

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

In re the Marriage of Ann S. Busch and Adolphus August Busch, IV)	No. ED93255
)	
ANN S. BUSCH, Petitioner/Appellant,)	Appeal from the Circuit Court of St. Louis County
)	
v.)	Honorable Dale W. Hood
)	
ADOLPHUS AUGUST BUSCH, IV, Respondent/Respondent.)	Date: April 27, 2010
)	

Wife filed a motion to enforce a dissolution decree. Husband moved to dismiss wife's motion. The trial court granted husband's motion to dismiss, treated it as a motion for judgment on the pleadings, and entered judgment on the pleadings.

REVERSED AND REMANDED.

Division One Holds:

1. Judgment on the pleadings is only appropriate when the question before the court is strictly one of law. A trial court should not sustain a motion for judgment on the pleadings if a material issue of fact exists.
2. When the defending party is the moving party for judgment on the pleadings, the allegations of the opposing party's petition or motion seeking relief are admitted for the purposes of the defending party's motion. The facts pleaded in the defending party's responsive pleading are not admitted and are not self-proving.
3. We will affirm a judgment on the pleadings only "if the facts pleaded by the petitioner, together with the benefit of all reasonable inferences drawn therefrom, show that petitioner could not prevail under any legal theory." *Messner v. American Union Ins. Co.*, 119 S.W.3d 642, 644 (Mo.App. 2003).
4. A party states a cause of action for enforcement of the provisions of a judgment by pleading facts showing a duty under the judgment or under any applicable law and the failure to perform that duty.
5. If a settlement agreement requires a spouse to hold property for the other spouse's benefit, the spouse holding the property has a fiduciary duty to the other spouse with respect to that property. If a settlement agreement or a judgment has awarded property to a spouse, with no direction to the other spouse to continue to hold it, but the other spouse retains it, the spouse retaining the property owes a fiduciary duty to the other spouse with respect to that property. That fiduciary status gives rise to certain legal duties, including the

obligation of the fiduciary to maintain complete and accurate records of the property held; account for his or her handling of the beneficiary's property; and furnish records and information to the beneficiary upon request or as is necessary for the beneficiary to enforce his or her rights under the trust.

6. We interpret the provisions of a settlement agreement by giving each provision a reasonable meaning so that no provision is left without function or sense.
7. The trial court erred in entering judgment on the pleadings for the following reasons:
 - a. Wife's motion to enforce stated a claim for enforcement of each of the provisions of the judgment that she sought to enforce.
 - b. Wife's motion did not seek relief from non-parties.
 - c. Wife had standing to file her motion.
 - d. Wife did not fail to plead a condition precedent.
 - e. Wife's right to copies of promissory notes she was awarded was not barred by her discovery waiver in the underlying dissolution case.
 - f. Wife was not required to specifically allege that husband had possession of promissory notes on which he was receiving payments.
 - g. Husband's status as a beneficial owner on a note receivable on which he was receiving pass-through payments and as a party to an agreement obligating him to make payments on a note payable support a reasonable inference that he had possession and control of information and documentation concerning the notes.
 - h. A reasonable interpretation of the paragraph requiring that each party receive his or her own Form 1099's on certain distributions is that the division of those distributions was to be structured so that each party would receive his or her own Form 1099's.
 - i. Wife's motion raised numerous issues of fact that could not be resolved by judgment on the pleadings.

Opinion by: Kathianne Knaup Crane, P.J.
Clifford H. Ahrens, J. and Nannette A. Baker, J., concur.

Attorneys for Appellant: Allan H. Zerman, Stephanie L. Jones, and Joseph J. Kodner
Attorney for Respondent: Ellen W. Dunne

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.