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CHIEF CLERK'S OFFICE SUPERIOR COURT

JONES, LUVENA, L.

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JUDICIAL DISTRICT OF
NEW HAVEN
AT NEW HAVEN

V.

JONES, KYLE, L

:

MAY 2, 2024

**MEMORANDUM OF DECISION
DEFENDANT'S MOTION FOR CONTEMPT PJ (#117.00)**

Before the court is the defendant's Motion for Contempt filed on August 18, 2023 (#117.00). The parties appeared for a hearing on December 1, 2023, and March 8, 2024. Both parties were represented by counsel. The court has considered the testimony of the parties and the evidence submitted into the record, taken judicial notice of the contents of the court file, and observed the demeanor and assessed the credibility of the parties.

The marriage of the parties was dissolved on March 3, 2022 (Ex. 4). The defendant alleges the plaintiff is in contempt because more than a full year from the date that he quitclaimed the property to the plaintiff as part of the dissolution, she has failed to secure a mortgage which finally and fully releases the defendant from any and all legal obligations and/or expenses related to the property (#117.00).

"It is the burden of the party seeking an order of contempt to prove, by clear and convincing evidence, both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive. ... If the moving party establishes this twofold prima facie case, the burden of production shifts to the alleged

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contemnor to provide evidence in support of the defense of an inability to comply with the court order. ... [E]ven in the absence of a finding of contempt, a trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order." (Citations omitted; internal quotation marks omitted.) *Ingles v. Ingles*, 216 Conn. App. 782, 790, 286 A.3d 908 (2022).

The parties used the Dissolution/Separation Agreement, JD-FM-172 form (Ex. 2). The agreement, executed on September 8, 2021, required clarification (Ex. 8). The parties appeared before the court (Kenefick, J.) for a dissolution hearing on March 3, 2022 (Ex. 8). The agreement was accepted as modified by the court and incorporated into the judgment (Ex. 2, 3, 4).

The agreement does not contain clear and unambiguous language requiring the plaintiff to refinance or assume the mortgage on the marital property. The court does not find the plaintiff in contempt. See *Puff v. Puff*, 334 Conn. 341, 365, 222 A.3d 493 (2020) ("It is the burden of the party seeking an order of contempt to prove ... both a clear and unambiguous directive to the alleged contemnor and the alleged contemnor's wilful noncompliance with that directive.").

The present issue arises due to the ambiguity in the dissolution agreement. A separation agreement incorporated into the judgment is in the nature of a contract. Therefore, principles of contract construction apply. *Mazza v. Mazza*, 216 Conn. App. 285, 293, 285 A.3d 90 (2022). "A contract must be construed to effectuate the intent of the parties, which is determined from the language used interpreted in the light of the situation of the parties and

the circumstances connected with the transaction. ... Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. ... [A]ny ambiguity in a contract must emanate from the language used in the contract rather than from one party's subjective perception of the terms. ... A court will not torture words to import ambiguity where the ordinary meaning leaves no room for ambiguity. ... [T]he intent of the parties is to be ascertained by a fair and reasonable construction of the written words and ... the language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract. ... When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract.” (Citations omitted; internal quotation marks omitted.) *Mazza v. Mazza*, supra, 216 Conn. App. 293.

Under Section 3, Real Estate, the parties completed the subsection regarding ownership of property and filled in the address for the marital residence, Property #1: 1190 Quinnipiac Avenue, New Haven, CT, 06513. They did not check the box to select “*Property held solely in one party's name and to be retained by that party*.” Id. p. 2. They jointly owned the property. However, they checked within this subsection:

The... plaintiff... shall retain sole ownership of Property #1 and shall hold harmless and indemnify the other party from all expenses, costs, mortgages, taxes, notes, and liens associated with the property.

They also checked the box in the following subsection to select: “*Transfer of property by quit claim deed*.”

They agreed in this second subsection:

The... defendant shall transfer all right, title, and interest in and to Property #1 to the: ... by *(date)* January 2022. From and after the date of transfer the ... plaintiff... shall assume, hold harmless and indemnify the other party from all expenses, costs mortgages, taxes, notes and liens associated with the property.

The statement omits the plaintiff as the recipient of the transfer.

The parties did not address the section titled Refinance of Mortgage(s) Secured by Property although there is a mortgage on the property (Ex. 2). There is no section or express provision governing an assumption of the mortgage by a party. See Id.

The court clarified several financial and parenting terms at the time of dissolution, including: (i) the husband will transfer to the wife by quitclaim deed his interest in 1190 Quinnipiac Avenue, New Haven, Connecticut; (ii) the mortgage is a joint debt, which the plaintiff is taking care of it; and (iii) the wife shall transfer the 2018 Dodge Durango to the husband in August of 2022, at which time the husband will be responsible for paying the loan (Ex. 8). The court confirmed in the hearing that the plaintiff is responsible for the mortgage. Id. The parties did not advise the court regarding whether the mortgage was in one or both of their names (Ex. 8). The judgment does not reference the mortgage (Ex. 4).

The court may consider parol evidence if relevant (1) to explain an ambiguity appearing in the instrument; (2) to prove a collateral oral agreement which does not vary the terms of the writing; (3) to add a missing term in a writing which indicates on its face that it does not set forth the complete agreement; or (4) to show mistake or fraud....” (Citations

omitted; emphasis in original; internal quotation marks omitted.) *Sullo Invs., LLC v. Moreau*, 151 Conn. App. 372, 378–79, 95 A.3d 1144, 1148–49 (2014).

The parties dispute whether they agreed at the time of entering into the dissolution agreement that the plaintiff shall refinance or assume the mortgage to remove the defendant's name. The defendant argues the parties agreed that in connection with the quitclaim, the plaintiff would refinance to take his name off the mortgage. He would not remain obligated. He waited, and subsequently the plaintiff stated she would assume the mortgage. She subsequently took insufficient action, did not timely advise him of issues that arose, and failed to advise him of actions he needed to take for her to complete the process, all of which have caused delay. As a result, he remains on the mortgage and, among other things, is unable to secure certain credit.

The plaintiff argues that she is not obligated to assume the mortgage. It was not her understanding at the time she entered into the dissolution agreement that she was required to refinance or assume the mortgage; nor was it her understanding when the parties appeared before the court to clarify certain terms, including that the defendant would refinance a vehicle.

The plaintiff claims the parties exchanged messages about the process of removing the defendant's name, which she stopped when she learned that she had to pay the second lien on the house (Ex. 5, 6). She subsequently resumed the process. The defendant was not responsive when he needed to provide information (Ex. 9). She is now faced with legal

expenses to defend the present motion, which impacts her ability to afford the cost to assume the mortgage.

The court advised the plaintiff in the dissolution hearing that the mortgage is her responsibility. Her testimony that the defendant would be able to refinance the vehicle because he had good credit and no other debt is not consistent with her position that she believed he would remain on the mortgage (See Ex. 8). The parties' text messages reveal that the plaintiff checked rates on a regular basis. The parties discussed her need for additional time to remove the defendant's name. The plaintiff made efforts to pursue refinancing, then assumption of the mortgage, and the parties were in dispute regarding the timeline for completion of the process.

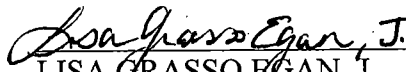
The court finds the defendant's testimony credible. The defendant agreed to quitclaim his interest in the marital residence with the plaintiff's agreement that his name would be removed from the mortgage. The plaintiff's demand for contribution toward the cost of the assumption of mortgage was not part of the parties' agreement.

ORDERS

1. The defendant's Motion for Contempt (#117.00) is hereby DENIED.
2. The plaintiff shall remove the defendant's name from the mortgage by refinance or assumption within 90 days of the Order.

SO ORDERED.

By the Court,


LISA GRASSO EGAN, J.

Judgment entered _____ 20
Counsel/Self-rep. Ind. notified 6/2 2024
By JDND copy of memo Other
 Copy to Reporter of Judicial Decisions

mailed to:
TT Atty R. Calabrese
Δ SRP K Jones
Δ Atty M. Philpot
by N Sasser
Asst Cle 6/2/24