efforts to effectuate the sale of the house is separate and independent of her initial financial obligation to make monthly contributions to the rental checking account for twelve months; the latter has terminated, the former has not. Even though Pack has no obligation to make any further payments or incur any risks, the good faith clause of the marital settlement agreement merely requires her to do something very modest: sign the same rental listing agreement she'd signed five times before to assist with the sale of the house. Her refusal to do so under the circumstances reflected bad faith, and, as Wiechert surmises, an attempt to hurt him financially by substantially increasing the likelihood that the house will be abandoned and forced into foreclosure. The trial court is merely enforcing the marital settlement agreement against a former spouse who seeks to thwart it.

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for Appellant.

Anthony C. Bisordi of Bisordi & Bisordi, P.A., Shalimar, for
Appellee.