

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

In re the Matter of the Marriage of )  
JEFFREY PAUL MANIPON, ) No. 66411-5-1  
Respondent, ) DIVISION ONE  
and ) UNPUBLISHED OPINION  
RANIE HELEN MANIPON, )  
Appellant. ) FILED: April 23, 2012

Grosse, J. — Clear and unambiguous terms in a property settlement agreement are enforced as written and are given their ordinary, usual, and popular meaning. Here, the parties’ property settlement agreement, incorporated into the decree of dissolution, clearly and unambiguously allows Jeffrey Manipon to require the immediate listing of the rental property for sale if Ranie Manipon fails to make a mortgage payment. The agreement does not, however, clearly and unambiguously allow Jeffrey to do so where Ranie does in fact make a mortgage payment, but does so after the payment’s due date. Because Ranie did not fail to make a mortgage payment on the rental property, but rather failed, on at least two occasions, to timely make a mortgage payment, Jeffrey’s right to require the immediate listing of the property for sale did not arise. Accordingly, we reverse the trial court’s order granting Jeffrey’s motion to enforce the decree of dissolution.

Incorporated into the parties’ decree of dissolution is a property settlement agreement under which Ranie was awarded rental property located in Federal Way, Washington. The agreement provides further:

If the Wife fails to make the mortgage payments on the real property awarded to her, Husband may make the payments and receive reimbursement and/or at his option, require that the real property be listed for sale immediately. The parties shall agree to a realtor or, if they cannot agree, the court shall choose from a list of 3 provided by the Husband. The court will retain jurisdiction over this issue. Husband to be reimbursed for house payments he makes within 90 days or from house sale net proceeds, if any.

The agreement also contains an attorney fee provision providing:

In the event of breach of this Agreement, the breaching party shall pay to the non-breaching party, in addition to the usual remedies allowed by law, all reasonable attorneys' fees and costs incurred by the non-breaching party in connection with such breach.

In November 2010, Jeffrey filed a motion to enforce the decree of dissolution, seeking an order allowing him to list the rental property for sale on the ground that Ranie failed to make mortgage payments on the rental property. He also requested an award of attorney fees. In his motion dated November 2, 2010, Jeffrey alleged that Ranie had yet to pay the October 2010 mortgage payment and was late paying the January 2010 mortgage payment.<sup>1</sup> The record shows that Ranie made the October 2010 payment on November 2, 2010, the same date Jeffrey filed the motion to enforce the decree of dissolution. The trial court granted Jeffrey's motion, allowing him to list the rental property for sale, and awarded him \$843.00 in attorney fees.

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<sup>1</sup> Although Jeffrey alleges that Ranie was late paying the January 2010 payment, the record indicates that she was late making the March 2010 payment, not the January 2010 payment. Ranie concedes that she was late paying the March 2010 payment: "I have always had the condominium rented and the payments have always been paid on time, except for one month in March, 2010, when my renter moved out and I made the payment 30 days late." The discrepancy in the dates makes no difference in our analysis, nor does the fact that Ranie was in fact late with two payments, rather than only one as she asserts.

Ranie argues that the trial court erred by granting Jeffrey's motion because she did not "fail to make" the two mortgage payments, but rather was late in making them. She argues, with no citation to authority, that making a late payment does not constitute a failure to make a payment. Jeffrey argues, with no citation to relevant authority,<sup>2</sup> that a "payment due by a certain date if not paid is a failure to pay." Presumably, his argument is that a payment due by a certain date that is in fact paid, albeit after the due date, constitutes a failure to pay. Resolution of this issue lies in the language of the property settlement agreement.

The interpretation of the language of a property settlement agreement is a question of law that we review de novo.<sup>3</sup> In construing a written agreement, the intent of the parties controls and is to be ascertained from reading the agreement as a whole.<sup>4</sup> Clear and unambiguous terms of an agreement are enforced as written.<sup>5</sup> We give words used in an agreement their ordinary, usual, and popular meaning unless the agreement clearly demonstrates a contrary intent, and we do not read ambiguity into an agreement where it can reasonably be avoided.<sup>6</sup>

Here, the terms of the property settlement agreement regarding Jeffrey's right to require the listing of the real property for sale are clear and unambiguous. The agreement provides that if Ranie "fails to make the mortgage payments on the real property awarded to her, [Jeffrey] may make the payments and receive

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<sup>2</sup> Jeffrey's citation to Saluteen-Maschersky v. Countrywide Funding Corp., 105 Wn. App. 846, 22 P.3d 804 (2001), is inapposite.

<sup>3</sup> In re Marriage of Gimlett, 95 Wn.2d 699, 705, 629 P.2d 450 (1981).

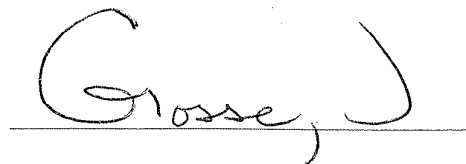
<sup>4</sup> Dice v. City of Montesano, 131 Wn. App. 675, 683-84, 128 P.3d 1253 (2006).

<sup>5</sup> Grey v. Leach, 158 Wn. App. 837, 850, 244 P.3d 970 (2010).

<sup>6</sup> Grey, 158 Wn. App. at 850.

reimbursement and/or at his option, require that the real property be listed for sale immediately.” The ordinary, usual, and popular meaning of the phrase “fails to make the mortgage payments on the real property” does not include making late payments. Failing to make a mortgage payment means that no payment, timely or untimely, is ever made. Had the parties intended for Jeffrey’s right to require that the property be listed for sale to arise upon Ranie’s failure to timely make a mortgage payment, they could have and should have included the word “timely” in the provision. As it exists in the property settlement agreement, the provision unambiguously provides that Jeffrey’s right to require that the property be listed for sale arises only when Ranie fails to make a mortgage payment. The record shows that Ranie has not failed to make any payment on the mortgage on the rental property. She did, however, make at least two late payments, the latest of which was made on the same date Jeffrey filed his motion to enforce the decree of dissolution. The record shows that no late charge was imposed with regard to this payment. Under these circumstances, Jeffrey’s right to require the immediate listing of the rental property for sale did not arise.

The trial court erred in granting Jeffrey’s motion to enforce the decree of dissolution. Accordingly, we reverse the trial court’s order granting Jeffrey’s motion and awarding him attorney fees.

A handwritten signature in black ink, appearing to read "Grosse, J.", is written above a horizontal line.

WE CONCUR:

*Jan, J.*

*Appelwick J.*