

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL ACTION - LAW

JILL TURKO,	:	
Plaintiff/Respondent	:	
	:	
vs.	:	No. 08-1501
	:	
PETER J. TURKO,	:	
Defendant/Petitioner	:	

Civil Law - Propriety of Issues Raised *Sua Sponte* by the Court -
Property Settlement Agreement - Interpretation of
Contracts - Reasonableness of Attorney Fees -
Doctrine of Necessary Implication

1. As a general rule, except where a question of subject matter jurisdiction exists, it is error for the trial court to *sua sponte* raise an issue not raised by the parties and decide the substantive merits of the case on that issue. However, where the issue raised by the court is encompassed within a broader issue already raised by the parties and is necessary to the determination of that issue, there is no error.
2. A property settlement agreement, even if incorporated by reference and made part of a divorce decree, is at its core a contract and is to be interpreted in accordance with the law of contracts.
3. The primary objective of contract interpretation is to ascertain the intent of the parties as expressed in the language of the contract. Where that intent is apparent from the words of the contract, the words of the contract control. Where, however, the words are ambiguous or the intent otherwise unclear, it is proper for the court in ascertaining the intent of the parties to take into account attendant circumstances such as the situation of the parties, the objects they apparently have in view, and the nature of the subject matter of the agreement.
4. The question of whether a contract is ambiguous is a question of law.
5. Pursuant to the terms of a contract which provide for the payment of attorney fees, the court may consider the reasonableness of such fees when making an award for

attorney fees, even if the contract does not specifically state that such fees are to be reasonable.

6. In the absence of an express term, the doctrine of necessary implication may act to imply a requirement necessitated by reason and justice without which the intent of the parties is frustrated.
7. The court properly interpreted the parties' settlement agreement when it allocated the costs of litigation incurred in the dissolution of husband's partnership with a third party between the marital and non-marital portion of the partnership interest, rather than against the value of the marital interest only as argued by husband.

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JILL TURKO,
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vs.

PETER J. TURKO,
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No. 08-1501

Arley Louise Kemmerer, Esquire
Melissa T. Pavlack, Esquire

Counsel for Plaintiff/Respondent
Counsel for Defendant/Petitioner

MEMORANDUM OPINION

Nanovic, P.J. - September 19, 2013

This is a case where Peter J. Turko ("Husband") asks us to enforce a provision of the parties' property settlement agreement but argues we have no authority to question what it means. This is also a case where Husband contends his interpretation must control, no matter how unconscionable, because, according to Husband, his interpretation is what the parties intended.

FACTUAL AND PROCEDURAL BACKGROUND

The parties were married on May 9, 1992. After sixteen years of marriage, on June 16, 2008, Jill Turko ("Wife") filed for divorce. On November 23, 2009, we entered a decree divorcing Husband and Wife under 23 Pa.C.S.A. § 3301(c).

The divorce decree incorporated, but did not merge, a property settlement agreement ("Agreement") dated October 19,

2009. At issue in this litigation is Paragraph 7(p) of that Agreement, which addresses pending litigation between Husband and his business partner, James Everett, over the dissolution of their business partnership and the parties' agreement that any marital interest Husband held in this partnership would be divided equally between Husband and Wife. *Id.* Paragraph 7(p) of the Agreement states:

Prior to the parties' marriage, Husband entered into a business partnership in the following business entities:

- Blue Ridge Insulators, Inc.
- North Ridge Associates
- Palmerton Construction Company

Husband is now involved in the dissolution of these entities with his business partner. The parties acknowledge that resolution of the dissolution of these entities has not been completed as of the date of execution of this Property Settlement Agreement. The parties acknowledge that Wife has a marital interest in the increase in value of Husband's share of these business entities from the date of the parties' marriage (May 9, 1992) until the date of dissolution of these business entities. Upon the dissolution of these business entities and after reducing the value of Husband's interest by the total of the attorney fees, costs and expert fees, Wife shall receive Fifty (50%) Percent of the marital interest.

Property Settlement Agreement, paragraph 7(p).

In an arbitrator's decision dated May 15, 2011, Husband was awarded \$599,052.00 in the partnership dissolution proceedings. Because payment of this award was not made by Mr. Everett until

July 2012, Husband was also awarded an additional \$25,769.00 in interest for this delay. At a court proceeding on June 13, 2012, the parties agreed that \$90,000.00 of the payment Husband was to receive from Mr. Everett would be placed in a non-interest bearing escrow account held by Husband's counsel to secure the payment of any monies owed to Wife pursuant to Paragraph 7(p) of the Property Settlement Agreement.

The parties were unable to agree on what amount Wife was entitled to receive from the monies held in escrow. Consequently, on November 21, 2012, Husband filed a Petition to Enforce the Property Settlement Agreement pursuant to 23 Pa.C.S.A. §3502(e) and 23 Pa.C.S.A. § 3323(f). In his petition, Husband claimed that Wife was not entitled to any money, as the marital interest was a negative number, and requested that all of the monies held in escrow be released to him. (Petition, paragraphs 7 and 8). In response to Husband's petition, Wife answered, *inter alia*, that "[p]ursuant to Paragraph 7(p) of the Agreement, upon dissolution of certain businesses in which Defendant Husband had an interest, and reducing Defendant Husband's share by attorney fees and expert fees, Plaintiff Wife was to receive a fifty percent (50%) share of the marital interest." (Answer and Counterclaim, Paragraph 13).

Hearings on Husband's petition were held on March 15, July

11, and July 12, 2013. At these hearings, the parties disagreed on the value of Husband's partnership interest as of the date of marriage,¹ as well as the reasonableness of the expenses Husband incurred in litigating the dissolution of the business partnership with Mr. Everett.² We accepted Husband's date of marriage value of his partnership interest and agreed with Husband that the marital value of his partnership interest was \$278,602.00. We also agreed the litigation expenses Husband incurred in the dissolution of the partnership, \$319,967.79, were a proper deduction under the parties' Agreement. Where we

¹ The primary factual dispute on this issue was the date of marriage value of property located at 1965 Forest Inn Road titled in both Husband's and Mr. Everett's names. Husband's appraiser opined that the fair market value of the property on May 9, 1992, was \$400,000.00. Wife's expert valued the property at \$167,000.00. We accepted Husband's value and used this figure in determining the value of Husband's business interests as of the date of marriage.

² These expenses totaled \$319,967.79 and consist of \$241,519.54 in attorney fees owed to the firm of Gross McGinley, of which \$217,588.91 was paid by the time of hearing; \$65,837.00 in accounting fees paid to Bruce Loch; \$3,400.00 in appraisal fees paid to Ray Geiger; and \$9,211.25 paid to the arbitrator who heard and decided the litigation between Husband and Mr. Everett, the Honorable Edward N. Cahn. Of these fees and expenses, only the amount of attorney fees was disputed by Wife.

Although the parties' property settlement agreement does not expressly require that the attorney fees incurred by Husband be reasonable before their deduction, our Supreme Court held in McMullen v. Kutz that "courts may consider reasonableness when making a counsel fee award, regardless of the precise verbiage of the document authorizing such award." 985 A.2d 769, 770-71 (Pa. 2009). In particular, "facts and factors to be taken into consideration in determining the fee or compensation payable to an attorney include: the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; the amount of money or value of the property in question; the degree of responsibility incurred; whether the fund involved was 'created' by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, the amount of money or the value of the property in question." *Id.* at 774 (quoting In re Estate of LaRocca, 246 A.2d 337, 339 (Pa. 1968)).

differed from Husband was on how to allocate the litigation expenses between the marital and non-marital portion of his partnership interest.

Husband argued that the litigation expenses were to be subtracted first from the marital value before being deducted against his non-marital interest in the partnership. Because the litigation expenses exceed the marital value, if this approach is taken, there is nothing to be distributed to Wife. At the hearing, we questioned whether deducting the litigation expenses against only the marital interest is required by Paragraph 7(p). In deciding against this application of the Agreement, we did not accept Husband's premise that Paragraph 7(p) places the entire burden of paying the litigation expenses on the parties' marital interest before any portion of these expenses is borne by Husband's premarital interest. Instead, we found the intent of Paragraph 7(p) of the Agreement was to spread the burden of paying the litigation expenses across the entire award Husband received in the arbitration proceedings, with no distinction being made between what portion of the recovery was marital and what portion non-marital. When the expenses are allocated in this manner, Wife is entitled to \$64,897.05 as the net value of her marital interest in the Husband's partnership share. We also determined that Wife was

entitled to \$5,992.51 as her share of interest.³ By order dated July 19, 2013, we directed that of the \$90,000.00 held in escrow, \$70,889.26 (i.e., \$64,897.05 plus \$5,992.51) be distributed to Wife and the balance, \$19,110.74, to Husband.

On July 24, 2013, Husband appealed our order. In his Concise Statement of Matters Complained of on Appeal, Husband presents two issues. First, Husband claims we "erred in raising

³ Our calculations were as follows:

1. Computation of Wife's Marital Interest

a) Computation of Gross Marital Interest

Date of Dissolution Value		\$599,052.00
Date of Marriage Value	-	\$320,450.00
Marital Interest		<u>\$278,602.00</u>

b. Marital Interest as a Percentage of Dissolution Value

	\$278,602.00
÷	<u>\$599,052.00</u>
=	.46507148
=	46.507148%

c. Computation of Wife's 50% Share of Marital Interest

Date of Dissolution Value		\$599,052.00
Litigation Expenses	-	<u>\$319,967.97</u>
Net Distribution to Husband from Arbitration		\$279,084.21

Marital Interest as a Percentage of Net Distribution	x	<u>.46507148</u>
Net Marital Interest		\$129,794.11

Wife's 50% Share of Net Marital Interest		\$64,897.05
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2. Computation of Interest Amount Owed Wife

Computation of Wife's Gross Marital Interest as a percentage of Gross Dissolution Value		\$139,301.00
	÷	<u>\$599,052.00</u>
	=	.23253574
	=	23.253574%

Wife's Share of Interest Payment		\$25,769.00
	x	<u>.23253574</u>
		\$5,992.21

an issue *sua sponte* that had not been raised by either party." This issue concerns whether Paragraph 7(p) of the Agreement is subject to interpretation by the court. Second, Husband claims we "erred in modifying the plain and accepted meaning relied upon by both parties for the calculation of the Wife's interest under the guise of interpretation." This issue concerns how we interpreted Paragraph 7(p).

DISCUSSION

1. *WHETHER THE COURT ERRED IN SUA SPONTE RAISING AN ISSUE THAT WAS NOT BEFORE IT?*

Husband claims we *sua sponte* raised an issue that was not before us, namely whether the language of Paragraph 7(p) requires that the litigation expenses be borne fully by the marital interest rather than being prorated against the full amount of Husband's arbitration award. We disagree.

As a general principle, excepting an issue of subject matter jurisdiction, it is inappropriate for a trial court to raise an issue *sua sponte*. Orange Stones Co. v. Borough of Hamburg Zoning Hearing Bd., 991 A.2d 996, 999 (Pa.Cmwlth. 2010). However, a distinction exists between a court's legitimate refinement or parsing of an issue placed before it by the parties, and cases where the court *sua sponte* raises an unrelated issue. Compare Balicki v. Balicki, 4 A.3d 654, 661-62

(Pa.Super. 2010) (holding the court acted within its authority in considering the tax ramifications of an alimony award, even though the issue was not specifically raised by either party, since alimony is taxable as income to the recipient and understanding this was necessary to the court's determination of a proper alimony award) with Harrington v. Com., Dept. of Transp., 784 A.2d 871, 874 (Pa.Cmwlth. 2001) (holding that the trial court committed reversible error by *sua sponte* raising an issue which had not been raised by the parties in a driver's license suspension appeal - the accuracy of the information contained in an out-of-state conviction report - and then deciding the case based on that issue). Stated differently, where the court addresses an issue within the ambit of a claim before it, the issue is properly considered. Dunkle v. Middleburg Mun. Auth., 842 A.2d 477, 481 n.7 (Pa.Cmwlth. 2004) (holding that whether a cognizable common law cause of action existed was within the ambit of a municipal authority's claim of governmental immunity and, therefore, was properly considered by the court in ruling on the authority's motion for summary judgment asserting the defense of governmental immunity).

Our questions to counsel as to how the litigation expenses were to be treated under the Property Settlement Agreement vis-à-vis Husband's arbitration award did not advocate or create any

new issue. How the litigation expenses incurred by Husband were to be allocated under Paragraph 7(p) were necessarily part and parcel of the decision of whether Wife was entitled to any of the monies held in escrow. While neither party questioned whether the Agreement required us to first deduct Husband's litigation expenses from the entirety of the arbitration award he received for his share in the partnership, this issue was necessarily encompassed within the ambit of the legal question before us: what amount, if any, was Wife entitled to receive under Paragraph 7(p) of the Agreement. The issue was neither irrelevant, nor could it be ignored.

2. WHETHER THE COURT'S INTERPRETATION OF PARAGRAPH 7(p) OF THE AGREEMENT IS CONTRARY TO THE PLAIN MEANING AS RELIED UPON AND ACCEPTED BY THE PARTIES

We begin this discussion by noting first that notwithstanding the incorporation of the Property Settlement Agreement into the parties' divorce decree, this case is governed by the law of contracts. "[P]roperty settlement agreements incorporated but not merged into divorce decrees are considered independent contracts, interpreted according to the law of contracts." Chen v. Chen, 893 A.2d 87, 93 (Pa. 2006).

Expounding further, in Stammerro v. Stammerro, 889 A.2d 1251 (Pa.Super. 2005), the Court stated:

Marital settlement agreements are private undertakings between two parties, each having responded to the 'give and take' of negotiations and bargained consideration. A marital support agreement incorporated but not merged into the divorce decree survives the decree and is enforceable at law or equity. A settlement agreement between [spouses] is governed by the law of contracts unless the agreement provides otherwise. The terms of a marital settlement agreement cannot be modified by a court in the absence of a specific provision in the agreement providing for judicial modification.

Id. at 1258 (citations and quotation marks omitted).

Fundamental to interpreting a contract is a determination of the parties' intent as expressed in the language of the contract.

A fundamental rule in construing a contract is to ascertain and give effect to the intent of the contracting parties. It is firmly settled that the intent of the parties to a written contract is contained in the writing itself. When the words of a contract are clear and unambiguous, the meaning of the contract is ascertained from the contents alone.

Chen, 893 A.2d at 93. (citations and quotation marks omitted).

"In determining the intent of the parties to a written agreement, the court looks to what they have clearly expressed, for the law does not assume that the language was chosen carelessly." Stamerro, 889 A.2d at 1258 (quoting Melton v. Melton, 831 A.2d 646, 653-54 (Pa.Super. 2003)).

The court must construe the contract only as written and may not modify the plain meaning of the words under the guise of interpretation.

When the terms of a written contract are clear, [the] Court will not re-write it or give it a construction in conflict with the accepted and plain meaning of the language used.

Habjan v. Habjan, 2013 WL 3832679 *8 (Pa.Super. 2013) (quoting Lang v. Meske, 850 A.2d 737, 739-49 (Pa.Super. 2004)) (citations omitted). "If left undefined, the words of a contract are to be given their ordinary meaning." Kripp v. Kripp, 849 A.2d 1159, 1163 (Pa. 2004).

A court has neither the power nor the authority to modify or vary the terms of a written agreement which are clear and unambiguous, absent fraud, accident or mistake. Habjan, 2013 WL 3832679 *8.

Where the parties, without any fraud or mistake, have deliberately put their engagements in writing, the law declares the writing to be not only the best, but the only, evidence of their agreement. . . . The court might consider extrinsic or parol evidence to determine the parties' intent only where the language of the agreement is ambiguous.

Step Plan Services, Inc. v. Koresko, 12 A.3d 401, 409-10 (Pa.Super. 2010) (citations and quotation marks omitted). Further, where the language is not ambiguous, the court cannot, under the guise of interpretation, construe contractual terms in a manner which the court believes are fairer or more equitable than those appearing in the contract. Kripp, 849 A.2d at 1165.

Where the language of a contract is unclear as to the parties' intent, the court may take into account attendant circumstances in determining the parties' intent.

In other words, the intent of the parties is generally the writing itself. In ascertaining the intent of the parties to a contract when unclear from the writing itself, the court considers the parties' outward and objective manifestations of assent, as opposed to their undisclosed and subjective intentions. Thus,

[t]he court may take into consideration the surrounding circumstances, the situation of the parties, the objects they apparently have in view, and the nature of the subject-matter of the agreement. The court will adopt an interpretation that is most reasonable and probable bearing in mind the objects which the parties intended to accomplish through the agreement.

Before a court will interpret a provision in . . . a contract in such a way as to lead to an absurdity or make the . . . contract ineffective to accomplish its purpose, it will endeavor to find an interpretation which will effectuate the reasonable result intended.

Stamerro, 889 A.2d at 1258-59 (citations and quotation marks omitted).

When the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the document itself. When, however, an ambiguity exists, parol evidence is admissible to explain or clarify or resolve the ambiguity, irrespective of whether the ambiguity is patent, created by the language of the instrument, or latent, created by extrinsic or collateral circumstances. A contract is ambiguous if it is reasonably susceptible of different

constructions and capable of being understood in more than one sense.

Kripp, 849 A.2d at 1163 (citations omitted). When a term in a contract is clear and cannot reasonably be interpreted to the contrary, there is no ambiguity. Tuthill v. Tuthill, 763 A.2d 417, 420 (Pa.Super. 2000) (*en banc*).

"The court, as a matter of law, determines the existence of an ambiguity and interprets the contract whereas the resolution of conflicting parol evidence relevant to what the parties intended by the ambiguous provision is for the trier of fact." Keystone Dedicated Logistics, LLC v. JGB Enterprises, Inc., 2013 WL 3991801 *5 (Pa.Super. 2013) (quoting Missett v. Hub Intern. Pennsylvania, LLC, 6 A.3d 530, 541 (Pa.Super. 2010)).⁴

While unambiguous contracts are interpreted by the court as a matter of law, ambiguous writings are interpreted by the finder of fact. . . . [T]he question of whether a contract is ambiguous is a question of law.

Kripp, 849 A.2d at 1163-64 and n.5. Finally, the existence of different opinions on the interpretation of a contract does not

⁴ When faced with questions of contractual interpretation, the applicable standard and scope of review is well-settled.

Because contract interpretation is a question of law, this Court is not bound by the trial court's interpretation. Our standard of review over questions of law is *de novo* and to the extent necessary, the scope of our review is plenary as [the appellate] court may review the entire record in making its decision. With respect to factual conclusions, we may reverse the trial court only if its findings of fact are predicated on an error of law or are unsupported by competent evidence in the record.

Step Plan Services, Inc. v. Koresko, 12 A.3d 401, 408 (Pa.Super. 2010) (citations omitted).

render it ambiguous. Krizovensky v. Krizovensky, 624 A.2d 638, 643 (Pa.Super. 1993).

As discussed in the preceding issue, whether Wife was entitled to receive any of the monies held in escrow necessarily required a determination and valuation of what, if any, portion of Husband's partnership interest with Mr. Everett constituted a marital asset, and how the litigation expenses Husband incurred in the dissolution proceedings should be allocated between marital and non-marital assets. Paragraph 7(p) of the Property Settlement Agreement defines the marital interest and its worth as being the increase in value of Husband's share of the partnership business between the date of the parties' marriage and the date of dissolution of the businesses. Under this formula, we determined the marital increase in value to be \$278,602.00. This figure is not in dispute in this appeal.

We also determined the amount of the litigation expenses to be accounted for under Paragraph 7(p) as \$319,967.97. Again, this figure is not in dispute. Husband then argues that under the plain language of Paragraph 7(p), and as interpreted and relied upon by the parties, the full amount of the litigation expenses are to be subtracted from the marital interest. See Husband's Exhibit P-7. Because these expenses exceed the value of the marital interest, Husband contends Wife is entitled to

nothing.

The problem with Husband's argument is that the language of the contract does not support this approach, and the evidence does not show that this is what the parties intended or agreed to. Specifically, the last sentence of Paragraph 7(p) states:

Upon the dissolution of these business entities and after reducing the value of Husband's interest by the total of the attorney fees, costs and expert fees, Wife shall receive Fifty (50%) Percent of the marital interest.

This language categorically does not deduct the litigation expenses solely from the marital interest. Allstate Fire and Cas. Ins. Co. v. Hymes, 29 A.3d 1169, 1172 (Pa.Super. 2011) (noting that when interpreting contracts, we assume the parties chose the language used carefully). Instead, it directs that the litigation expenses be deducted from Husband's interest. When Paragraph 7(p) is read its entirety, it is evident that Husband's interest is synonymous with Husband's share in the partnership, which is inclusive of both the marital and non-marital interest of Husband's share. 401 Fourth Street, Inc. v. Investors Ins. Group, 879 A.2d 166, 171 (Pa. 2005) (noting that when interpreting a contractual term, a court looks not only at the term itself but at the entire provision and the context in which it is used).

As to what the parties intended, the parties are bound by the clear and unambiguous language of the Agreement which expresses that intent. Husband's Exhibit P-7, in which Husband offers his self-serving illustration of how he believes the contract should be interpreted, cannot alter the actual language of the Agreement which is not ambiguous on its face. Habjan v. Habjan, 2013 WL 3832679 *9 (quoting Brown v. Cooke, 707 A.2d 231, 233 (Pa.Super. 1998)). In addition, not only is there no evidence that Wife ever agreed to this approach, it flatly contradicts the actual language of the contract.⁵

In our computation, we followed the plain language of the contract. The litigation expenses (\$319,967.97) were subtracted from the dissolution value of Husband's share of the partnership (\$599,052.00), with the difference being the net amount Husband realized from the arbitration award (\$279,084.21). In computing how much of this figure accounted for the marital interest alone, \$279,084.21 was multiplied by the correlative ratio of the parties' unreduced marital interest in the arbitration award to the gross value of the award. This product, \$129,794.11, represents the net value of the marital interest. We then

⁵ At the conclusion of the evidence, and before the record was closed, counsel were offered an opportunity to argue their respective positions. As to these arguments, they are not evidence. In addition, we note that Wife's answer and counterclaim to Husband's petition specifically challenged the approach taken by Husband, referencing Paragraph 7(p) of the Agreement. (Answer and Counterclaim, paragraph 13).

determined that half of this figure represented the fifty percent interest in the net marital property to which Wife was entitled under the contract.

The effect of this approach was to allocate the litigation expenses proportionately between the marital and non-marital interests of Husband's share in the partnership. In contrast to the apportionment argued by Husband, this approach does not arbitrarily or unfairly, and without any basis in the contract, place the entire burden and source of payment of the litigation expenses first and primarily upon the marital interest. Because Paragraph 7(p) is not susceptible of any other reasonable interpretation, the Agreement is not ambiguous, and the construction we have applied, not only conforms with the language chosen by the parties, it definitionally reflects their true intent. *See also* Property Settlement Agreement, paragraph 7(a) asserting the parties' intent to provide a fair and equitable distribution of marital property after consideration of those factors enumerated in 23 Pa.C.S.A. § 3502(a). *See also* 23 Pa.C.S.A. § 3102(a)(6) (citing various legislative findings and objectives to be considered in construing the Divorce Code, including effectuating economic justice between parties who are

divorced and ensuring a fair and just determination and settlement of their property rights).⁶

CONCLUSION

The Agreement which is the subject of these proceedings is a property settlement agreement entered as part of the parties' divorce proceedings for the purpose of equitably dividing their marital property. It is an agreement within which the parties have expressly stated their intent to make a fair and just division of marital property after having considered the statutory factors enumerated in Section 3502(a) of the Divorce

⁶ Alternatively, had we found Paragraph 7(p) ambiguous for failure to specifically state how the litigation expenses are to be allocated against Husband's arbitration award, we would have reached the same conclusion. See Amerikohl Mining Co. v. Peoples Natural Gas Co., 860 A.2d 547, 550 (Pa.Super. 2004) (noting that courts favor the construction of ambiguous contracts in a manner "which makes it fair and rational, not the construction which makes it unusual or inequitable"); see also Harrity v. Medical College of Pennsylvania Hospital, 653 A.2d 5, 10 (Pa.Super. 1994) ("The court will adopt an interpretation that is most reasonable and probable bearing in mind the objects which the parties intended to accomplish through the agreement") and 23 Pa.C.S.A. § 3323(f) (granting the court full equity power and jurisdiction in all matrimonial causes, with authority to issue orders necessary to protect the interests of the parties or to effectuate the purposes of the Divorce Code and to grant such relief or remedy as equity and justice require).

Similarly, in the absence of an express provision to the contrary, the "doctrine of necessary implication" implies

an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made and to refrain from doing anything that would destroy or injure the other party's right to receive the fruits of the contract.

Stamerro v. Stamerro, 889 A.2d 1251, 1259 (Pa.Super. 2005) (quoting Palmieri v. Partridge, 853 A.2d 1076, 1079 (Pa.Super. 2004)). The doctrine avoids injustice "by inferring contract provisions that reflect the parties' silent intent." *Id.* "In the absence of an express term, the doctrine of necessary implication may act to imply a requirement necessitated by reason and justice without which the intent of the parties is frustrated." Stamerro, 889 A.2d at 1259 (quoting Somers v. Somers, 613 A.2d 1211, 1214 (Pa.Super. 1992)).

Code, 23 Pa.C.S.A. § 3502(a), which is concerned with the equitable distribution of marital property. In making the decision we did, we believe we acted fully within our authority, if not our responsibility, as a court to question the language of a contract which the parties seek to enforce and, specifically in this case, to question how Husband's litigation expenses were to be allocated in order to correctly decide the amount due to Wife. We further believe that the allocation we made of these litigation expenses properly reflected the parties' intent as expressed in the Property Settlement Agreement.

BY THE COURT:

P.J.