

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT  
DIRECT APPELLATE REVIEW No. \_\_\_\_\_  
Appeals Court No. 2025-P-0722

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MARYBETH DESJARDINS  
APPELLANT

v.

STEVEN DESJARDINS,  
APPELLEE

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On Appeal From Judgment of the Middlesex County  
Probate and Family Court, Docket No. MI24D-0080

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**MARYBETH DESJARDINS' APPLICATION FOR  
DIRECT APPELLATE REVIEW**

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**Date: July 3, 2025**

## **REQUEST FOR DIRECT APPELLATE REVIEW**

Neither this Supreme Judicial Court (SJC) nor the Massachusetts Appeals Court has published an opinion that addresses (a) the impropriety of an antenuptial agreement provision that purports to preclude the Probate & Family Court's authority under M.G.L. c. 208, §§ 17 and 38,<sup>1</sup> to grant, in a case involving an agreement purporting to waive temporary support, a *pendente lite* attorney's fee award to be used by the spouse-in-need "*during the pendency of the litigation to enable her to defend the action and to contest the validity and enforceability of the antenuptial agreement.*" DeMatteo v. DeMatteo, 436 Mass. 18, 38-39 (2002) (emphasis added); or, relatedly (b) the validity and/or enforceability of a "fees for breach" penalty or prevailing party fee award provision in an

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<sup>1</sup> General Laws c. 208, § 17, provides: "The court may require either party to pay into court for the use of the other party during the pendency of the action an amount to enable him to maintain or defend the action...." General Laws c. 208, § 38, provides: "In any proceeding under this chapter, whether original or subsidiary, the court may, in its discretion, award costs and expenses, or either, to either party, whether or not the marital relation has terminated. In any case wherein costs and expenses, or either, may be awarded hereunder to a party, they may be awarded to his or her counsel, or may be apportioned between them."



antenuptial agreement that has the effect of stripping the contesting party of what benefits the agreement otherwise provides and functions to unreasonably restrict the contesting spouse-in-need's access to justice guaranteed by the Massachusetts Declaration of Rights.

"This Court has said that '[marriage] is the foundation of the family. It is a social institution of the highest importance. The Commonwealth has a deep interest that its integrity is not jeopardized.'" Capazzoli v. Holzwasser, 397 Mass. 158, 160-61 (1986), quoting French v. McAnarney, 290 Mass. 544, 546 (1935).<sup>2</sup> "Marriage is not a mere contract between two parties, but a legal status from which certain rights and obligations arise." DeMatteo v. DeMatteo, 436 Mass. 18, 31 (2002) ("the State has an interest in

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<sup>2</sup> Id., citing See Commonwealth v. Stowell, 389 Mass. 171, 175, 449 N.E.2d 357 (1983) ("The Commonwealth has extensively exercised [its] power to regulate numerous aspects of the marriage relationship. See generally G.L. c. 207. Given this broad concern with the institution of marriage, the State has a legitimate interest in prohibiting conduct which may threaten that institution"); Green v. Richmond, 369 Mass. 47, 51, 337 N.E.2d 691 (1975) ("Massachusetts has a strong public interest in ensuring that its rules governing marriage are not subverted").

protecting the financial interests of spouses when they divorce").<sup>3</sup>

In Osborne v. Osborne, 384 Mass. 591 (1981), on direct appellate review, this Court established that "an antenuptial contract settling the alimony or property rights of the parties upon divorce is not per se against public policy and may be specifically enforced." Id. at 598 (emphasis added). The Court, however, made clear that it was "***express[ing] no opinion on the validity of antenuptial contracts that purport to limit the duty of each spouse to support***

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<sup>3</sup> The SJC recognized half a century ago that court-imposed obligations for a spouse to pay the other's counsel fees are functionally equivalent in purpose to awards of alimony, and likewise require consideration of the relative economic positions of the divorcing spouses. Goldman v. Roderiques, 370 Mass. 435, 436-438 (1976). "[A] spouse's need for adequate legal representation ... 'is not materially different from those other needs ... which fall within the more common meaning of alimony or support.'" Grubert v. Grubert, 20 Mass. App. Ct. 811, at 819 (1985), quoting Goldman v. Roderiques, *supra*. (noting that **G.L. c. 208, s 17**, empowers the judge to require a spouse to pay an **amount needed by the other to cover litigation expenses during the pendency of the action**). See Borgarello v. Borgarello, 388 Mass. 652, 654 (1983) ("**Section 38** of G.L. c. 208, like §§ 34, 34A, 34B, 34C, 35, 36, 36A ..., and 37, which provide as to alimony, **is designed to allocate resources fairly between the parties to a divorce**").

***the other during the marriage.***" Id. Citing French v. McAnarney, a now 90-year-old decision, the Court observed that "certain rights and duties incident to the marital relation, including the duty of the husband to support his wife, could not be avoided by an antenuptial contract." Id. at 596, citing French v. McAnarney, 290 Mass. 544 (1935) ("an antenuptial contract wherein the wife agreed not to make any claim for support against the husband was void as against public policy"). Id. at 596.<sup>4</sup>

Direct Appellate Review is warranted in this *Desjardins* appeal to answer questions the Osbourne Court left open forty-four (44) years ago, and for this Court to address related and important issues of first impression and policy questions of great public interest that should be submitted for final determination by the SJC, to wit:

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<sup>4</sup> The facts were distinguishable from those in Osborne because, in French v. McAnarney, the parties were not divorced. Id. The Osborne Court also cited opinions from other jurisdictions that had addressed the issue directly. Eule v. Eule, 24 Ill.App.3d 83, 320 N.E.2d 506 (1974) (waiver of temporary support and alimony pendente lite held void); Holliday v. Holliday, 358 So.2d 618 (La.1978) (waiver of alimony pendente lite held void).

1. Are antenuptial agreement provisions void as contrary to public policy where they purport to waive a spouse-in-genuine-need's right to seek pendente lite support and attorney's fees during the pendency of a divorce (while the parties remain married) to enable her to defend the action and to contest the validity and enforceability of the antenuptial agreement? <sup>5</sup>

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<sup>5</sup> Whereas Massachusetts has yet to squarely address the issue in a modern case, other jurisdictions have clearly established the principle that antenuptial agreement provisions purporting to waive a spouse's right to temporary (pre-dissolution) support, including awards of pendente lite attorney's fees, violate important public policies and will not be enforced. E.g., Belcher v. Belcher, 271 So.2d 7 (Fla. 1972); Lashkajani v. Lashkajani, 911 So.2d 1154, 1157 (Fla. 2005) (following *Belcher*, "'until there is a decree of dissolution of the marriage, thus ending her role as wife, the wife's support remains within long-established guidelines of support by the husband which cannot be conclusively supplanted by his advance summary disposition by agreement'"); Mulhern v. Mulhern, 446 So.2d 1124 (Fla. 4<sup>th</sup> DCA 1984) (the principles of *Belcher* prohibiting waiver of pre-dissolution support apply equally to award of attorney's fees prior to dissolution); Khan v. Khan, 79 So. 3d 99, 102 (Fla. 4<sup>th</sup> DCA 2012) (the public policy principles of *Belcher* and *Lashkajani* apply equally to marital settlement / separations agreements purporting to waive of pre-dissolution support); Kessler v. Kessler, 818 N.Y.S.2d 571 (NY 2006) (provision in prenuptial agreement absolutely waiving right to attorney's fees voided as unconscionable);

2. Are “fees for breach” penalties or prevailing party fees provisions in antenuptial agreements void as contrary to public policy where such provisions have the effect of unreasonably restricting a contesting spouse-in-need’s access to justice guaranteed by the Massachusetts Declaration of Rights and where enforcement strips the contesting spouse of all benefit the agreement otherwise provides?<sup>6</sup>

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McAlpine v. McAlpine, 679 So.2d 85, 90 (La. 1996) (“prenuptial waivers of alimony pendente lite [are] void as contrary to the public policy of this [s]tate”).

<sup>6</sup> See Grabe v. Hokin, 341 Conn. 360 (2021) (the “fees for breach” provision needed to be severed from an otherwise valid antenuptial agreement where enforcement of the provision “**would financially cripple the [contesting party’s] remaining assets**” and because it was “unlikely that the parties considered paying millions of dollars in attorney’s fees to the other party in the event of a marital dissolution.”); O.A. v. J.A., 342 Conn. 45 (2022) (in a case involving a contested postnuptial agreement, trial court’s *pendente lite* award to contesting party of \$114,019.99 in current attorney’s fees and a retainer for legal counsel in the amount of \$250,000 was proper and affirmed; the trial judge was not required to first address enforceability of the parties’ postnuptial agreement prior to awarding wife such payments)

3. Does the doctrine of “unclean hands,” as a matter of law, preclude a spouse from obtaining the equitable remedy of specific enforcement where that spouse is in material and ongoing breach of the antenuptial agreement at the time he seeks enforcement against the non-breaching party?<sup>7</sup>
4. Does it violate public policy to hold the financially disadvantaged (“non-monied”) spouse in “breach” of an antenuptial agreement for merely asking the P&FC to conduct the two-part analysis *mandated* by this Court’s DeMatteo decision?<sup>8</sup>

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<sup>7</sup> In Rudnick v. Rudnick, 102 Mass. App. Ct. 467 (2023), the Appeals Court upheld the trial judge’s refusal to enforce the parties’ prenuptial agreement because the husband’s breaches of the agreement left the wife “no marital property interests, and no right to seek alimony,” and was, therefore, unconscionable. Id. at 473. Apart from *Rudnick*, however, no Massachusetts case has applied the principles of “unclean hands” or breach of the agreement as grounds for invalidating or voiding the agreement independent of its fairness or lack thereof at time of execution.

<sup>8</sup> As further detailed herein, Judge Bhatt found that MaryBeth’s Answer and Counterclaim [Uncontested Exhibit 14] in which she raised Steven’s unclean hands as a defense and asked the court to find the antenuptial agreement invalid and unenforceable, constituted a breach of the agreement’s prohibition

It has been twenty (20) years since the SJC last undertook review of substantive law and legal principles applicable to enforceability of antenuptial agreements. Austin v. Austin, 445 Mass. 601 (2005) (further appellate review from 62 Mass. App. Ct. 719, limited to issues concerning the enforceability of antenuptial agreement).<sup>9</sup> Although Vakil v. Vakil,

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against **"initiating or permitting the initiation of any judicial action to obtain a judgment or order which is inconsistent with the Prenuptial Agreement..."** (Finding No. 122, a verbatim adoption of Steven's Proposed Finding No. 170). There is no Massachusetts case, nor should there ever be a precedent by which a disadvantaged, non-monied spouse is held in breach of an antenuptial agreement and penalized when *all she did was ask the court in equity in a bifurcated proceeding to conduct the analysis that this Court announced as the mandatory test for determining an antenuptial agreement's validity and enforceability.*

<sup>9</sup> It is also significant, and important to the consideration of direct appellate review, that the last three full Appeals Court opinions over the last ten (10) years involving substantive challenges to a trial judge's finding of validity or enforceability of an antenuptial concluded with holdings that the challenged agreements were either invalid or unenforceable. See Rudnick v. Rudnick, 102 Mass. App. Ct. 467 (2023) (agreement unconscionable - enforcement would leave the wife no marital assets and no alimony); Schechter v. Schechter, 88 Mass. 239 (2015) (prenuptial agreement was void ab initio for failure to include fair and reasonable provisions at time of execution); Kelcourse v. Kelcourse, 87 Mass. App. Ct. 33 (2015) (agreement unconscionable at time of divorce).

450 Mass. 411 (2008) (on further appellate review from 66 Mass. App. Ct. 526), involved an antenuptial agreement, both parties ultimately accepted the agreement terms such that this Court's decision did not entail judicial resolution of enforceability issues *per se*.<sup>10</sup> Id. at 420-421 (with neither party contesting the agreement, "there is no need [for the Court] to undertake the two-part analysis outlined in [DeMatteo] and [Austin]") (citations omitted). Nonetheless, the Vakil Court was clear that the Court did, indeed, have "public policy concerns" about the enforceability of the agreement's alimony waiver provisions,<sup>11</sup> which amounted to a non-mutual forfeiture of the wife's right to seek alimony if she contested

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<sup>10</sup> The case ultimately turned on the trial judge's improper and unjustified denial of the wife's motion to amend her answer. Id. at. 420

<sup>11</sup> It has been said that "courts have a duty to refuse to enforce a contract that is contrary to public policy." Soaring Pine Cap. Real Est. & Debt Fund II, LLC v. Park St. Grp. Realty Servs., LLC, 511 Mich. 89, 101 (2023). "A court may, and indeed *should*, consider *sua sponte* whether a contract provision violates public policy." In re Marriage of Best, 387 Ill. App. 3d 948, 951 (2009), citing 6 R. Lord, Williston on Contracts § 12:5, at 58 (4th ed.1995), and First Trust & Savings Bank of Kankakee v. Powers, 393 Ill. 97, 103 (1946) (holding that a court of equity should refuse to enforce a provision that is against public policy, even if no party has raised the point).



the grant of a divorce to the husband which, ultimately, she did not. Id.<sup>12</sup>

Judge Bhatt's Bifurcated Judgment in this action, if allowed to stand, (a) leaves the wife homeless, without alimony, with no share of marital assets (including no car), and unable to pay the legal fees and expenses she in good faith incurred during the pendency of the husband's relentless action to enforce the agreement; (b) inexplicably and with no explanation absolves the wealthy ("monied") husband of his multiple, material breaches of the antenuptial agreement provisions purporting to benefit the wife during and throughout the marriage and during the pendency of his enforcement action; (c) is premised on findings, for which there is no credible evidentiary support, that it was the wife who breached the agreement; (d) obligates the wife or "her Estate," despite her low (poverty level) income and lack of accessible assets, to provide health insurance coverage to the husband for the rest of his life; (e)

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<sup>12</sup>The Court noted the "especially dim view" it would have of "penalty clauses" that are "*manifestly contrary to public policy*," such as any contract provision that might discourage marital reconciliation or one-sided provisions that impose "consequences solely on the wife..." Id. at 421 (emphasis added).

renders the wife unjustifiably exposed to the husband's motion for attorney's fees in amounts that more than triple in magnitude the meager lump sum the husband claims she is owed.

"A prenuptial agreement is enforceable only if a judge [first] determines the agreement to be valid." Eyster v. Pechenik, 71 Mass. App. Ct. 773, 782 (2008).<sup>13</sup> It stands to reason that there can be no compensable "breach" of antenuptial agreement that has yet be found valid. Public policy would not allow parties to waive or contract away the court's duty to examine a questioned agreement under the two-part DeMatteo test. An antenuptial agreement that attached penalties to a spouse's mere act of putting the agreement before the court for analysis of validity, which is all MaryBeth did, would be contrary to public policy *per se*. Likewise, a rule that permits an antenuptial agreement to threaten penalties in the form of an exorbitant attorneys' fee award merely because its fairness is questioned would function to

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<sup>13</sup> Compare G.L. . c. 208, § 1A ("In the event that the court does not approve the [separation] agreement as executed, or modified by agreement of the parties, **said agreement shall become null and void and of no further effect between the parties ...**")

deter challenges even to agreements that are patently unfair. Such a rule and use of such penalty provisions as a matter of course would amount to the denial of any contesting party's "fundamental right" of "access to the courts" that is guaranteed under the Massachusetts Declaration of Rights.<sup>14</sup> Vaks v. Ryan, 2014 Mass. App. Div. 37 (Dist. Ct. 2014) (access to the courts is effectively denied by a clause that requires payment of a party's legal fees no matter which party brings the action).<sup>15</sup>

The outcome in this case is Draconian, in part due to an absence of clear Massachusetts precedent concerning the issues specified above, and in part

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<sup>14</sup> "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws." A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts, Article XI.

<sup>15</sup> In Trs. of Cambridge Point Condo. Tr. v. Cambridge Point, LLC, 478 Mass. 697, 705-06 (2018), this Court held that a condominium "bylaw that makes it extraordinarily difficult—and in this case, effectively impossible—to obtain redress for a developer's defective construction and design of common areas and facilities is void because it is contrary to public policy." Id. at 705-06.

because the trial judge erroneously misapplied the proper and applicable standards and principles of law that preclude recognition of an antenuptial agreement that “essentially strips the contesting party of substantially all her marital interests” and “prevents [her] retaining her marital rights, of which maintenance and support ... are the most critical.” Rudnick v. Rudnick, 102 Mass. at 470-471.<sup>16</sup> The Bifurcated Judgment based on the 2019 prenuptial agreement is unconscionable. It puts a wife and her three children on the street with no marital property and debts, including an impending order to pay Steve’s legal fees, that far and away exceed her meager personal assets. For the reasons set forth herein, to be developed by way of full Brief and Appendix, the Bifurcated Judgment cannot be allowed to stand, and

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<sup>16</sup> “[T]o ensure that the ultimate findings and conclusions are consistent with the law, [the appellate court will] scrutinize without deference the legal standard which the judge applied to the facts.” NPS, LLC v. Minihane, 451 Mass. 417, 419-20 (2008), quoting Kendall v. Selvaggio, 413 Mass. 619, 620 (1992). “A finding is clearly erroneous when there is no evidence to support it, or when, ‘although there is evidence to support it, **the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.**’ ” Adoption of Larry, 434 Mass. 456, 462 (2001), quoting Custody of Eleanor, 414 Mass. 795, 799 (1993).

this matter ultimately should be remanded to the P&FC for a new trial in connection with which the applicable statutes and principles of law are properly applied, including unclean hands, and including a pendente lite attorney's fees award to MaryBeth measured from the outset.

#### **STATEMENT OF PRIOR PROCEEDINGS**

Steven Desjardins ("Steve") filed a Complaint for Divorce as well as an Amended Complaint for Divorce on January 11, 2024, seeking specific enforcement of an antenuptial agreement dated May 3, 2019 [Docket ##1, 6]. Notwithstanding provisions of the agreement obligating him to disclose the filing to his wife, MaryBeth Desjardins ("MaryBeth") within seven (7) days of the filing, service of process was not effected until March 1, 2024 [Docket #7].

The matter was immediately ordered on March 11, 2024, to a Pre-Trial Conference on July 16, 2024 [Docket #8].

MaryBeth filed her Answer and Counterclaim to Complaint for Divorce on March 20, 2024 [Docket #10].

Steve's Motion to Bifurcate the issues of the antenuptial agreement's validity and enforceability was allowed on June 13, 2024 [Docket ##13, 26]. Because of this immediate bifurcation of the case at Steve's request, there was no litigation on any issues other than the validity and enforceability of the antenuptial agreement.

On August 9, 2024, pursuant to M.G.L. c. 208, §§ 17 and 38, MaryBeth filed her Motion for Attorney's Fees Pendente Lite & to Continue Pretrial Conference with supporting Affidavit [Docket ##35, 36], to which Steve filed a written Opposition on September 9, 2024 [Docket #46]. MaryBeth's Motion for Attorney's Fees Pendente Lite was denied 'without prejudice' (Bhatt, J.) on October 15, 2024 [Docket #48]. Judge Bhatt's endorsement on the Motion suggested that the Motion could be "renewed" at the trial (evidentiary hearing) of the bifurcated issues, dates for which were to be assigned.

Following a Status Conference on November 20, 2024, MaryBeth filed a Motion to Reconsider Hon. Manisha Bhatt's "Without Prejudice" Denial of Defendant's Motion for Attorney's Fees Pendente Lite

[Docket ##57, 58]. On December 18, 2024, Judge Bhatt Denied MaryBeth's Motion to Reconsider [Docket #61].

By Order dated November 22, 2024 [Docket #54], a two-day trial on the bifurcated issues was scheduled for and conducted on January 29 and January 30, 2025. The sole contested issue specified in this Trial Order was, "Validity of the parties' Ante-nuptial Agreement."

With leave of Court, the parties both submitted final proposed judgments and proposed findings of fact with conclusions of law [Docket ##68-74]. Steven's Motion to Strike MaryBeth's post-trial submissions was denied [Docket ##73, 85]

MaryBeth's renewed Verified Motion for Attorney's Fees and Costs Incurred in Bifurcated Proceedings & Request for Hearing [Docket #76] was Denied, without a hearing, on April 11, 2025 [Docket #86]. Judge Bhatt gave no reason or explanation for the Denial other than to write on the Motion, "see Bifurcated Judgment on the issue of the validity of antenuptial agreement this date."

On February 21, 2025, MaryBeth filed a Verified Motion to Reopen the Evidence [Docket #77], to expose

the knowingly false testimony Steve had presented on a central issue in the case (i.e., breach of his obligation to pay Prudential life insurance premiums, discussed below). Judge Bhatt denied this motion on April 10, 2025, writing in the margin, "*The content of this motion is not on point to the validity of the antenuptial agreement...*" [Docket #82]<sup>17</sup>

The Bifurcated Judgment that is the subject of this appeal was issued on April 10, 2025 [Docket #88], along with Judge Bhatt's Procedural History, Findings of Fact and Rationale [Docket #87]

An Amended Procedural History, Findings of Fact and Rationale [Docket #94] was docketed on May 13, 2025, in response to MaryBeth's timely Motion for New Trial or to Alter or Amend the Bifurcated Judgment and Findings Dated April 10, 2025 (Bhatt, J.) Pursuant to Rule 59(a) and 59(e) & Request for Hearing [Docket #89], which was, without a hearing, denied in part and allowed in part [Docket #93].

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<sup>17</sup> This endorsement is evidence that Judge Bhatt either did not understand the principles underlying MaryBeth's affirmative defense of unclean hands, or consciously chose to disregard theories properly raised by the contesting party.



MaryBeth's Notice of Appeal from the Bifurcated Judgment was timely filed on May 21, 2025 [Docket #98]

**STATEMENT OF RELEVANT FACTS<sup>18</sup>**

Steve took MaryBeth and her three young sons into his home during 2013.<sup>19</sup> During 2014-2015, Steve built a luxury home into which, upon completion, he moved MaryBeth and her children. MaryBeth and her children, right up to the time of this Application for Direct Appellate Review, continued to live in the Tyngsborough home after Steve moved permanently to a home he purchased during 2023 in New Hampshire.

MaryBeth was 53 and Steve was 55 years old at the time of trial on the bifurcated issues. Both parties

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<sup>18</sup> This brief statement of relevant facts is presented in MaryBeth's view and consistently with the proposed findings as submitted to Judge Bhatt. MaryBeth does not waive opportunity to more fully develop the facts in the form of her Brief and Appendix as the appeal proceeds.

<sup>19</sup> Steve is not the children's father, but liked them (good kids) and he fulfilled father-like role during the marriage.

were previously married and divorced. Each party has children from their prior marriage.

MaryBeth accepted Steve's marriage proposal in January 2017, which was made without mention of an antenuptial agreement. Unbeknownst to MaryBeth, Steve began working with an attorney since June 2018 on drafting a prenuptial agreement. MaryBeth did not learn of the agreement's existence until February 2019.

The form of the agreement Steve proposed is *unprecedented*. Steve, a wealthy and successful building contractor, used the agreement to confer upon himself a variety of valuable rights and benefits that he could not obtain in the absence of marriage to MaryBeth. The agreement to which he ultimately obtained MaryBeth's signature significantly enhanced Steve's present-day wealth as well as his future financial security.

The agreement was not "negotiated" in any manner by the lawyers with whom each party consulted. Instead, Steve had private discussions with MaryBeth, after which he reported to his attorney, Michael Fadden, what terms the agreement should contain.

Attorney Fadden communicated those terms to the lawyer MaryBeth consulted, Daniel Mansur, who did virtually nothing more than ask MaryBeth if the terms presented were consistent with what she and Steve discussed.

The agreement contained two (2) central provisions, the first concerning Steve's desire for low-cost health insurance to be provided by MaryBeth,<sup>20</sup> and the second concerning Steve's desire to be made the beneficiary of a \$500,000 Prudential life insurance policy that MaryBeth had obtained for her children's benefit long before meeting Steve. Those provisions are reproduced below in the order that they appear in the agreement:

**"MaryBeth or her Estate shall continuously provide monthly health insurance to Steve for the remainder of his life and Steve shall be responsible for the payment of all such monthly health insurance." (p. 10)**

**"Steve shall become and shall remain the beneficiary of one (1) life insurance policy with Prudential ... having a death benefit in the amount of \$500,000.00, and payable on the death of MaryBeth to Steve which MaryBeth agrees shall remain in full force and effect. ... Steve shall**

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<sup>20</sup> There is evidence that Steve was paying approximately \$24,000 per year for his health insurance coverage prior to his transfer to MaryBeth's coverage plan.

pay and be responsible for all premiums due and payable on the Prudential policy."

The agreement also included a "Breach" provision stating that, "*Neither MaryBeth nor Steve will initiate or permit initiation of any judicial action to obtain a judgment or order which is inconsistent with this Agreement or to vary or set aside any portion of this Agreement... Any such action shall be deemed a breach of this Agreement, and the breaching party shall indemnify the other and pay his/her costs and expenses incurred in the defense of same, including but not limited to reasonable attorneys' fees.*" (p. 11) The Breach provision also stated that, "If either party breaches **any provision** of the within Agreement, the breaching party or his or her estate shall indemnify the other party and make the other party whole... and shall be liable for any attorney's fees, costs and expenses, of any kind or nature whatsoever incurred by the other party in attempting to enforce the provisions of the within Agreement."

It is undisputed that MaryBeth complied with her obligation to provide Steve's health insurance obligation in a timely manner after the marriage.

There is also no dispute that Steve *never once* paid or reimbursed MaryBeth for her monthly costs to provide this health insurance coverage, despite the substantial amounts he saved on health insurance costs each month. **Judge Bhatt, however, made not one mention of Steve's breach of / non-compliance with his obligation to pay the monthly health insurance costs in her Findings of Fact,<sup>21</sup> despite the issue (Steve's unclean hands) having been raised by affirmative defense and litigated as a central theme in MaryBeth's case.<sup>22</sup>**

Steve's non-payment of premiums caused the \$500,000.00 Prudential life insurance policy to lapse multiple times during the marriage, but reinstatement was achieved at those times. However, when Steve filed his Complaint for Divorce in January 2024, he permanently stopped paying the life insurance

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<sup>21</sup> The issue was highlighted to Judge Bhatt by MaryBeth counsel's opening statement, the parties' testimony, the exhibits entered in evidence, and MaryBeth's proposed findings of fact and rationale.

<sup>22</sup> The doctrine of unclean hands denies equitable relief "to one tainted with the inequitableness or bad faith relative to the matter in which [he] seeks relief." Murphy v. Wachovia Bank of Del., N.A., 88 Mass. App. Ct. 9, 15 (2015) (citation omitted).

premiums, despite his continuing obligation under the agreement to do so. Steve's failure to pay the premiums that were due and payable in and after December 2023 caused the Prudential policy to lapse again, but MaryBeth did not become aware of the lapse until after it was too late for reinstatement.

Steve acknowledged in his own testimony that *his* non-payment of the required Prudential policy premiums violated his contractual obligations under the agreement. Steve admitted to funding MaryBeth's good faith application for reinstatement of the Policy during December 2024, and he testified that, as of the time of the January 2025 trial, he was unaware of whether MaryBeth's reinstatement application had been allowed or denied. In fact, however, Steve had obtained written confirmation in December 2024 that reinstatement was irrevocably denied (i.e., his testimony to Judge Bhatt was knowingly false).

**Judge Bhatt, however, as with the health insurance non-payment issue, made not one mention of Steve's breach of / non-compliance with his obligation to pay the \$500,000.00 Prudential life insurance**

premiums in her Findings of Fact,<sup>23</sup> despite the issue of Steve's unclean hands having been raised by affirmative defense and litigated as a central theme in MaryBeth's defense in Steve's enforcement action.<sup>24</sup> Astonishingly, Judge Bhatt, with verbatim adoption of Attorney Cherny's proposed finding no. 183, entered her Finding No. 133: **"The Court finds ... that Wife breached the [agreement] first when she filed her Answer and Counterclaim in this matter, and second when the life insurance policy for Husband lapsed without her efforts to maintain or reinstate same."**<sup>25</sup>

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<sup>23</sup> The issue was highlighted to Judge Bhatt by MaryBeth counsel's opening statement, the parties' testimony, the exhibits entered in evidence, MaryBeth's proposed findings of fact and rationale, MaryBeth's post-judgment motion for new trial or to alter or amend the Bifurcated Judgment, and her Motion to Reopen the Evidence.

<sup>24</sup> Judge Bhatt mentioned the policy lapse at Finding (#128) [*"The Court credits Wife's testimony at trial that this policy is not in place, and at some point it lapsed."*], but refused to note the reason for the lapse being Steve's non-compliance with the agreement, facts that were well-developed in the evidence.

<sup>25</sup> Attorney Cherny was well aware of the evidence that MaryBeth had submitted the policy reinstatement application along with Steve's reinstatement fee to Prudential before this trial began, and Steve was in possession of Prudential's denial of MaryBeth's application when he testified to the contrary before Judge Bhatt. Attorney Cherny lacked a good faith basis for his proposed finding no. 183, and Steve's testimony constituted a fraud on the Court. Judge Bhatt's apparently blind adoption of Attorney Cherny's

At page 20 of the Judge's Rationale, she states, *"...the Court finds that an award of Husband's attorney's fees and costs is warranted due to the breach provision under the terms of the Prenuptial Agreement."*<sup>26</sup> In addition to ignoring Steve's multiple breaches of the agreement's central provisions,<sup>27</sup> the Judge made no mention of how MaryBeth could possibly pay the fee award Steve is seeking or the devastating effect the penalty will have on MaryBeth's ability to

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proposed finding no. 183 demonstrates that she did not review the evidence she had before her.

<sup>26</sup> The judge deferred determination of the amount this fee award. At the time of the parties' post-trial submissions Steve's multiple attorneys were asking the Court to set the fee award at more than \$178,000.00.

<sup>27</sup> MaryBeth's Brief in full and Appendix will address (a) the various other ways Steve materially breached the agreement, including failure to obtain MaryBeth's \$100,000 life insurance policy until compelled to do so in the litigation, draining the balance of a Fidelity Account that was required to be held for MaryBeth's benefit in the event of Steve's death, selling a Ford Mustang that was to be kept for MaryBeth if Steve died, executing a will or trust within 90 days of the agreement; and (b) the other ways in which Steve's wealth was enhanced at MaryBeth's expense, i.e. Steve, even after divorce, will remain the irrevocable Option C survivor beneficiary of the pension benefits MaryBeth accumulated prior to the marriage.



survive and meet her and her children's expenses and basic needs.<sup>28</sup>

Mention must be made of the so-called lump sum, "in-lieu of alimony" cash payment provision found at page 9 of the agreement. There is evidence that this provision was in the nature of an "after-thought." Steve wished to go forward with executing a version of the agreement that included payment of nothing to MaryBeth except \$10,000 upon vacating the home in which the parties lived at the time of divorce; and it never occurred to Attorney Mansur to suggest adding in provisions by which a fair and reasonable amount or share of property would be paid / transferred to MaryBeth in the event of a divorce or Steve's death during the marriage. Steve needed to be convinced by his own counsel to include the lump-sum provision. The \$50,000.00,<sup>29</sup> amount Steve proposed to Judge Bhatt

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<sup>28</sup> "A contractual provision that provides for a penalty for a breach of contract is unenforceable." Mittas Early Learning, LLC v. MDC Props. - Westford Rd, LLC, 104 Mass. App. Ct. 615, 618-19, review denied, 494 Mass. 1109 (2024).

<sup>29</sup> Notably, the \$50,000 lump sum pales in comparison to the approximately \$150,000 or more that Steve saved in health insurance costs between October 2019 and now. Judge Bhatt initially adopted Steve's proposed \$50,000, even though Attorney Cherny had earlier stated that the correct amount was \$75,000. See

as all that MaryBeth is due is an incredible .0067% of the \$7,500,000.00 worth of assets Steve represented in his schedule appended to the agreement.<sup>30</sup> The attorneys' fee award Steve seeks is 3½ times the lump sum amount that Steve proposed to Judge Bhatt.<sup>31</sup>

### **STATEMENT OF THE ISSUES**

1. Are antenuptial agreement provisions void as contrary to public policy where they purport to waive a spouse-in-genuine-need's right to seek pendente lite support and attorney's fees during the pendency of a divorce (while the parties remain married) to enable her to defend the action and to

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MaryBeth's Motion for New Trial or to Alter or Amend Bifurcated Judgment. The Bifurcated Judgment now specifies no amount.

<sup>30</sup> Judge Bhatt's denial of MaryBeth's Motion for Attorney's Fees Pendente Lite, of course, left MaryBeth unable to retain an accountant or experts to assist with discovery, valuation of assets (retrospective and current), tracing of income, etc.

<sup>31</sup> See Atlantis Mgmt. Grp. II LLC v. Nabe, 190 N.Y.S.3d 13, 15 (2023) (a one-dollar buyback clause in operating agreement "violated public policy, as it grossly overcompensated plaintiff for any loss it may have sustained from a breach of contract" - a clause that "imposes a draconian remedy for a trivial breach of contract, is a penalty rather than a liquidated damages clause, and we decline to enforce it).

contest the validity and enforceability of the antenuptial agreement?

2. Are "fees for breach" penalties or prevailing party fees provisions in antenuptial agreements void as contrary to public policy where such provisions have the effect of unreasonably restricting a contesting spouse-in-need's access to justice guaranteed by the Massachusetts Declaration of Rights and where enforcement strips the contesting spouse of all benefit the agreement otherwise provides?
3. Does the doctrine of "unclean hands," as a matter of law, preclude a spouse from obtaining the equitable remedy of specific enforcement where that spouse is in material and ongoing breach of the antenuptial agreement at the time he seeks enforcement against the non-breaching party?
4. Does it violate public policy to hold the financially disadvantaged ("non-monied") spouse in "breach" of an antenuptial agreement for merely asking the P&FC to conduct the two-part analysis *mandated* by this Court's DeMatteo decision?



## ARGUMENT

This Court has also “long recognized that ‘the public interest in freedom of contract is sometimes outweighed by public policy, and in such cases [a] contract will not be enforced.’” Trs. of Cambridge Point Condo. Tr. v. Cambridge Point, LLC, 478 Mass. 697, 705-06 (2018), quoting Beacon Hill Civic Ass'n v. Ristorante Toscano, Inc., 422 Mass. 318, 321, 662 N.E.2d 1015 (1996)<sup>32</sup> (“‘Public policy’ in this context refers to a court's conviction, grounded in legislation and precedent, that denying enforcement of a contractual term is necessary to protect some aspect of the public welfare”).

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<sup>32</sup> “[I]t is a principle universally accepted that the public interest in freedom of contract is sometimes outweighed by public policy, and in such cases the contract will not be enforced.” Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., *supra.*, at 321 (invalidating and declining to enforce both a restaurant’s waiver of right to apply for license and the associations waiver of right to opposed issuance of license – [t]o accept such ... waiver[s] as valid would destroy the very purpose of the statute”). “[I]t is well established that a contract violating public policy will not be enforced.” Frishman v. Maginn, 75 Mass. App. Ct. 103, 115-16, 912 N.E.2d 468, 478-79 (2009), citing A.Z. v. B.Z., 431 Mass. 150, 160 (2000).

"It is settled that a contract in violation of law or public policy will not be enforced." McLaughlin v. Amirsaleh, 65 Mass. App. Ct. 873, 885 (2006). "It is also an established maxim of equity that '[h]e who seeks equity must do equity.'" Id., quoting New England Merchants Natl. Bank of Boston v. Kann, 363 Mass. 425, 428 (1973). "This so-called 'clean hands' doctrine rests on grounds of public policy and the integrity of courts." Id.<sup>33</sup>

In DeMatteo v. DeMatteo, 436 Mass. 18, 38-39 (2002) (hereafter "DeMatteo"), this Court broached but did not reach issues presented directly by this *Desjardins* appeal. The trial judge declined to enforce the parties' prenuptial agreement and, *sua sponte*, issued a judgment requiring that husband "shall pay the parties' counsel fees."<sup>34</sup> The husband argued on

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<sup>33</sup> "It is a fundamental rule of equity that he who seeks equity should not be allowed to profit from his own wrongdoing." Langer v. Langer, 123 Ohio App. 3d 348, 355, cause dismissed, 80 Ohio St. 3d 1473 (1997).

<sup>34</sup> Due presumably to the importance of the issues raised in DeMatteo, the SJC granted the husband's application for direct appellate review and considered the arguments in what was essentially an interlocutory appeal from the trial judge's decision to not validate and enforce the parties' antenuptial agreement. See

direct appellate review to this Court that it was an abuse of discretion to not enforce the agreement, which included "breach provisions" under which the wife would be responsible for paying all "attorneys fees, cost and expenses" that the husband "incurred ... in attempting to enforce the provisions of [the] Agreement."<sup>35</sup>

The SJC held that the parties' agreement was valid and enforceable under the correct legal standards the trial judge had *not* applied. On the issue of *pendente lite* attorney's fees, however, the Court, citing both General Laws c. 208, §§ 17 and 38, rejected the husband's arguments and held that the husband was properly ordered to pay the wife's attorney's fees during the pendency of the litigation to enable her to defend the action and to contest the validity and enforceability of the antenuptial agreement." *Id.* at 38-39 ("[t]he judge was well within her discretion in ordering the husband to pay the wife's attorney's fees") (emphasis added). The case was

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Pisano v. Pisano, 87 Mass. App. Ct. 403, 411 n.12 (2015).

<sup>35</sup> Brief of M. Joseph DeMatteo, pages 13-14, 42-44, in No. SJC-8614, on direct appellate review of Appeals Court No. 2001-P-439.

remanded for "a determination of the fees for the wife's attorney 'not incommensurate with an objective evaluation of the services performed.'" Id., quoting Ross v. Ross, 385 Mass. 30, 38-39 (1982).<sup>36</sup>

Where no further appeal followed the remand in DeMatteo, there is not a decided case revealing the amount of pendente lite fees wife was awarded, or whether the husband pursued an award against the wife for the fees and expenses he incurred in seeking to enforce the agreement. Further, over the decades since DeMatteo was decided, there has been no case in which this Court or the Appeals Court has had the opportunity to decide whether an antenuptial agreement purporting to waive pendente lite support and attorney's fees is in violation of public policy and void, or to decide whether and to what extent "fees for breach" penalty provisions in antenuptial agreements are likewise in violation of public policy

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<sup>36</sup>Also citing, Goldman v. Roderiques, 370 Mass. 435, 437 (1976) (in making award of attorney's fees, "the basic factors of need and relative economic positions of the spouses" must be considered); Kennedy v. Kennedy, 400 Mass. 272, 274 (1987) (consideration of award should appropriately take into account important interests at stake and amount of opposition interposed by opposing party).



or function to render enforcement of the agreement unconscionable.

Collected in the margin above (note 5) are cases from jurisdictions that have firmly established precedent holding that it violates public policy to attempt to waive by antenuptial agreement a spouse's obligation to support his/her spouse and/or to pay pendente lite attorney's fees that allow the spouse to be fairly represented by competent counsel during the pendency of the divorce action while the parties are still married.<sup>37</sup> MaryBeth posits in this appeal that the SJC should clearly and firmly adopt and establish those very principles in Massachusetts, such that the

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<sup>37</sup> See Fields, Prohibited Subject Matter in Prenuptial Agreements, sec. 1.05 (as appearing in Ch. 1, Brown et al., 2006 Family Law Update (Aspen 2006)) ("[T]he majority U.S. Rule is that spouses have a duty to support one another during the marriage and that parties cannot agree to terms that hold them harmless from support obligations during coverture. Because temporary alimony is support that is rendered prior to the judgment of final divorce and, therefore, during the marriage, many courts have viewed prenuptial agreements invalid to the extent that they relieved one spouse of his duty to support the other spouse."), collecting cases. See also, Fernandez v. Fernandez, 710 So.2d 223, 225 (Fla. 2<sup>nd</sup> DCA 1998) (the law "requires one spouse, who has the ability, to support the other more needy spouse until a final judgment of dissolution is entered even in the face of an antenuptial agreement to the contrary").

principles are consistently followed and applied in the P&FC as this issue continues to arise with the increasing use of antenuptial and postnuptial agreements, and on remand in this *Desjardins* case.

In O.A. v. J.A., 342 Conn. 45 (2022), the Connecticut Supreme Court took direct review of a husband's interlocutory appeal from a trial judge's order granting the wife temporary alimony and ordering the husband to pay the wife's *pendent lite* attorney's fees in the "current" amount \$114,019.99 along with a retainer of \$250,000 for fees to be incurred during the pendency of the husband's cross complaint to enforce a postnuptial agreement. Claiming that the agreement, if enforced, precluded both an award of alimony (including temporary alimony) and *pendente lite* attorney's fees. The husband argued on appeal that it was error to award *pendent lite* alimony and attorney's fees in any amount without *first* determining the validity and enforceability of the postnuptial agreement in a bifurcated, evidentiary hearing. He argued for the Supreme Court to establish a rule under which the trial judge should presume validity of the prenuptial agreement and deny such *pendente lite* awards unless and until the contesting

party has met her burden of proving the agreement to be unenforceable.<sup>38</sup>

Rejecting the husband's contentions, the Court expressly agreed with the wife that, notwithstanding the presence of such agreements, a trial judge's award of *pendente lite* alimony and attorney's fees is consistent with the state's public policy and its case law addressing the purpose that such *pendente lite* awards serve in divorce matters. Id. at 54-55 ("prenuptial agreements violate public policy if ... a provision thereof purports to relieve a prospective spouse of ... the obligation to support his or her spouse throughout the marriage."), citing McHugh v. McHugh, 181 Conn. 482, 485-486 (1980).<sup>39</sup> Like

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<sup>38</sup>When entering the *pendente lite* orders, "the trial court noted, because of the complexity of the defendant's finances, valuing his assets—a necessary step in determining the enforceability of the postnuptial agreement—will likely require considerable discovery and expert assistance, a process that could take a good deal of time during which, under the bifurcated approach advocated by the defendant, the plaintiff would be left without the means to support herself, to pay an attorney, and to hire an expert to make sense of the defendant's complicated finances." Id. at 62-63.

<sup>39</sup>See In Re Marriage of Ikeler, 161 P.3d 663 (Colo. 2007) ("An award of attorney's fees is one of the tools that the [Legislature] provided the courts in order to carry out its stated purpose of 'mitigating

Massachusetts, Connecticut law recognizes that pendente lite or temporary alimony “ensures that a dependent spouse is supported while the parties are living apart pending the outcome of [their] dissolution action,” Id. at 56, and that a trial judge in a divorce has statutory authority and “broad discretion to award attorney’s fees or expert fees, pendente lite, if circumstances and justice so require.” Id. at 57-58 (citations omitted).

In support of its decision, and as MaryBeth is asking of this Court, the Connecticut Court made note of cases from jurisdictions in which the “courts have concluded that ***“an agreement of the parties that waives or limits the right to request temporary support and attorney’s fees to a spouse in need in a pending dissolution action is a violation of public policy.”*** Id. at 63 n.13. The Court concluded that there is no requirement for a trial judge to first determine the enforceability of an agreement that purports to include a waiver of pendente lite support and attorney’s fees before entering an order for such

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the potential harm to the spouses...caused by the process of legal dissolution of marriage’”).

relief during the pendency of the divorce proceedings, during which the parties remain married.<sup>40</sup>

What happened after the parties in O.A. v. J.A. returned to the trial court for the completion of their divorce case, see Aryeh v. Aryeh, 2003 WL 7648564 (2023), speaks to additional issues raised in this Dejardins appeal. Although the trial judge found that the agreement, in general, was enforceable, the judge determined that, **"[g]iven the [parties' respective] circumstances, it would be inequitable - and perhaps unconscionable - to require [the wife's] repayment of the pendente lite [alimony and attorney's fees] awards."** Id. \*11. The judge emphasized that the pendente lite orders had been entered "based on the court's statutory authority," independent of whether or not the parties' agreement was ultimately found to be enforceable. Id. \*10.

The judge next considered the agreement's provisions under which a party who unsuccessfully challenged the agreement would be required to pay the

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<sup>40</sup> The Court indicated that the principles underlying its decision apply in the context of a contested prenuptial, postnuptial, or separation agreement. Id. at 60.

"prevailing party's" legal fees, and found the provision to be unconscionable and unenforceable. Id.

\*11 "***Such a provision would impose on the [wife] a sum that is completely beyond her ability to ever repay.***"

Id.<sup>41</sup>

### **WHY DIRECT APPELLATE REVIEW IS APPROPRIATE**

The issues raised herein are issues of first impression and/or issues of such importance and great public interest that it is most appropriate they are submitted in the first instance to the Supreme Judicial Court for determination.

In no area of the law are the concepts of "clean hands" and the covenant of good faith and fair dealing more important than in the context of forming and performing under antenuptial and postnuptial agreements. In practice, however, the dominant and "monied" spouses, typically championed by upper echelon lawyers, often are allowed to wield "fees for breach" and other penalty provisions to deter,

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<sup>41</sup> The "prevailing party" provision was severed from the remainder of the agreement under its severability clause.

intimidate and outspend their disadvantaged and “non-monied” spouses (more often the woman) into never seeking the P&FC’s analysis of an agreement’s validity or conscionability, forcing that spouse to submit to an outcome that is less than what would be reasonably due had she been able to afford to meet her husband on a more leveled playing field.

Massachusetts case law already recognizes the flaws that are inherent in the prenuptial agreement formation and execution process. The Appeals Court in Eyster v. Pechenik, 71 Mass. App. Ct. 773, 783 (2008), provided this apt explanation for the heightened scrutiny required of the trial judge when such agreements are presented for review:

The rationale for imposing particular procedural and substantive requirements on the enforcement of prenuptial contracts has been explained by the American Law Institute as follows: “The distinctive expectations that persons planning to marry usually have about one another can disarm their capacity for self-protective judgment, or their inclination to exercise it, as compared to parties negotiating commercial agreements.” American Law Institute, Principles of the Law of Family Dissolution: Analysis & Recommendations § 7.02 comment (c) (2002) (ALI Principles). Furthermore, “[f]amily contracts set aside otherwise applicable public policies while commercial agreements do not.” *Ibid.* These differences between family and commercial contracts mean that in the former case “the law

can reasonably require greater assurance that the parties understand and appreciate what they are doing ... and may require rules that limit the enforcement of private agreements that significantly infringe upon [those public policies]." *Ibid.*

Direct Appellate Review of this appeal presents a long overdue opportunity for the SJC to clearly and firmly establish that it contravenes Massachusetts public policy to attempt to waive by antenuptial agreement a spouse-in-need's right to request and receive temporary support and pendente lite attorney's fee awards that will enable her, while the parties remain married, to competently and effectively defend him or herself during the pendency of the P&FC's mandatory review of the agreement for validity and conscionability. As importantly, this appeal provides the opportunity for this Court to establish a principle or standards by which "fees for breach" penalty provisions should rightly be stricken from antenuptial agreements as contrary to public policy, or found to be unconscionable and unenforceable when enforcement would create and impose an impossible or unreasonable burden on the contesting party.

Further, there is a paucity, if not absence of case law applying the principles of unclean hands and



breach of the covenant of good faith and fair dealing in the context of performing under and seeking enforcement of antenuptial agreements. It is possible that the absence of such case law is one reason Judge Bhatt in this case so thoroughly ignored MaryBeth's well-pleaded affirmative defenses and disregarded Steve's undeniable breaches of this antenuptial agreement before finding it to be valid and enforceable. Where specific enforcement of an antenuptial agreement is an equitable remedy, there is every reason to deny that remedy to a spouse like Steve who commences his action while in material breach of multiple provisions of the agreement he wants the court to enforce. This appeal is an opportunity for this Court to establish presently non-existent principles of law that P&FC judges can consistently apply in circumstances like these where a spouse seeks benefit from the court despite his or her own misconduct and inequitable behavior directly pertaining to the agreement under review.

Respectfully submitted,  
MARYBETH DESJARDINS,  
By her attorney,

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Dated: July 3, 2025

## **Addendum**

### **Addendum Table of Contents**

Trial Court Docket Entries.....	46
Notice of Appeal dated 5/21/2025.....	53
Order dated 10/2/24 denying Wife's Motion for Attorney's Fees Pendente Lite.....	54
Order dated 12/18/24 denying Wife's Motion to Reconsider Denial of Wife Motion for Attorney's Fees Pendente Lite.....	55
Order dated 4/10/25 on Wife's Motion for Attorney's Fees Incurred in Bifurcated Proceedings.....	56
Bifurcated Judgment dated 4/10/25.....	57
Amended Procedural History, Findings of Fact and Rationale.....	59
Verified Motion to Reopen Evidence with denial order dated 4/10/25.....	79
Wife's Rule 59 Motion for New Trial or to Alter or Amend Bifurcated Judgment with Statement in Support and denial order dated 5/5/25.....	87

## MI24D0080DR Desjardins, Steven J. vs. Desjardins, Marybeth A.

- Case Type:
  - Domestic Relations
- Case Status:
  - Active
- File Date
  - 01/11/2024
- DCM Track:
  -
- Initiating Action:
  - Divorce 1B
- Status Date:
  - 01/11/2024
- Case Judge:
  - Bhatt, Hon. Manisha H.
- Next Event:
  - 07/03/2025

### Property Information

All Information Party Event Docket Disposition

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- DOD

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**More Party Information****Events**

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
05/13/2024 09:00 AM	Judge Allen Courtroom Middlesex	Lowell Courtroom 13 - 6th Floor	Motion	Bhatt, Hon. Manisha H.	Case Not Heard and Rescheduled
06/10/2024 09:00 AM	Judge Bhatt Session	Lowell Courtroom 13 - 6th Floor	Motion	Bhatt, Hon. Manisha H.	Under Advisement
07/16/2024 09:00 AM	Judge Bhatt Session	Lowell Courtroom 14 - 6th Floor	Pretrial Conference Domestic and Equity		Case Not Heard and Rescheduled
09/09/2024 09:00 AM	Judge Bhatt Session	Lowell Courtroom 13 - 6th Floor	Motion	Bhatt, Hon. Manisha H.	Under Advisement
09/10/2024 09:00 AM	Judge Bhatt Session	Lowell Courtroom 13 - 6th Floor	Pretrial Conference Domestic and Equity	Bhatt, Hon. Manisha H.	Taken Off List
11/20/2024 09:00 AM	Judge Bhatt Session	Lowell Courtroom 13 - 6th Floor	Status Conference	Bhatt, Hon. Manisha H.	Order Issued
01/15/2025 02:00 PM	Judge Bhatt Session	Lowell Courtroom 13 - 6th Floor	Trial Conference	Bhatt, Hon. Manisha H.	Order Issued
01/15/2025 02:00 PM	Judge Bhatt Session	Lowell Courtroom 13 - 6th Floor	Motion	Bhatt, Hon. Manisha H.	Order Issued
01/29/2025 10:00 AM	Judge Bhatt Session	Lowell Courtroom 13 - 6th Floor	Trial 1 Day	Bhatt, Hon. Manisha H.	Under Advisement
01/30/2025 11:00 AM	Judge Bhatt Session	Lowell Courtroom 13 - 6th Floor	Trial 1 Day	Bhatt, Hon. Manisha H.	Under Advisement
02/24/2025 09:00 AM	Judge Bhatt Session	Lowell Courtroom 13 - 6th Floor	Motion	Bhatt, Hon. Manisha H.	Taken Off List
04/28/2025 09:00 AM	Judge Bhatt Session	Lowell Courtroom 11 - 5th Floor	Motion	Bhatt, Hon. Manisha H.	Taken Off List
07/03/2025 09:00 AM	Judge Bhatt Session	Lowell Courtroom 11 - 5th Floor	Motion	Bhatt, Hon. Manisha H.	
08/11/2025 09:00 AM	Judge Bhatt Session	Lowell Courtroom 11 - 5th Floor	Motion	Bhatt, Hon. Manisha H.	Case Not Heard and Rescheduled
08/26/2025 10:00 AM	Judge Bhatt Session	Lowell Courtroom 11 - 5th Floor	Pretrial Conference Domestic and Equity	Bhatt, Hon. Manisha H.	

**Docket Information**

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/11/2024	Complaint for Divorce - Irretrievable Breakdown 1B	1	
01/11/2024	Certificate of Marriage	2	 Image Image
01/11/2024	Mass. Statistical R408 Form	3	 Image
01/11/2024	Affidavit as to Military Service	4	
01/11/2024	Uniform Counsel Certification Form Filed	5	 Image Image
01/11/2024	Summons issued on complaint for Divorce e-filed 01/11/2024.		



















<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
01/11/2024	Amended Petition	6	
03/06/2024	Summons Filed, Date of Service 03/01/2024	7	
03/11/2024	Pre-Trial Notice and Order Sent Judge: Allen, Hon. Jennifer M. Event: Pretrial Conference Domestic and Equity Date: 07/16/2024 Time: 09:00 AM Result: Case Not Heard and Rescheduled	8	  
03/20/2024	Notice of Appearance  Applies To: Grimaldi, Esq., Marc A (Attorney) on behalf of Desjardins, Marybeth A. (Defendant)	9	 
03/20/2024	Answer and Counterclaim to Complaint for Divorce	10	
03/22/2024	Request For Financial Statements	11	 
03/26/2024	Answer to Counterclaim	12	 
04/08/2024	Motion To Bifurcate Divorce Action	13	 
04/08/2024	Memorandum in Support of Motion to Bifurcate	14	 
04/08/2024	Affidavit In Support of Motion to Bifurcate	15	 
04/16/2024	Notice of Hearing	16	 
05/03/2024	Notice of Marking Motion	17	 
05/03/2024	Proposed Order		  
05/03/2024	Motion To Compel	18	 
05/09/2024	Opposition Motion to Bifurcate the Divorce	19	 
05/13/2024	Pre-Trial Notice and Order Sent Judge: Allen, Hon. Jennifer M. Event: Pretrial Conference Domestic and Equity Date: 09/10/2024 Time: 09:00 AM Result: Order Issued	20	
05/13/2024	Motion To Continue/Reschedule	21	 
05/14/2024	Motion To Continue/Reschedule ALLOWED on 05/13/2024 File Reference # 21	22	 
05/31/2024	Notice of Appearance  Applies To: Cherny, Esq., David Edward (Attorney) on behalf of Desjardins, Steven J. (Plaintiff)	23	 
05/31/2024	Certificate of Service	24	 
06/10/2024	Case Taken Under Advisement: Motion scheduled on: 06/10/2024 09:00 AM Has been: Under Advisement Hon. Manisha H. Bhatt, Presiding		 
06/11/2024	Event Resulted: Pretrial Conference Domestic and Equity scheduled on: 09/10/2024 09:00 AM Has been: Order Issued Hon. Manisha H. Bhatt, Presiding		
06/11/2024	Pre-Trial Notice and Order Sent Judge: Bhatt, Hon. Manisha H. Event: Pretrial Conference Domestic and Equity Date: 09/10/2024 Time: 09:00 AM Result: Taken Off List	25	  
06/13/2024	Motion To Bifurcate the Divorce Action ALLOWED on 06/10/2024 File Reference # 13  Judge: Bhatt, Hon. Manisha H.	26	 
06/24/2024	Stipulation of the Parties	27	 

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/24/2024	Joint Motion To Approve Stipulation	28	
07/03/2024	Motion To Approve Stipulation ALLOWED on 07/01/2024 File Reference # 28	29	
07/03/2024	Temporary/Scheduling Order 7/1/24	30	
	Judge: Bhatt, Hon. Manisha H.		
07/03/2024	Order dated 07/01/2024, Appointing Special Master for Discovery	31	
07/08/2024	Appearance by Attorney, Kevin M Corr, Esq., Party Name Marybeth A. Desjardins	32	
07/08/2024	Notice of Withdrawal	33	
	Applies To: Grimaldi, Esq., Marc A (Attorney) on behalf of Desjardins, Marybeth A. (Defendant)		
07/09/2024	Certificate of Service	34	
08/09/2024	Wife's Motion For Attorney Fees Pendente Lite & to Continue Pretrial Conference	35	
08/09/2024	Affidavit	36	
08/12/2024	Motion For Instruction and/or Clarification	37	
09/05/2024	Marybeth A. Desjardins's Pretrial Memorandum	38	
09/05/2024	Steven J. Desjardins's Pretrial Memorandum	39	
09/06/2024	Opposition to Defendant's Motion for instruction and/or clarification	40	
09/06/2024	Opposition to Defendant's motion for attorney fees	41	
09/06/2024	Certificate of Service	42	
09/09/2024	Case Taken Under Advisement: Motion scheduled on: 09/09/2024 09:00 AM Has been: Under Advisement Hon. Manisha H. Bhatt, Presiding		
09/09/2024	Financial Statement	43	
	Applies To: Desjardins, Marybeth A. (Defendant)		
09/09/2024	Financial Statement	44	
	Applies To: Desjardins, Steven J. (Plaintiff)		
09/09/2024	Opposition to Motion for Instructions and/or Clarification	45	
09/09/2024	Opposition to Motion for Attorney's Fees	46	
10/15/2024	Order dated 10/02/2024, on Motion File Reference #18	47	
10/15/2024	Motion For Attorney's Fees DENIED on 10/02/2024 File Reference # 35	48	
10/15/2024	Order dated 10/02/2024, on Motion File Reference #37	49	
11/20/2024	Event Resulted: Status Conference scheduled on: 11/20/2024 09:00 AM Has been: Order Issued Hon. Manisha H. Bhatt, Presiding		
11/20/2024	Financial Statement	50	
	Applies To: Desjardins, Steven J. (Plaintiff)		
11/20/2024	Financial Statement	51	
	Applies To: Desjardins, Marybeth A. (Defendant)		
11/20/2024	Status Memorandum	52	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/20/2024	Steven J. Desjardins's Pretrial Memorandum	53	
12/02/2024	Order dated 11/22/2024, Scheduling Trial	54	
12/02/2024	Motion To Quash Subpoena	55	
12/02/2024	Certificate of Service	56	
12/03/2024	Motion To to Reconsider (Rule 59(e)) wof	57	
12/06/2024	Corrected Motion To Reconsider wof	58	
12/16/2024	Opposition to Corrected Motion to Reconsider	59	
12/16/2024	Certificate of Service	60	
12/23/2024	Motion To Reconsider DENIED on 12/18/2024 File Reference # 57	61	
01/08/2025	Defendant-Wife's Ominbus Motion In Limine	62	
01/15/2025	Financial Statement	63	
	Applies To: Desjardins, Steven J. (Plaintiff)		
01/15/2025	Financial Statement	65	
	Applies To: Desjardins, Marybeth A. (Defendant)		
01/15/2025	Joint Statement of Uncontested Facts	66	
01/15/2025	Event Resulted: Trial Conference scheduled on: 01/15/2025 02:00 PM Has been: Order Issued Hon. Manisha H. Bhatt, Presiding		
01/15/2025	Event Resulted: Motion scheduled on: 01/15/2025 02:00 PM Has been: Order Issued Hon. Manisha H. Bhatt, Presiding		
01/21/2025	Motion To Quash wof	64	
01/22/2025	Order dated 01/15/2025, on Motion File Reference #62	67	
01/29/2025	Case Taken Under Advisement: Trial 1 Day scheduled on: 01/29/2025 10:00 AM Has been: Under Advisement Hon. Manisha H. Bhatt, Presiding		
01/30/2025	Case Taken Under Advisement: Trial 1 Day scheduled on: 01/30/2025 11:00 AM Has been: Under Advisement Hon. Manisha H. Bhatt, Presiding		
02/20/2025	Proposed Order		
02/20/2025	Proposed Findings		
02/20/2025	Plaintiff's Motion For costs and counsel fees	68	
	Applies To: Desjardins, Steven J. (Plaintiff)		
02/20/2025	Affidavit In support of plaintiff's motion for attorney's fees and costs	69	
	Applies To: Desjardins, Steven J. (Plaintiff)		
02/20/2025	Affidavit Of Counsel Fees	70	
02/20/2025	Certificate of Service	71	
02/20/2025	defendant's Proposed Findings of fact		
	Applies To: Desjardins, Marybeth A. (Defendant)		



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
02/20/2025	wife's Proposed judgement after bifurcated trial Applies To: Desjardins, Marybeth A. (Defendant)		 Image
02/20/2025	Proposed Order		 Image
02/20/2025	Proposed Order		 Image
02/20/2025	Opposition to motion to reopen the evidence Applies To: Desjardins, Steven J. (Plaintiff)	72	 Image
02/20/2025	plaintiff's Motion To Strike the defendant's post-trial submissions Applies To: Desjardins, Steven J. (Plaintiff)	73	 Image
02/20/2025	Certificate of Service	74	 Image
02/21/2025	Opposition to Motion to Strike Applies To: Desjardins, Marybeth A. (Defendant)	75	 Image
02/21/2025	Verified Motion To Reopen the Evidence wof	77	 Image
02/21/2025	Wife's Verified Motion For Attorney Fees and Costs Incurred in Bifurcated Proceedings & Request for Hearing wof	76	 Image
03/13/2025	Opposition to the Defendant's Motion for Attorney Fees	78	 Image
03/13/2025	Motion To Remove Hearing	79	 Image
03/13/2025	Certificate of Service	80	 Image
04/10/2025	Pre-Trial Notice and Order Sent Judge: Bhatt, Hon. Manisha H. Event: Pretrial Conference Domestic and Equity Date: 08/26/2025 Time: 10:00 AM	81	 Image
04/11/2025	Motion To Reopen the Evidence DENIED on 04/10/2025 File Reference # 77 Judge: Bhatt, Hon. Manisha H.	82	 Image
04/11/2025	Motion To Remove Hearing from the Courts List ALLOWED on 04/10/2025 File Reference # 79 Judge: Bhatt, Hon. Manisha H.	83	 Image
04/11/2025	Order dated 04/10/2025, #68 Judge: Bhatt, Hon. Manisha H.	84	 Image
04/11/2025	Motion To Strike DENIED on 04/10/2025 File Reference # 73 Judge: Bhatt, Hon. Manisha H.	85	 Image
04/11/2025	Motion For Attorney Fees DENIED on 04/10/2025 File Reference # 76 Judge: Bhatt, Hon. Manisha H.	86	 Image
04/11/2025	Findings of Fact Procedural History, and Rationale Dated 04/10/2025 Judge: Bhatt, Hon. Manisha H.	87	 Image
04/11/2025	Bifurcated Judgment Dated 04/10/2025 Judge: Bhatt, Hon. Manisha H.	88	 Image
04/22/2025	Motion For New Trial or to Alter or Amend the Bifurcated Judgment	89	 Image
04/22/2025	Statement of Facts and Law in Support of Motion for New Trial	90	 Image
04/25/2025	Opposition to Motion for New Trial or to Alter or Amend the Bifurcated Judgment	91	 Image
04/25/2025	Certificate of Service	92	 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/13/2025	Order dated 05/05/2025, on Motion File Reference #89	93	
05/13/2025	Findings of Fact and Rationale Amended 05/05/2025 nunc pro tunc 04/10/2025	94	
05/13/2025	Motion To Prohibit Defendants Counsel from Publishing Extrajudicial Statements Pursuant to Supreme Judicial Courts Rule 3:07: Rules of Professional Conduct	95	
05/19/2025	Notice of Hearing	96	
05/21/2025	Wife's Memorandum of Law	97	
	Applies To: Desjardins, Marybeth A. (Defendant)		
05/22/2025	Action on Appeal as follows: Notice of Appeal by	98	
	Applies To: Desjardins, Marybeth A. (Defendant)		
05/30/2025	Defendant's Notice Pursuant to Mass. R. APP. P 8(b)	99	
06/03/2025	Action on Appeal as follows: Notice of Assembly of Record	100	
06/18/2025	Notice of change of address	101	
	Applies To: Ryder, Esq., Kathleen P (Attorney) on behalf of Desjardins, Steven J. (Plaintiff)		
06/24/2025	Steven Desjardin's verified Motion For exclusive use and occupancy of marital home	102	
06/24/2025	Steven Desjardin's Verified Motion For further bifurcation	103	
06/24/2025	Steven Desjardin's Motion For speedy hearing or short order of notice	104	
06/24/2025	Notice of Hearing	105	
06/26/2025	Affidavit In Support of Motion for Exclusive Use and Occupancy of the Marital Home	106	
			

### Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Active		Bhatt, Hon. Manisha H.

Commonwealth of Massachusetts  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION

STEVEN J. DESJARDINS

PLAINTIFF

v.

MARYBETH A. DESJARDINS,  
DEFENDANT

DOCKET NO.: MI24D-0080DR

DEFENDANT'S NOTICE OF APPEAL

Notice is hereby given pursuant to Mass. R.A.P. 3 and 4 that Defendant, MaryBeth Desjardins, in the above-entitled matter, hereby appeals to the Appeals Court from the entry of the Bifurcated Judgment dated April 10, 2025 upholding enforcement of prenuptial agreement, Findings of Fact and Rationale entered therewith, the denial of Defendant's Motion to Reopen Evidence on April 10, 2025, the denial of Defendant's Motion for Attorneys Fees and Costs on April 10, 2025, the denial of Defendant's Motion for Attorney's Fees and Costs Pendente Lite dated August 9, 2025 (original and on reconsideration), evidentiary rulings made during the trial indicating bias in Plaintiff's favor, the Order dated May 5, 2025 (docketed May 13, 2025) to the extent it denies Defendant's Motion for New Trial or to Alter/Amend the Bifurcated Judgment and Findings Pursuant to Rules 59(a) and 59(e), and the Court's May 5, 2025 Amended Procedural History, Findings of Fact And Rationale.

Respectfully submitted,  
MARYBETH DESJARDINS,  
By her attorney,

/s/ *Kevin M. Corr*

Kevin M. Corr, BBO#561202  
Kates & Barlow, P.C.  
21 Custom House Street  
Boston, MA 02110  
(617) 412-4200  
[kcorr@katesbarlow.com](mailto:kcorr@katesbarlow.com)

Dated: May 21, 2025

FILED

MAY 22 2025 AG

Commonwealth of Massachusetts  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION

DOCKET NO. MI24D0080DR

STEVEN J. DESJARDINS,  
PLAINTIFF,

v.

MARYBETH A. DESJARDINS,  
DEFENDANT.

Middlesex, SS. 10/2/24 048  
The Above Motion is Hereby  
Allowed Denied without prejudice  
Manisha H. Bhatt motion may be  
Justice of Probate renewed at  
the next  
hearing on  
the matter.  
a status  
conference  
on  
this matter  
is schedule  
for  
Wednesday  
November  
20, 2024  
at  
9:00am

**WIFE'S MOTION FOR ATTORNEY'S FEES PENDENTE LITE  
& TO CONTINUE PRETRIAL CONFERENCE**

NOW COMES the Defendant/Plaintiff-in-Counterclaim, Marybeth A. Desjardins ("MaryBeth"), and respectfully moves this Honorable Court, pursuant to G.L. C. 208, §§17 and 38, and Supplemental Probate Court Rule 406, for an initial award of attorney's fees in the sum of Seventy-five thousand (\$75,000.00) Dollars to be applied toward legal fees and expenses Pendente Lite. As grounds for the within Motion, MaryBeth refers to and incorporates herein the Affidavit of her Counsel filed herewith, and further states as follows:

1. Plaintiff/Defendant-in-Counterclaim, Steven J. Desjardins ("Steven") filed his Complaint for Divorce on January 11, 2024. MaryBeth filed an Answer and a Counterclaim to Steven's Complaint for Divorce on March 20, 2024.
2. MaryBeth's prior counsel withdrew his representation of her only recently, leaving successor counsel, the undersigned, to assimilate MaryBeth's entire case file and attempt to pick up where he left off and save MaryBeth from being prejudiced by the disappearance of the attorney who filed the counter-case.
3. In contrast, when David Cherny, Esq., filed his earlier appearance for Steven, Attorney Kathleen Ryder, the lawyer who represented Steven as early as 2019 in relation to this marriage, stayed on as co-counsel despite the certainty that she, Attorney Ryder, will be a witness in this case.<sup>1</sup>

<sup>1</sup> Attorney Ryder's recognition that she is a potential witness in the case is the likely explanation for the addition of David Cherny to his team.

Commonwealth of Massachusetts  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION

DOCKET NO. MI24D0080DR

STEVEN J. DESJARDINS,  
PLAINTIFF,

v.

MARYBETH A. DESJARDINS,  
DEFENDANT.

Middlesex, SS 12/18/24  
The Above Motion is Hereby  
Allowed Denied

Manisha H. Bhatt  
Justice of Probate

after review  
of  
both  
parties  
submission

**MOTION TO RECONSIDER HON. MANISHA BHATT'S "WITHOUT PREJUDICE"  
DENIAL OF DEFENDANT'S MOTION FOR ATTORNEY'S FEES PENDENTE LITE  
(Order dated October 2, 2024 (Bhatt, J., Ref. ## 35 and 48) PURSUANT TO RULE 59(e)**

With no explanation for the ruling and no accompanying memorandum of decision, Judge Bhatt denied "without prejudice" (Ref. #48) Defendant, Marybeth A. Desjardins' ("MaryBeth") **Motion for Attorney's Fees *Pendente Lite***, filed Aug. 9<sup>th</sup> (Ref. #35), heard Sept. 9<sup>th</sup>. Even though Judge Bhatt's endorsement on MaryBeth's Motion invited a renewal of the Motion at the evidentiary hearing that was to be scheduled at the Status Conference on Nov. 20, 2024, MaryBeth's counsel was reprimanded for renewing the Motion via MaryBeth's Status Memorandum filed for that hearing, and was instructed to file this motion for reconsideration.

Procedurally, MaryBeth's Motion is without defect and fully satisfies the requirements of Supplemental Probate Court Rule 406, i.e. it included MaryBeth's statement that she intends in good faith to defend herself in Steven's enforcement action, and it was accompanied by her counsel's certification that he believes MaryBeth's statement to be true. The mandatory nature of the language of Supplemental Rule 406 compels allowance of MaryBeth's Motion on this reconsideration request: "... *The Judge shall review the financial statements of the parties and other relevant evidence, including affidavits, and shall order an allowance, if appropriate, for counsel fees and necessary expenses.*"<sup>1</sup>

<sup>1</sup> MaryBeth's Motion, in addition to reliance upon Supplemental Probate Court Rule 406, was filed pursuant to G.L. C. 208, §§17 and 38.

FILED

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DEC 19 2024 H

Commonwealth of Massachusetts  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION

STEVEN J. DESJARDINS,  
PLAINTIFF,

v.

MARYBETH A. DESJARDINS,  
DEFENDANT.

DOCKET NO. MI24D0080DR

*se* Middlesex, SS 4/10/25

The Above Motion is Hereby

Allowed - Denied

*Manish H. Bhatt*

Justice of Probate

*see the  
Bifurcated  
Judgment  
in the  
issue of  
the validity  
of  
an antenuptial  
agreement  
of  
this  
date.*

**WIFE'S VERIFIED MOTION FOR ATTORNEY'S FEES AND COSTS  
INCURRED IN BIFURCATED PROCEEDINGS  
&  
REQUEST FOR HEARING**

NOW COMES the Defendant/Plaintiff-in-Counterclaim, Marybeth A. Desjardins ("MaryBeth"), and respectfully moves this Honorable Court, pursuant to M.G.L. c. 208, § 38 to pay all of her attorney's fees and costs in the amount of \$172,689.00 (fees) and \$7,760.13 (expenses), in accordance with the Proposed Judgment filed herewith. To the extent the Court wishes to conduct a hearing on the amount of fees and costs to be granted, a hearing date is hereby respectfully requested.

As grounds therefor, Wife states as follows:

1. Plaintiff, Steven J. Desjardins ("Steven") filed his Complaint for Divorce on January 11, 2024. MaryBeth filed an Answer and a Counterclaim to Steven's Complaint for Divorce on March 20, 2024.
2. The undersigned counsel became involved in the matter in July 2024, and has diligently represented MaryBeth, with the assistance of associates and staff, through the discovery phase of the case, through the pretrial conference phase of the case, and through the trial conference and trial phases of the case.
3. The undersigned counsel incorporates herein the itemized and detailed monthly billing invoices that have been issued to MaryBeth in connection with counsel's work on her behalf, which are shown at Attachment A.

**FILED**  
FEB 21 2024

*76*

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX, SS

DOCKET NO: 24D0080

STEVEN J. DESJARDINS  
PLAINTIFF/HUSBAND

V.

MARYBETH A. DESJARDINS  
DEFENDANT/WIFE

**BIFURCATED JUDGMENT**

*(On Complaint for Divorce filed on January 11, 2024 and Counterclaim for Divorce filed on March 20, 2024 on the Issue of Validity of Antenuptial Agreement)*

The Plaintiff in this matter, Steven J. Desjardins (hereinafter referred to as “Husband”) filed a Complaint for Divorce on or about January 11, 2024 in which he alleges that the parties’ marriage was irretrievably broken down. In his Complaint, Husband sought to enforce the parties’ antenuptial<sup>1</sup> agreement executed on May 3, 2019. The Defendant in this matter, MaryBeth A. Desjardins (hereinafter the “Wife”) filed an Answer and a Counterclaim for Divorce also alleging that the parties’ marriage had suffered an irretrievable breakdown and requesting, among other things; spousal support, a division of assets and liabilities and that the Court not enforce the parties’ antenuptial agreement executed on May 3, 2019.

This matter came before the Court (Bhatt, J.) on January 29 and January 30, 2025 for a bifurcated trial on the issue of the validity and enforcement of the parties’ antenuptial agreement. Attorneys David E. Cherny and Hannah K. DelCervo of Atwood and Cherny represented Husband. Attorney Kevin Corr of Kates and Barlow represented the Wife. A total of twenty (20) exhibits were admitted into evidence. The Court has taken judicial notice of the Court file. The contents of the Joint Statement of Uncontested Facts<sup>2</sup> are incorporated herein by reference to the extent it is consistent with the credible evidence presented at trial. The Court (Bhatt, J.) heard testimony from the Husband, the Wife and upon the stipulation of counsel on the second day of trial; further took into evidence the deposition transcripts of both Attorney Michael Fadden and Attorney Daniel Mansur, the parties prior counsel for the antenuptial agreement at issue. The Court permitted the parties to submit proposed findings, rationales, and judgments following trial.

---

<sup>1</sup> The terms ‘antenuptial’ and ‘prenuptial’ are used synonymously by the Court as both terms are defined as meaning ‘before marriage’. This Court and other courts refer to antenuptial agreements and prenuptial agreements to describe the same type of agreement that the parties entered into in this matter.

<sup>2</sup> The parties submitted a Joint Statement of Uncontested Facts to the Court on January 15, 2025 as well as on January 29, 2025. The Court notes that both submissions are identical and accordingly will reference them as “Joint Statement of Uncontested Facts”.

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After due consideration of the credible evidence and all reasonable inferences therefrom, it is hereby  
**ORDERED AND ADJUDGED:**

The Parties' antenuptial agreement executed on May 3, 2019 and May 6, 2019 is valid at the time of the execution and conscionable at the time of enforcement.

This matter is scheduled for a Pre-Trial Conference of August 26, 2025 at 10:00 a.m.

April 10, 2025

Manisha H. Bhatt  
Manisha H. Bhatt, Associate Justice  
Middlesex Probate and Family Court



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX, SS

DOCKET NO: 24D0080

STEVEN J. DESJARDINS  
PLAINTIFF/HUSBAND

V.

MARYBETH A. DESJARDINS  
DEFENDANT/WIFE

**AMENDED PROCEDURAL HISTORY, FINDINGS OF FACT AND RATIONALE**  
*(On the Bifurcated Issue of Validity of Antenuptial Agreement)*

The Plaintiff in this matter, Steven J. Desjardins (hereinafter referred to as “Husband”) filed a Complaint for Divorce on or about January 11, 2024 in which he alleges that the parties’ marriage was irretrievably broken down. In his Complaint, Husband sought to enforce the parties’ antenuptial<sup>1</sup> agreement executed on May 3, 2019. The Defendant in this matter, MaryBeth A. Desjardins (hereinafter the “Wife”) filed an Answer and a Counterclaim for Divorce also alleging that the parties’ marriage had suffered an irretrievable breakdown and requesting, among other things; spousal support, a division of assets and liabilities and that the Court not enforce the parties’ antenuptial agreement executed on May 3, 2019.

This matter came before the Court (Bhatt, J.) on January 29 and January 30, 2025 for a bifurcated trial on the issue of the validity and enforcement of the parties’ antenuptial agreement. Attorneys David E. Cherny and Hannah K. DelCervo of Atwood and Cherny represented Husband. Attorney Kevin Corr of Kates and Barlow represented the Wife. A total of twenty (20) exhibits were admitted into evidence. The Court has taken judicial notice of the Court file. The contents of the Joint Statement of Uncontested Facts<sup>2</sup> are incorporated herein by reference to the extent it is consistent with the credible evidence presented at trial. The Court (Bhatt, J.) heard testimony from the Husband, the Wife and upon the stipulation of counsel on the second day of trial; further took into evidence the deposition transcripts of both Attorney Michael Fadden and Attorney Daniel Mansur, the parties prior counsel for the antenuptial agreement at issue. The Court permitted the parties to submit proposed findings, rationales, and judgments following trial.

---

<sup>1</sup> The terms ‘antenuptial’ and ‘prenuptial’ are used synonymously by the Court as both terms are defined as meaning ‘before marriage’. This Court and other courts refer to antenuptial agreements and prenuptial agreements to describe the same type of agreement that the parties entered into in this matter.

<sup>2</sup> The parties submitted a Joint Statement of Uncontested Facts to the Court on January 15, 2025 as well as on January 29, 2025. The Court notes that both submissions are identical and accordingly will reference them as “Joint Statement of Uncontested Facts”.

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MAY 05 2025 VP

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After due consideration of all of the credible evidence and of all inferences which could reasonably be drawn therefrom, the Court enters the following Procedural History, Findings of Fact and Rationale.

**I. RELEVANT PROCEDURAL HISTORY**

1. On January 11, 2024, Husband filed a Complaint for Divorce pursuant to M.G.L. Ch. 208 s. 1B, in the Middlesex County Probate and Family Court bearing Docket No.: MI24D0080DR. Later that same day on January 11, 2024, Husband filed his Amended Complaint for Divorce bearing the same Docket Number.
2. On March 1, 2024, Wife was served with the Summons and Complaint for Divorce.
3. On March 11, 2024, the first Pre-Trial Notice and Order was sent by this Court to the parties for hearing to be held on July 16, 2024 before the Honorable Judge Jennifer M. Allen.
4. On March 20, 2024, Wife filed her Answer and Counterclaim in response to Husband's Amended Complaint for Divorce.
5. In addition, on March 22, 2024, Wife filed her Request for Financial Statement of the Husband.
6. On March 26, 2024, Husband filed his Answer to Wife's Counterclaim for Divorce.
7. On April 8, 2024, Husband filed a Motion to Bifurcate the Divorce Action and for an Evidentiary Hearing on the Validity of the Prenuptial Agreement of the Parties, supported by both an Affidavit of Husband and Memorandum of Law. Husband's Motion to Bifurcate sought that:
  - a. Pursuant to Mass. Dom. Rel. P. Rule 42(b), this Court bifurcate the divorce matter from determining the validity of the parties' Prenuptial Agreement;
  - b. An evidentiary hearing be set to determine the validity and enforceability of the parties' Prenuptial Agreement; and
  - c. Whether Wife is liable for her breach of the parties' Prenuptial Agreement.
8. On May 3, 2024, Wife filed her Motion to Compel Husband's Production of a Rule 401 Financial Statement.
9. On May 8, 2024, Wife filed her Opposition to the Husband's Motion to Bifurcate.
10. On May 13, 2024, the parties filed a Joint Motion to Continue Husband's Motion to Bifurcate and the Pre-Trial Conference.
11. Also on May 13, 2024, this Court (Yee, J.) allowed the parties' Joint Motion to Continue and rescheduled the hearing on Husband's Motion to Bifurcate to June 10, 2024 and the Pre-Trial Conference to September 10, 2024. The second Pre-Trial Notice and Order was subsequently sent by this Court for hearing to be held on September 10, 2024.
12. On May 31, 2024, Attorney David E. Cherny file his Notice of Appearance for Husband.
13. After hearing on June 10, 2024, this Court (Bhatt, J.), allowed Husband's Motion to Bifurcate. (Docket #26)

14. On June 11, 2024, the third Pre-Trial Notice and Order was sent by this Court to the parties for hearing to be held on September 10, 2024 before the Honorable Judge Manisha H. Bhatt.
15. On June 24, 2024, the parties entered into a Stipulation to appoint a discovery master in this matter. The parties agreed to appoint Attorney Peter Kajko as discovery master.
16. Additionally on June 24, 2024, the parties filed their Joint Motion to Approve Stipulation which was then allowed by this Court (Bhatt, J.) on July 1, 2024.
17. On July 1, 2024, this Court (Bhatt, J.) issued a Temporary/Scheduling Order scheduling this matter for hearing for Pre-Trial Conference on September 10, 2024, and ordering that the parties comply with the Stipulation dated June 24, 2024.
18. Further on July 1, 2024, this Court (Bhatt, J.) entered an Order Appointing Special Master for Discovery, appointing Attorney Peter Kajko as discovery master.
19. On July 8, 2024, Attorney Kevin Corr filed his Notice of Appearance for Wife.
20. On August 9, 2024, Wife filed her Motion for Attorney's Fees Pendente Lite and to Continue Pre-Trial Conference, accompanied by a supporting Affidavit of Attorney Kevin Corr. Wife's August 9, 2024 Motion sought that Husband remit to Wife's counsel an initial award of \$75,000 for legal fees and costs.
21. On August 12, 2024, Wife filed her Motion for Instructions and/or Clarification on Order dated June 10, 2024 seeking that this Court instruct counsel and the parties on the scope of the issues to be presented at the Pre-Trial Conference.
22. On September 5, 2024, both Husband and Wife filed their respective Pre-Trial Memorandums.
23. After hearing on September 9, 2024 on Wife's Motions, this Court (Bhatt, J.) on October 2, 2024, denied Wife's Motion for Attorney's Fees Pendente Lite, noting that this matter was next scheduled for a status conference on November 20, 2024.
24. Additionally on October 2, 2024, this Court (Bhatt, J.) entered an Order on Wife's Motion to Compel Husband's Production of a Rule 401 Financial Statement stating that, "no action taken as the Court notes that parties have exchanged financial statements."
25. Further on October 2, 2024, this Court (Bhatt, J.) entered an Order on Wife's Motion for Instructions and/or Clarification on Order dated June 10, 2024 stating in pertinent part that, "an evidentiary hearing on all matters pertaining to the antenuptial agreement to be scheduled at the status conference on November 20, 2024 at 9:00am."
26. On November 20, 2024, Wife filed her Status Memorandum and Husband renewed his Pre-Trial Memoranda at time of hearing.
27. On November 22, 2024, this Court (Bhatt, J.) entered an Order Scheduling Trial which provided in pertinent part that:
  - a. A Trial Conference shall be held on January 15, 2025;
  - b. Discovery is completed (other than supplementation of discovery previously obtained);

- c. The parties must exchange exhibit lists and exhibits by December 30, 2024;
  - d. This matter is scheduled for two days of trial on January 29<sup>th</sup>, 2025 and January 30<sup>th</sup>, 2025.
28. On December 3, 2024, Wife filed her Motion to Reconsider this Court (Bhatt, J.)'s Order Denying her Motion for Attorney Fees Pendente Lite. Subsequently on December 6, 2024, Wife filed her Corrected Motion to Reconsider this Court (Bhatt, J.)'s Order Denying her Motion for Attorney Fees Pendente Lite.
29. On December 16, 2024, Husband filed his Opposition to Wife's Motion to Reconsider stating in pertinent part that:
- a. Wife's Motion is defective on its face as it ignores proper procedure pursuant to Mass. Dom. Rel. P. Rule 59(e);
  - b. Fees may be awarded, if appropriate, and there is no requirement pursuant to the rules that the court must enter written findings to the contrary; and
  - c. Wife's Motion to Reconsider presents no new arguments, and simply expresses Wife's dissatisfaction with this Court's order.
30. Without hearing, on December 18, 2024, this Court (Bhatt, J.) denied Wife's Motion to Reconsider "after review of the parties' submissions." (Docket #61)
31. On January 8, 2025, Wife filed her "Omnibus Motion in Limine" seeking that this Court declare certain witnesses as hostile witnesses and to admit certain pieces of evidence prior to moving to admit them at time of trial.
32. On January 15, 2025, at the time of the Trial Conference, the parties executed and jointly filed their Joint Statement of Uncontested Facts.
33. Additionally on January 15, 2025, the parties each filed their respective trial financial statements with the Court.
34. After hearing on January 15, 2025, this Court (Bhatt, J.) entered an Order on Wife's Omnibus Motion in Limine stating in pertinent part that:
- a. "After hearing, paragraph 3 of this motion is allowed. Paragraphs 1, 2, 4, and 5 are denied without prejudice."
  - b. Paragraph 3 states: "Plaintiff, Steven Desjardins shall be the first party to put in his case-in-chief."
- (Docket #67)
35. On January 21, 2025, third-party witness Keri Caggiano filed her Motion to Quash Trial Subpoena Duces Tecum.

## **II. FINDINGS OF FACT**

- 1. The parties were married on May 25, 2019 in New Castle, New Hampshire.
- 2. There are no children born of this marriage.

3. Wife resides at 21 Red Gate Road, Tyngsborough, Massachusetts 01879.
4. Husband resides at 17 Campbell Road, Bedford, New Hampshire, 03110.
5. Prior to the parties' marriage, they executed a Prenuptial Agreement.
6. Husband signed the Prenuptial Agreement on May 3, 2019, and Wife signed the Prenuptial Agreement on May 6, 2019.
7. This is the second marriage for each party.
8. Husband was born in October, 1969 and is fifty-five (55) years old as of the date of trial.
9. Wife was born in October, 1971 and is fifty-three (53) years old as of the date of trial.
10. Husband is self-employed, currently working in real estate development for Desjardins, LLC.
11. Wife has been retired from the Middlesex County Retirement System since 2019, but is currently self-employed, currently working part time for her own cleaning services business.

***Relationship of the Parties Prior to Executing Prenuptial Agreement***

12. The parties met at a Goo Goo Dolls concert in New Hampshire on or about 2013 and started dating soon thereafter. [Trial Testimony Day 1]
13. This is the second marriage of the parties. [Joint Statement of Uncontested Facts]
14. At the time the parties met, Husband was going through a divorce from his first wife. [Trial Testimony Days 1, 2]
15. When the parties first met, they exchanged phone numbers. They did not exchange email addresses. Husband credibly testified that he does not use email. [Trial Testimony Day 1]
16. At the time the parties met, Wife was employed at the Middlesex County Retirement System (hereinafter "MCRS"). Husband was self-employed at DesJardins LLC. [Trial Testimony Days 1 and 2]
17. At the time the parties began dating in 2013, Wife lived in Dracut, MA with her three sons from her prior marriage, Nicholas (born on August 22, 2005), Keston (born on July 6, 2009) and Rylan (born on August 4, 2010). Husband resided at 21 Red Gate Rd. (Hereinafter "Red Gate") Tyngsboro, MA.
18. At some point after the parties began dating in 2013, Red Gate burned down. Husband stayed for some time at Wife's residence in Dracut.
19. Thereafter in 2013, the Husband secured a home in Wyndham, NH to reside while the Husband constructed a new home on the Red Gate property. Wife and her three children moved into Husband's Wyndham, NH residence. Husband paid for all of the expenses associated with the Wyndham, NH residence. [Trial Testimony Day 1]
20. On or about 2015, the construction at Red Gate finished and the parties moved to Red Gate together, along with Wife's three sons from her prior marriage. [Trial Testimony Days 1 and 2]

21. Wife currently resides at Red Gate with her three sons from her prior marriage, one of Husband's children from his prior marriage and Husband's grandchild. [Trial Testimony Days 1, 2]
22. As of date of trial, Wife has not paid rent for nor financially contributed towards the expenses of Red Gate. [Trial Testimony Days 1 and 2] [Wife's Financial Statement, Exhibit #7, FN 7]
23. The parties acknowledged that neither has any ownership interest in the Red Gate property. [Exhibit #1, pg. 5, para. 2] Husband's sister owns the property with her husband. Husband's company built the house on the Red Gate property land, paid for by Husband's sister and her husband. Husband now pays rent to his sister for use and occupancy of the Red Gate property. [Trial Testimony Day 1] [Wife's Financial Statement, Exhibit #7] [Husband's Financial Statement, Exhibit#6]
24. Husband proposed to Wife in January 2017. Wife accepted the proposal, and the two were then engaged. [Trial Testimony Day 1]
25. At the time of the parties' engagement, Wife was earning \$66,000 per year at MCRS.
26. On February 4, 2019 (3:57 p.m.), Wife sent an email to her former colleague at the MCRS, Leslie Hyder. [Exhibit # 19] The email stated, "Hi Leslie – Can you do me a favor and do an estimate to retire as of my birthday this year and when I am 65. Can you also do Option C with Husband his date of birth is October 14, 1969 thank you."
27. The Court credits Wife's testimony that she sent this email on Husband's instructions to obtain reports that detailed and compared (a) Wife's retirement benefits on the assumption she began receiving benefits as of her birthday in October 2019 with (b) the benefits Wife would receive if she deferred taking the retirement benefits to normal retirement age (65) in October 2036. [Trial Testimony Day 2]
28. The Court credits Wife's testimony that Husband told her he wanted these reports so he could "do the numbers," meaning conduct an analysis of whether taking the retirement benefits early (2019) would be more valuable than deferring the flow of those benefits seventeen (17) more years to normal retirement age (2036). [Trial testimony Day 2]
29. The specific reports that Husband instructed Wife to obtain were emailed to Wife on February 4, 2019 (4:11 p.m.), and she gave the reports to Husband. [Trial testimony Day 2, Exhibit# 19]
30. The MCRS retirement benefit reports Husband had Wife obtained [Exhibit# 19] included the following material facts and data:
31. Wife's retirement at age 48 (in October 2019) under the Option C (joint and last survivor allowance) election would pay her (Member) a Monthly Retirement Allowance of \$1,188.18 (or \$14,258.16 annually);
32. Wife's retirement at age 65 (in October 2036) under the Option C election would pay her a Monthly Retirement Allowance of \$3,470.01 (or \$41,640.12 annually);
33. Wife's Option C election at age 48 (in October 2019) would provide Husband (Survivor) a Monthly Retirement Allowance of \$792.12 (or \$9,505.44 annually);

34. Wife's Option C election at age 48 (in October 2019) would provide Husband a Monthly Retirement Allowance of \$2,313.34 (or \$27,760.08 annually);
35. Wife was allowed to select only one beneficiary under Option C, and that one beneficiary had to be Wife's spouse, former spouse (if unmarried at time of election), child, parent, or sibling.
36. Election of Option C would reduce Wife's monthly allowance payments by 4.1% from the payments she would receive under an Option A election;
37. The designated Option C beneficiary cannot be changed once the retirement benefits become effective (begin to pay out).
38. Husband credibly testified that approximately six to seven months after the engagement, he raised the idea of a prenuptial agreement to Wife. [Trial Testimony Day 1]
39. Husband further credibly testified that it was his intent to have a prenuptial agreement with Wife because in the event of a divorce, he did not want to have the same experience as he did when he was divorcing his first spouse. [Trial Testimony Day 1]
40. Wife credibly testified that when Husband raised the idea of prenuptial agreement, she responded, "Okay". [Trial Testimony Day 2]
41. Wife credibly testified that she did not want to see Husband go through what he went through with his first wife and agreed to a prenuptial agreement. She further credibly testified that she understood what a prenuptial agreement was. [Trial Testimony Day 2]

#### *Drafting of and the Execution of the Prenuptial Agreement*

42. In 2018, Husband sought the advice and services of Attorney Michael Fadden for the Prenuptial Agreement. Husband asked Attorney Fadden to draft a prenuptial agreement for him and Wife. [Trial Testimony Day 1]
43. Prior to Attorney Fadden's involvement in the parties' Prenuptial Agreement, he had performed some real estate work for Husband in connection with his business. [Trial Testimony Day 1]
44. Husband does not personally use email as a method to communicate. Husband's sister, Ms. Keri Caggiano, works for Husband. Ms. Caggiano utilizes email to communicate (pay bills, send correspondence and documents) on Husband's behalf. [Trial Testimony Day 1]
45. It was reported to Attorney Fadden that Husband does not have private email. [Exhibit #13, pg. 31]
46. On June 18, 2018, Mrs. Caggiano emailed Attorney Fadden in follow up to a conversation Husband and Attorney Fadden had. [Exhibit #13, pg. 2]
47. On February 4, 2019, Mrs. Caggiano reported to Attorney Fadden that she gave all the info Attorney Fadden needed to Husband, and that she will have an updated asset list over to Attorney Fadden in a day or two. Ms. Caggiano further stated that Husband wants to believe that they will marry, if a divorce happens, maybe he will give her a little money to move out but otherwise she gets nothing. [Exhibit #13, pg. 2]

48. Many of the email correspondences between Mrs. Caggiano and Attorney Fadden are to relay messages between Attorney Fadden and Husband. [Exhibit #13]
49. On February 4, 2019 Wife sent an email to her former colleague at the MCRS, Leslie Cregg-Hyder:
- Hi Leslie,
- Can you do me a favor and do an estimate of to retire as of my birthday this year and when I am 65. Can you also do Option C with Husband his date of birth is October 14, 1969 thank you.
- [See Exhibit 19]
50. Husband told the Wife that she can choose any attorney she wished to represent her interests for the Prenuptial Agreement and that he would pay that attorney's fees.
51. Wife obtained Attorney Daniel J. Mansur's name from Leslie Cregg-Hyder [Exhibit 18 p. 153]
52. On or about March 19, 2019 Wife retained Attorney Daniel J. Mansur to represent her interests for the Prenuptial Agreement. [Exhibit #18, pg. 154]
53. Attorney Fadden and Attorney Mansur shared multiple drafts of the Prenuptial Agreement back and forth via email. [Exhibit #13, pg. 57]
54. Both Attorney Mansur and Attorney Fadden made changes to the Prenuptial Agreement, and both utilized "track changes" to evidence their edits. [Exhibit #13, pgs. 57; 62-81]
55. On March 15, 2019, Wife met with Attorney Mansur at his office. [Exhibit #18, pg. 63]
56. When Wife met with Attorney Mansur, he reviewed the proposed prenuptial agreement with her that came over from Attorney Fadden. [Exhibit #16, pg. 15, line 15; pg. 16, line 9]
57. On March 25, 2019, after discussing the Prenuptial Agreement with Husband, Wife emailed Attorney Mansur to include certain provisions in the Prenuptial Agreement, including that "I will be obtaining a life insurance policy for Husband that he will pay for monthly." [Exhibit #18, pg. 177]
58. On April 4, 2019, Wife and Attorney Mansur emailed back and forth regarding the revised Prenuptial Agreement. On this same day, Attorney Mansur reviewed an email from Wife on her approval of the revisions. [Exhibit #18, pgs. 63; 169-171]
59. On April 4, 2019, Wife sent an email to Attorney Mansur stating, "Good morning Dan, I have attached the changes to the pre nup". [Exhibit #18, pg. 172]
60. Later that day, after her email exchange with Attorney Mansur, Wife emailed him stating, "Hi Dan, Everything looks good". [Exhibit #18, pg. 169]
61. Attorney Fadden revised the Prenuptial Agreement and sent it back over to Attorney Mansur on April 16, 2019, after meeting with Husband. [See Exhibit #13, pg. 84]
62. On April 16, 2019, Attorney Mansur sent Wife an email listing out the revisions made to the Prenuptial Agreement and his comments on same. In this same communication to Wife,



Attorney Mansur invited Wife to call and discuss with him the changes to the Prenuptial Agreement. [Exhibit #18, pg. 164]

63. The Court credits Wife's testimony that she received an email from Attorney Mansur on April 16, 2019 that contained the revised Prenuptial agreement from Attorney Fadden and Attorney Mansur told her to call him if she had any questions. Wife does not remember if she called Attorney Mansur, but she does not think she had any questions [Exhibit 19, page 164, Trial Testimony Day 2]
64. In response, on April 30, 2019, Wife responded to Attorney Mansur's email with:  

Hi Dan,

Everything looks good. All items I have confirmed. The o my [sic] income I receive is a child's benefit from Social Security as payee for my children which is 546.00 a month

[Exhibit #18, pg. 164]
65. On April 30, 2019, Attorney Mansur responded to Attorney Fadden that "Attached please find Pre-Nup with all changes accepted. There were no further changes except for the income added on Wife's schedule." [Exhibit #13, pg. 107]
66. Attorney Mansur did not make any substantial edits to the Prenuptial Agreement after his email on April 30, 2019. [Exhibit #13, pg. 110]
67. The Court finds that the parties discussed the topic of a Prenuptial Agreement on multiple occasions from February 2019 until its execution in May 2019. The parties discussed the contents of the Pre-nuptial agreement with each other and requested their counsel to incorporate the changes that they discussed amongst themselves. [Exhibits 13 and 18]
68. The Court finds that the parties reviewed more than one draft of the Prenuptial Agreement and communicated their edits to the Prenuptial Agreement to their respective counsel prior to its execution.

#### *Terms and Provisions of the Prenuptial Agreement*

69. After multiple drafts of the Prenuptial Agreement had circulated between parties and counsel, Husband's counsel added a provision where Wife would receive a sum certain payment from Husband should the marriage be terminated by divorce, depending on how many years the parties were married. [Exhibit #1, pg. 9] This provision was added by Husband's counsel. [Trial Testimony Day 1]
70. The parties' Prenuptial Agreement defines separate property and what is to occur upon the death of either party or the termination of the marriage. Notably, "any asset owned individually by a party prior to the marriage (as set forth on Schedules A and B attached hereto) shall remain the separate property of such party, of his or her estate, to the exclusion of the other party." [Exhibit #1, pg. 5, para. 1]
71. The parties, within the Prenuptial Agreement, expressly waived any and all claims and rights they may have against the other for support of any kind. [Exhibit #1, pg. 9]
72. There were provisions added to the Prenuptial Agreement for the Wife's benefit should the parties' marriage terminate by way of divorce. [Trial Testimony Day 1]

- a. Any children's furniture used by Husband or Wife in the house shall be the property of Wife upon divorce. [Exhibit #1, pg. 6, para. 4]
- b. If the parties' marriage is terminated by way of divorce, Husband shall pay to Wife a lump sum of \$50,000 if the marriage is less than five (5) years; \$75,000 if the marriage is more than five (5) years but less than ten (10) years; and \$150,000 if the marriage is longer than ten (10) years. [Exhibit #1, pg. 9]
- c. Within five (5) days of Wife vacating the residence that the parties are residing in, Husband shall pay to her a sum of \$10,000. [Exhibit #1, pg. 10]

### ***The Execution of the Parties' Prenuptial Agreement***

- 73. Both Husband and Wife had independent legal counsel of their own choosing and the opportunity to consult with independent legal counsel of their own choosing prior to the execution of the Prenuptial Agreement. [Exhibit #1, pg. 3, para. D, 2; Trial Testimony Day 2]
- 74. The Court further credits the Wife's testimony there was not a question that she asked Attorney Mansur that he did not answer [Trial Testimony Day 2]
- 75. Attorney Mansur has been an attorney at law since 1987 after passing the Massachusetts state bar exam. [Exhibit #16, pg. 7, line 14]
- 76. The Court credits Attorney Mansur's testimony that it is his practice with any contract to review the entire document and any other documents he might have in his possession at that time. [Exhibit #16, pg. 17, line 12]
- 77. The Court credits Attorney Mansur's testimony that when he met with Wife, he would have "gone over the agreement with her page by page, explaining to her each of the paragraphs contained in the agreement." [Exhibit #16, pg. 18, line 21]
- 78. The Court credits Attorney Mansur's testimony as follows:  
 "[T]his is what I would do with all my client, I would go receive the contract, review the terms of the contract with them, I would make sure that there's going – she was going to be doing a full disclosure of all her assets and income and everything, and making sure that we obtained and requested the same from the other party to the agreement. I would also be going over with her, this is the terms of the agreement, you understand that you are giving up certain rights under, you know, Massachusetts law as a married person, and that there are other options here for you, you know, you don't have to sign this.

...

You know, there are the ability to negotiate those terms, depending what leverage we have to be able to do that, and how receptive the other party is to changing what they're willing to offer."

[Exhibit #16, pg. 19, lines 5-17, pg. 20 lines 5-9]

- 79. The Court finds that Attorney Mansur notarized Wife's signature on the Prenuptial Agreement, and further credits his testimony that it would have been his practice before

notarizing a client's signature, to ask the client if they are signing the document freely and voluntarily and whether they understand what they are signing. [Exhibit #16, pg. 37, line 13]

80. Attorney Mansur further executed a Certification of Counsel in the Prenuptial Agreement. [Exhibit #1, pg. 18]

d. "I, Daniel Mansur, Esquire hereby certify that I am an attorney duly licensed to practice law in the Commonwealth of Massachusetts, and have acted as counsel to Wife Sullivan Kotsonas in the preparation and negotiation of this Prenuptial Agreement. I hereby certify that I have explained to Ms. Kotsonas the legal implications of the terms and conditions of this Agreement, as well as the rights and obligations she is gaining and/or waiving by her execution of this Agreement. I hereby further certify that in my opinion, Ms. Kostonas fully understands the legal impact of this Agreement, and she has been fully advised as to all aspects related thereto.

[Exhibit #1, pg. 18]

81. The Court credits Attorney Mansur's testimony that Attorney Mansur's practice is to review what the law is with a client, what a client is entitled to under the law if they don't sign a prenuptial agreement; and what rights they would have and what rights they are waiving with a prenuptial agreement. [Exhibit #16, pg. 41, line 14]
82. The Court credits Attorney Mansur's testimony that had Wife not understood the Prenuptial Agreement, he would not have notarized the Agreement, nor would he have executed the certification of counsel. [Exhibit #16, pg. 43, line 5]
83. The Court credits Attorney Mansur's testimony that it was his practice to have the clients of an agreement initial each page of the agreement so that a page is not added in later and that the client read each page before signing. [Exhibit #16, pg. 44-45, line 21]
84. Attorney Mansur agreed that there has to be a full and complete disclosure before entering into an agreement, and that at the time of signing, Wife was in agreement with the terms of the Prenuptial Agreement including the Schedules. [Exhibit #16, pg. 58, line 9]
85. Husband credibly testified that he disclosed his assets and income on Schedule B of the Prenuptial agreement to the best of his ability. [Trial Testimony Day 1]
86. The Court finds that Wife acknowledged Husband's assets and income table (Schedule B, Exhibit #1 pg. 21 and Attachment A, pg. 22) attached to the Prenuptial Agreement and further finds that Wife represented that she read the schedule when she initialed the pages. [Exhibit #1, pgs. 21 and 22]
87. The Wife initialed each of the twenty-two (22) pages of the Prenuptial Agreement. The Husband initialed twenty-one (21) of the twenty-two (22) pages<sup>3</sup> of the Prenuptial

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<sup>3</sup> Page twenty-two (22) of the antenuptial agreement is entitled "Attachment A". Attachment A pertains to schedule B, which is located on page twenty-one (21) of the antenuptial agreement. Schedule B is the Husband's financial disclosure pertinent to the antenuptial agreement. Husband signed Schedule B on May 5, 2019 and initialed the bottom of page 21. Husband did not initial the Attachment A on page 22. Schedule B, Attachment A reflects that Husband disclosed total assets in the amount of \$7,504,330.55.

- Agreement. The Court credits that this signifies that both Husband and Wife read the page prior to putting their initials on that page. [Exhibit #1, Trial Testimony Days 1,2]
88. Both Husband and Wife signed the Prenuptial Agreement. [Exhibit #1, pg. 14]
89. The Court finds that the parties signed the Prenuptial agreement on separate dates and in separate locations. Husband signed the Prenuptial Agreement on May 3, 2019 at Atty. Fadden's office. Wife signed the Prenuptial Agreement on May 6, 2019 at Atty. Mansur's office.
90. The Court finds that neither Husband nor the Wife were coerced into signing the Prenuptial Agreement or under duress at the time they signed the Prenuptial Agreement.
91. At the time Wife signed the parties' Prenuptial Agreement on May 6, 2019, Wife was aware and apprised of Husband's financial status and income. [Exhibit #1, pg. 3, para. C, 2 and Exhibit#1 pg. 21-22]
92. At the time Husband signed the parties Prenuptial Agreement on May 3, 2019, Husband was aware and apprised of Wife's financial status and income. [Exhibit #1, pg. 3, para. C, 2 and Exhibit #1 pg. 19-20]
93. Husband's counsel, Attorney Fadden, and Wife's counsel, Attorney Mansur, each notarized the parties' respective signatures on the Prenuptial Agreement. [Exhibit #1, pg. 15]
94. Each party's counsel further completed and signed a "Certification of Counsel" in connection with the Prenuptial Agreement. [Exhibit #1, pgs. 17-18] Both Attorney Fadden on behalf of Husband and Attorney Mansur on behalf of Wife, certified that:
- e. They are both attorneys duly licensed to practice law in the Commonwealth of Massachusetts;
  - f. They have both acted as counsel to the parties in the preparation and negotiation of the Prenuptial Agreement;
  - g. That they have both explained the legal implications of the terms and conditions of the Prenuptial Agreement, as well as the rights and obligations each party is gaining and/or waiving by execution of this Prenuptial Agreement; and
  - h. That in each of their opinions, both Husband and Wife fully understand the legal impact of this Prenuptial Agreement and that Husband and Wife have each been duly advised as to all aspects related thereto.
- [Exhibit #1, pgs. 17-18]
95. The Court finds that Massachusetts Law governs the determination of the validity and subsequent enforcement of the parties' Antenuptial agreement.
96. The Court finds that Wife was afforded the time, opportunity to consider and independently verify if the Antenuptial Agreement was fair prior to signing it.
97. The Court finds that the Husband was afforded the time, opportunity to consider and independently verify if the Antenuptial was fair prior to signing it.

98. The Court finds that the parties discussed the topic of entering into a Pre-nuptial agreement in 2018, selected their respective attorneys to represent their interests in the Pre-nuptial agreement matter, discussed the terms and conditions of the Pre-nuptial agreement with one another and then communicated their wishes to their respective counsel during the timeframe of March 2019 to the end of April 2019, had full and fair disclosure of each other's financial circumstances when they each signed the Prenuptial agreement, entered into the Prenuptial Agreement having understood the terms and provisions of the Prenuptial Agreement, fully informed of the rights and obligations they were waiving and/or gaining.
99. The Court finds that upon a "first look", the parties' Prenuptial Agreement is fair and reasonable. Both Husband and Wife had independent counsel of their own choosing; both disclosed their assets and income; the agreement was free from fraud and coercion; and both entered into the agreement understanding the legal implications of the terms contained therein.

#### ***Marriage of the Parties***

100. The parties were married on May 25, 2019 at Wentworth by the Sea in New Castle, New Hampshire. [Joint Statement of Uncontested Facts, Trial Testimony Day 1, 2]
101. Wife financially contributed to the wedding by purchasing her wedding dress. [Trial Testimony Day 1]
102. Over two hundred (200) people attended the wedding, and Husband paid for the wedding in its entirety. [Trial Testimony Day 1]
103. During the marriage, Wife did not financially contribute to the living expenses, household expenses or the assets acquired during the marriage. [Trial Testimony Day 1]
104. The parties did not open any joint accounts together.
105. During the marriage, Husband maintained his employment at DesJardins, LLC. [Trial Testimony Day 1]. Husband does construction work for DeMoulas Market in addition to other clients. Husband also buys homes, fixes them up and sells those homes.
106. During the marriage, the Wife started a cleaning services business and earns income from same. Husband provided the van, vacuums and other tools and equipment that the Wife uses to operate her business. [Exhibit #7, Trial Testimony Day 2]
107. Wife did not purchase or maintain any separate real estate assets of her own during the marriage.

#### ***Enforcement of Prenuptial Agreement***

108. The parties contemplated Wife's retirement when negotiating and drafting the Prenuptial Agreement and Wife was retired from MCRS at the time parties signed the Prenuptial Agreement. [Exhibit #1, pg. 2, para. C, 1] The Court finds that Wife's retirement and subsequent income stream is not a new circumstance that arose during the marriage.
109. Wife is currently self-employed and performs cleaning services for mostly residential clients. [Exhibit #7, pg. 9, Trial Testimony Day 2]

110. Wife's income is comprised of her self-employment earnings of \$338.66 per week; pension benefits of \$314.60 per week; and disability benefits received on behalf of her children of \$207.69 per week. Pursuant to Wife's trial financial statement, she is earning \$860.95 per week. [See Exhibit #7, pg. 1]
111. Wife admitted at trial that she does not contribute to any of the household expenses where she currently resides at Red Gate Road. [Trial Testimony Day 2]
112. Wife paid for her own individual expenses during the marriage, and Husband paid for the household expenses such as rent, utilities, etc., [Trial Testimony Day 2]
113. Wife admitted at trial that when she and Husband traveled and went on vacations, Husband paid. [Trial Testimony Day 2] Husband paid for the parties' entertainment during the marriage. There was insufficient credible evidence as the exact amount that the Husband paid each year, accordingly the Court is unable to determine an exact value of the Husband's contributions to the parties' vacations and entertainment expenses.
114. The Court credits the veracity of the Wife's trial financial statement.
115. The Court credits the veracity of the Husband's trial financial statement.
116. Prior to the parties' marriage, Wife owned a home on Mill Street in Dracut. After she moved in with the Husband, Wife permitted her former Husband to reside in the Mill Street home. Wife ultimately signed over the title of the Mill Street home to the bank because of an outstanding water bill that she could not afford to pay. [Trial Testimony Day 2]
117. Additionally, although Wife did not officially retire until after the parties' married, Wife stopped working in August of 2018, prior to the parties' marriage. [Trial Testimony Days 1, 2]
118. The parties negotiated and included in the Prenuptial Agreement provisions for the benefit of Wife should the parties' marriage terminate by way of divorce, including lump sum payments to her. [Exhibit #1, pgs. 9-10]
119. Wife is the owner of her own cleaning business and earns an income from same. [Trial Testimony Day 2, Exhibit #7]
120. The Court finds that Wife is not stripped of her marital rights, is not left without sufficient support or maintenance, and she has appropriate employment. Wife is capable of earning an income through her business revenue and will continue to receive her pension benefits and disability payments on behalf of her children. Further, Wife will receive from Husband a lump sum payment of spousal support upon the termination of the marriage by divorce and an additional payment of \$10,000 when she vacates the Red Gate Road property.
121. The Court finds that upon a "second look", the parties' Prenuptial Agreement is fair and reasonable, and conscionable at time of enforcement.

***Breach***

122. Initiating or permitting the initiation of any judicial action to obtain a judgment or order which is inconsistent with the Prenuptial Agreement is a breach of the Prenuptial Agreement. [Exhibit #1, pgs. 10-11]
123. On March 20, 2024, Wife filed her Answer and Counterclaim to Husband's Amended Complaint for Divorce seeking in pertinent part that this Court:
- i. Order a suitable amount of alimony/support paid by Husband to Wife, and provide suitable health insurance;
  - j. Order a conveyance of real estate located at 17 Campbell Road, Bedford, Hillsborough County, New Hampshire;
  - k. Order a conveyance of real estate located at 1414 Lisbon Court, Champions Gate, Florida;
  - l. Order a conveyance of real estate located at 620 75<sup>th</sup> Bradenton, Manatee County, Florida; and
  - m. Order a conveyance of real estate located at 29 Woodland Street, Fryeburg, Oxford County, Maine.
- [Exhibit #14, Docket Entry #10]
124. Wife did not make any financial contributions to any of the properties listed in her filed Answer and Counterclaim, and further recognized at time of trial that these properties were defined as Husband's separate property in the Prenuptial Agreement. [Trial Testimony Day 2]
125. Wife's pleading filed on March 20, 2024 contradicts the terms of the parties' May 3, 2019 Prenuptial Agreement, and on cross-examination, Wife admitted that her prayer for relief in this pleading constituted a breach of the Prenuptial Agreement. [Trial Testimony Day 2]
126. Husband credibly testified that it is his understanding that if a breach occurs under the terms of the Prenuptial Agreement, then the breaching party would pay the other's legal fees. [Trial Testimony Day 1]
127. Pursuant to the Prenuptial Agreement, Wife is to maintain in full force and effect a life insurance policy with Prudential that has a death benefit of \$500,000, made payable to Husband upon her death. [Exhibit #1, pg. 10]
128. The Court credits Wife's testimony at trial that this policy is not in place, and at some point it lapsed. [Trial Testimony Day 2]
129. During the pendency of this litigation, Husband duly served upon Wife Request for Admissions. This pleading included ninety-eight (98) requests. Wife served her Response to First Request for Admissions, which was signed under the pains and penalties of perjury by Wife on August 5<sup>th</sup>, 2024. [Exhibit #20, pg. 18]
130. Of the ninety-eight (98) Request for Admissions that Husband served, Wife denied ninety-three (93) of them. [Exhibit #20, pgs. 2; 3; 13; 18]

131. Wife signed her Response to First Request for Admissions under the pains and penalties of perjury. [Exhibit #20, pg. 18]
132. On cross-examination, Wife admitted to the following Requests of which she previously denied under the pains and penalties of perjury:
- a. 2. Prior to your marriage, on May 3, 2019, you entered into a Prenuptial Agreement (hereinafter Prenuptial Agreement) with Steven;
  - b. 4. During the negotiations of the Prenuptial Agreement, you were represented by Attorney Daniel J. Mansur of Roark & Mansur Law, P.C.;
  - c. 5. During the negotiations of the Prenuptial Agreement, Steven was represented by Attorney Michael J. Fadden of Michael J. Fadden, P.C.;
  - d. 6. Prior to and during the negotiations of the Prenuptial Agreement, you had the opportunity to be represented by an attorney;
  - e. 7. Prior to and during the negotiations of the Prenuptial Agreement, you had the opportunity to ask questions you may have had regarding Steven's financial circumstances;
  - f. 9. You independently selected Attorney Daniel J. Mansur;
  - g. 10. You believed that Attorney Daniel J. Mansur to be an attorney well versed in Massachusetts domestic relations law throughout the term of Attorney Daniel J. Mansur's representation of you;
  - h. 11. The Prenuptial Agreement expressly details the rights and claims of the parties in the event of a divorce;
  - i. 13. You have not contributed tangibly or intangibly to the acquisition, preservation or appreciation in the values of Steven's assets as reflects on his Schedule B attached to the Prenuptial Agreement;
  - j. 15. At the time of the execution of the Prenuptial Agreement, Steven had invested a considerable amount of time, effort and expense into the acquisition, preservation and appreciating is his business and real estate;
  - k. 16. At the time of execution of the Prenuptial Agreement, you agreed that you wanted to ensure that the separately listed assets of Steven's remain as separate property under the terms of the Prenuptial Agreement;
  - l. 17. In connection with the Prenuptial Agreement, you waived any claims that you may have against Steven predicated upon you and Steven living together prior to the date of the marriage.
  - m. 18. The Prenuptial Agreement contained provisions for all rights, liabilities, and obligations that you and Steven had to each other which were predicated upon your marriage or based upon any other claims of the relationship between the two of you.
  - n. 19. You understood that when you signed the Prenuptial Agreement you were waiving claims to any separate property owned by Steven.



- o. 20. The term “separate property” is defined in the Prenuptial Agreement, Exhibit A, paragraphs 1-3.
- p. 22. You agreed that any asset owned individually by either you or Steven prior to the marriage would remain as separate property upon the termination of the marriage.
- q. 23. You agreed as to your and Steven’s respective property rights on separation or divorce.
- r. 25. In negotiation and execution of the Prenuptial Agreement, you had independent legal counsel of your choosing prior to your execution of the Agreement.
- s. 26. In negotiation and execution of the Prenuptial Agreement, you acknowledge that you have been fully informed of all rights and liabilities pertaining to the terms of the Agreement.
- t. 27. In connection with the negotiation and execution of the Prenuptial Agreement, you acknowledged you executed it only after consultation with your attorney.
- u. 28. In connection with the negotiation and execution of the Prenuptial Agreement, you acknowledge that you read the Agreement line by line and understood and assented to each of its provisions before signing.
- v. 29. In connection with the Prenuptial Agreement you acknowledge that you executed the Prenuptial Agreement of your own free will, without any fraud, undue influence or duress.

[Exhibit #20, Trial Testimony Day 2]

133. This Court finds that upon its finding the parties’ Prenuptial Agreement is fair and reasonable, and conscionable at the time of enforcement, that Wife breached the Prenuptial Agreement first when she filed her Answer and Counterclaim in this matter, and second when the life insurance policy for the benefit of the Husband lapsed without her efforts to maintain or reinstate same.

### III. RATIONALE

Antenuptial agreements are permitted in the Commonwealth of Massachusetts provided that they conform with statutory and common law requirements. G.L. c.209, §§25, 26; Osborne v. Osborne, 384 Mass. 591, 598-600 (1981). “For an antenuptial agreement to be enforceable, it must be both (1) fair and reasonable at the time of execution (the ‘first look’), and (2) conscionable at the time of enforcement (the ‘second look’).” Rudnick v. Rudnick, 102 Mass. App. Ct. 467, 470 (2023), quoting DeMatteo v. DeMatteo, 436 Mass. 18, 35-38 (2002). In determining validity, a judge must determine “whether (1) it contains a fair and reasonable provision as measured at the time of its execution for the party contesting the agreement; (2) the contesting party was fully informed of the other party’s worth prior to the agreement’s execution, or had, or should have had, independent knowledge of the other party’s worth; and (3) a waiver by the contesting party is set forth” DeMatteo, 436 Mass. at 26, quoting Rosenberg v. Lipnick, 377 Mass. 666, 672 (1979). “DeMatteo makes it clear that an agreement that strips a spouse of substantially all marital interests is contrary to public policy and is thus unenforceable.” Rudnick, 102 Mass. App. Ct. at 472. After careful

examination of the circumstances surrounding the drafting, negotiation, and execution of the antenuptial agreement, the Court finds that the agreement is, and was, valid at the time of execution.

In determining reasonableness, the Court may consider “the parties’ respective worth, the parties’ respective ages, the parties’ respective intelligence, literacy, and business acumen, and prior family ties or commitments.” *Rosenberg*, 377 Mass. at 672. An antenuptial agreement will not be found “fair and reasonable” if there is evidence that either party engaged in “fraud, failed to disclose assets fully and fairly, or in some other way took unfair advantage of the confidential and emotional relationship of the other when the agreement was executed.” *DeMatteo*, 436 Mass. at 31. “The burden is not on either party to inquire, but on each to inform, for it is only by requiring full disclosure of the amount, character, and value of the parties’ respective assets that courts can ensure intelligent waiver of the statutory rights involved.” *Rosenberg*, 377 Mass. at 670. Indeed, the Supreme Judicial Court has noted that “the parties to an antenuptial agreement generally do not deal at arm’s length. Rather they occupy a relationship of mutual trust and confidence and as such must exercise the highest degree of good faith, candor, and sincerity in all matters bearing on the proposed agreement.” *Id.*, at 670.

#### ***Fair and Reasonable at the Time of Execution***

In the present case, at the time that the parties signed the antenuptial agreement, Wife was forty-seven (47) years old, and Husband was forty-nine (49) years old. Both parties were divorced in Massachusetts; entering their second marriage and were, therefore, presumably familiar with the G. L. c. 208, §34 factors. The Husband, due to the experience he had in his first divorce, held a clear understanding what he required of an antenuptial agreement in order to proceed forward with the marriage. The Wife was aware of the Husband’s difficulties during his first divorce and did not want Husband to “go through that again”. Wife is a Summa Cum Laude graduate of Newbury College. Husband is a high school graduate. After the parties were engaged, Husband raised the idea of a Prenuptial Agreement, and Wife agreed to one. The Court credits the Wife’s testimony that when Husband asked her about a Prenuptial Agreement, she “said okay”. Husband’s recollection is that the parties became engaged in 2018 and that he broached the topic of the antenuptial agreement with Wife about five (5) to six (6) months after getting engaged. Wife’s recollection is that the parties became engaged in January 2017. While the parties’ recollection as to the date of their engagement differs, the Court finds that the issue of an antenuptial agreement was raised well in advance of their marriage that took place on May 25, 2019.

In June 2018, Husband contacted Attorney Fadden to represent his interests in the antenuptial agreement. The Court finds that Husband told the Wife that she could find her own attorney to represent her interest in the antenuptial agreement and that he would pay that attorney’s fees. Wife asked her friends and/or acquaintances for recommendations of attorneys to represent her interests in the antenuptial agreement. Wife received Attorney Mansur’s name. In February 2019, Wife first contacted Attorney Daniel Mansur to represent her interests in the antenuptial agreement. Thereafter, the parties and their respective counsel commenced the negotiations and the drafting of the antenuptial agreement. Both Attorney Fadden and Attorney Mansur produced their entire client file, both of which were admitted at time of trial as Exhibits #13 and #18, respectively.

While the Wife testified at trial that “there were no negotiations” about the antenuptial agreement, the Court finds that the email evidence admitted at trial demonstrated that the Husband

and the Wife discussed the antenuptial agreement between themselves and then communicated with their counsel about the changes that they wished to be incorporated into the antenuptial agreement. The email evidence admitted at trial further demonstrated that drafts of the agreement were exchanged between the parties and their counsel from March 2019 through the end of April 2019. Wife and Attorney Mansur emailed back and forth in 2019 with edits to the Prenuptial Agreement,<sup>1</sup> and on more than one occasion, Wife indicated that “Everything looks good.” Certain revisions and edits to the final Prenuptial Agreement benefitted Wife, including the lump sum payment schedule where Husband would pay a sum certain to Wife upon the dissolution of the marriage depending on the length of the marriage, and a further sum when Wife moves out of the residence. The Court finds that the foregoing constitutes negotiations of the antenuptial agreement.

The end result of the negotiations is a twenty-two (22) page document that contains full representations of fairness and understanding, as well as rights, obligations and waivers, and detailed asset disclosure statements. This Court heard testimony specifically from the Wife that she did ask questions of Attorney Mansur, and he answered all of them. This Court heard further testimony of the Wife that she told Attorney Mansur she understood the terms and provisions of the Prenuptial Agreement. Prior to signing the Prenuptial Agreement, Wife reviewed Husband’s asset and income disclosure (Schedule B) and was satisfied with same as indicated by her initial at the bottom of the page. The parties each signed the antenuptial agreement independently, three days apart from one another in their respective attorney’s offices. The Wife credibly testified at trial that she did sign the Antenuptial Agreement freely and voluntarily. No evidence was admitted at time of trial to demonstrate that Wife did not understand that terms of the Prenuptial Agreement. The Court did not hear any credible evidence that the Wife signed it under duress or coercion. Both Husband’s and Wife’s signatures were notarized, and both Attorney Fadden and Attorney Mansur executed Certifications of Counsel. Based upon the testimony and evidence presented at time of trial, this Court finds that Wife did understand the terms and provisions of the Prenuptial Agreement, and their legal implications, and she signed the Prenuptial Agreement knowingly and voluntarily. Given all of the circumstances, therefore, the Court finds that the antenuptial agreement signed by the parties was fair and reasonable at the time of execution and therefore valid and enforceable. As such, the Court shall now give a “second look” to the antenuptial agreement and analyze the antenuptial agreement in the context of the current divorce proceedings.

#### ***Fair and Reasonable Terms of the Prenuptial Agreement***

This is a less than five-year marriage, where Wife entered with little to no assets and Husband entered as an established businessman with significant individual assets. The parties negotiated and agreed that these assets would remain their separate property throughout and upon dissolution of the marriage. There are no children of the marriage. As part of the Prenuptial Agreement, Wife recognized that she was aware and apprised of Husband’s financial status and income, and further that any asset owned individually prior to the marriage will remain the separate property of that party. The parties hold no joint assets and neither made any efforts to obtain joint assets with the other during the marriage.

Wife will be “walking away” from this marriage to Husband with more than what she entered into the marriage with. Wife’s total assets upon the signing of the Prenuptial Agreement were \$123,832.27 which notably includes Wife’s pension fund. Wife will now retain that pension fund

asset and a receive a lump sum payment from the Husband as a result of provisions in the Prenuptial Agreement. Wife will not be stripped of any of the marital rights as a result of enforcing the Prenuptial Agreement and given her employment and receipt of cash from Husband, she will have more assets than prior to marrying Husband.

### ***Counsel Fees***

Significant counsel fees and costs have been incurred by both parties through ongoing litigation of this matter. This matter commenced in January 2024 when Husband filed his Complaint for Divorce. The Court finds that he entered into this Prenuptial Agreement with the intent to avoid litigation should his marriage to Wife terminate by way of divorce, given his experience with his first divorce. The Court also finds that Wife agreed to an antenuptial agreement because she did not want to see Husband “go through that again”. However, the litigation that has ensued has resulted in discovery requests such that the Court found the need to appoint a special master for discovery along with the instant litigation; a two-day bifurcated trial on the validity and subsequent enforcement of the antenuptial agreement. Because the Court finds that the antenuptial agreement is fair and reasonable at the time of its execution and fair and reasonable at the time of its enforcement, the Court finds that an award of Husband’s attorney’s fees and costs is warranted due to the breach provision under the terms of the Prenuptial Agreement.

Date: May 5, 2025  
*nunc pro tunc April 10, 2025*

Manisha H. Bhatt  
Manisha H. Bhatt, Associate Justice  
Middlesex Probate and Family Court

Commonwealth of Massachusetts  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION

DOCKET NO.: MI24D-0080DR

STEVEN J. DESJARDINS

PLAINTIFF

v.

MARYBETH A. DESJARDINS,  
DEFENDANT

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82  
VERIFIED MOTION TO  
REPOEN THE EVIDENCE  
Middlesex, SS 4/16/25

The Above Motion is Hereby

Allowed ☒ Denied

Manisha H. Bhatt

Justice of Probate

Denied.  
The content  
of this  
motion is  
not on point  
to the  
validity of  
the antenupt  
agreement.  
The Court  
therefore  
declined  
to  
re-open  
the  
evidence.

Defendant, Marybeth A. Desjardins (hereinafter the "MaryBeth"), respectfully requests this Honorable Court's order that re-opens the evidence in the bifurcated trial and allows MaryBeth's counsel the additional fifteen (15) minutes of trial the Court offered to grant at the start of Trial Day 2 (January 30, 2025). In support of this request, MaryBeth states the following reasons:

1. A significant issue in the bifurcated trial involves the Plaintiff, Steve Desjardin's ("Steve") breach of the provision in his own prenuptial that obligates him to pay all of the premiums due the \$500,000 Prudential Life Insurance policy that MaryBeth owned prior to the parties' marriage. [Uncontested Exh. 1, p. 10 – "Steve shall pay and be responsible for all premiums due and payable on the Prudential policy."]
2. Steve's failure to pay any premiums for December 2023 forward, after filing his divorce action in January 2024, cause the Prudential policy to lapse. [See Trial Day 2 Transcript pp. 69-71]
3. Steve admitted it was his obligation to pay all of the Prudential policy premiums in his own trial testimony. [See Trial Day 1 Transcript p. 133]
4. When asked on cross-examination to tell the Court on January 29, 2025, the status of the Prudential policy, Steve gave the following testimony [TR1 p. 135]:

Q: Okay. What is the status on that [Prudential] policy now, do you know?

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FEB 21 2024

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- A: **I have no idea.**
- Q: It doesn't exist anymore, does it?
- A: **They just recently cashed a check for 600 and something dollars.**
- Q: Sir, the policy is not in effect, is it?
- A: **I have no idea.**
- Q: It lapsed for non-payment of premiums, correct?
- A: **I don't know. They cashed our check the last time we seen it.**

5. After the trial concluded, however, Steve handed MaryBeth on **February 10, 2025**, a Prudential Life Insurance check dated **December 17, 2024**, payable to MaryBeth for \$678.44 along with a letter, stating, *"Thank you for your recent payment. However, we cannot accept it because this life insurance policy has ended. The attached check represents a return of your payment."* See Attachment A.
6. Upon further inquiry, Prudential provided MaryBeth with a copy of a letter that had been sent to 21 Red Gate Road, Tyngsborough, MA, on **December 18, 2024**, which she did not see until Steve handed her the check for \$678.44 on **February 10, 2025**. This letter stated, *"I am sorry to inform you that we have declined your application for reinstatement because of your prescription medication history and/or medical claims history given to us in a report from Milliman IntelliScript.... You will receive a check for \$678.44 under separate cover."* See Attachment B.
7. As he had done with all communications from Prudential, Steve and/or his sister intercepted the December 18, 2024, letter and the December 17, 2024, check from the mailbox at the marital home and concealed the same from MaryBeth prior to the January 29 and January 30, 2025, trial dates in this action.
8. When MaryBeth testified at trial that she was uncertain of the status of her application to have the Prudential policy reinstated, she was truthful.
9. When Steve testified at trial that he had "no idea" what the status of the policy was, he was intentionally testifying falsely. Steve knew from the intercepted correspondence

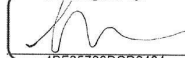
that the application for reinstatement of the policy had been denied and that the check he had sent for "600 and something dollars" had been refunded.

10. Steve's concealment from MaryBeth and from this Court of his knowledge that the Prudential policy reinstatement application was denied was an intentional scheme to avoid the Court becoming aware of the irreparable harm caused by his breach of his own prenuptial agreement terms that required his payment of all Prudential policy premiums.
11. MaryBeth, therefore, asks this Honorable Court to exercise its discretion to reopen the evidence and grant her an additional fifteen (15) minutes of trial time at which Steve's false testimony and the consequences of his breach of his own prenuptial agreement may be developed with truthful testimony.
12. Where the Court on January 30, 2015, already offered to grant MaryBeth's counsel this additional fifteen (15) minutes of trial time to examine Steve on other issues, neither party nor the Court would be prejudiced by allowance of this Motion.

VERIFICATION:

I, MaryBeth Desjardins, hereby certify under penalty of perjury that the facts stated in this Motion to Reopen Evidence are true and that the documents appended as Attachments A and B are true and genuine copies.

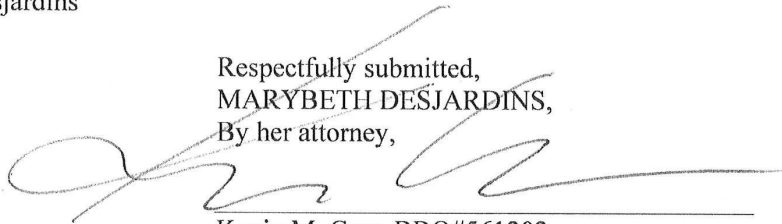
DocuSigned by:



MaryBeth Desjardins

February 19, 2025

Respectfully submitted,  
MARYBETH DESJARDINS,  
By her attorney,



Dated: February 19, 2025

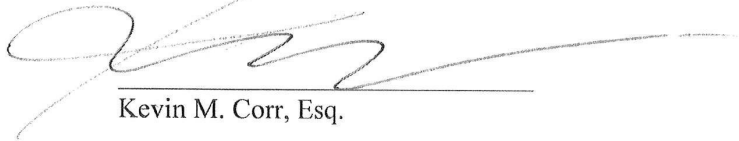
Kevin M. Corr, BBO#561202  
Kates & Barlow, P.C.  
21 Custom House Street  
Boston, MA 02110  
(617) 412-4200  
[kcorr@katesbarlow.com](mailto:kcorr@katesbarlow.com)

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I served a copy of the within **VERIFIED MOTION TO REOPEN THE EVIDENCE** on the Plaintiff, Steven Desjardins, *via e-mail delivery* to his counsel, David Edward Cherny, Atwood and Cherny PC, 177 Huntington Ave., 23<sup>rd</sup> Floor, Boston, MA, 02115, [dcherny@atwoodcherny.com](mailto:dcherny@atwoodcherny.com)


Dated: February 19, 2025



Kevin M. Corr, Esq.



"A"


**Prudential**  
 Pruco Life Insurance Company,  
 a Prudential Financial company  
 PO Box 7390, Philadelphia, PA 19176-7390  
[www.prudential.com](http://www.prudential.com)

PRIX BDE

L1080971541  
 MARYBETH DESJARDINS  
 21 RED GATE RD  
 TYNGSBORO MA 01879

Reason for Check: PAYMENT RETURN  
 Check Number: L1080971541  
 Check Amount: \$678.44  
 Date of Check: December 17, 2024  
 Policy Type: TERM  
 Policy Number: L3 066 471  
 Insured Name: MARYBETH DESJARDINS

**Your Check Statement**  
 Page 1 of 1


Thank you for your recent payment. However, we cannot accept it because this life insurance policy has ended. The attached check represents a return of your payment.

If you have any questions, please call our Customer Service Office at 800-778-2255 Monday through Friday, 8:00 a.m. to 8:00 p.m. Eastern Time or your Pruco Life Representative, MARTEN J VANDERVELDE, CFP, WMCP, ChFC, R, at 603-521-2329. You may also write to:

Customer Service Office  
 PO Box 7390  
 Philadelphia, PA 19176-7390

R90801M PTD 01222024

Detach before cashing or depositing check. Please retain this check statement for future reference.


**Prudential**  
Pruco Life Insurance Company,  
 a Prudential Financial company  
 PO Box 7390, Philadelphia, PA 19176-7390  
[www.prudential.com](http://www.prudential.com)

Wells Fargo Bank, NA  
 1080971541  
 64-975  
 612

POLICY NUMBER L3 066 471

Pay: \*\*\*\*SIX HUNDRED SEVENTY EIGHT AND 44/100 DOLLARS\*\*\*\*

488

December 17, 2024

Void after 180 days

\$\*\*\*\*\*678.44

Dollars Cents

To the Order of: MARYBETH DESJARDINS\*\*\*\*\*

*Treasurer*

⑈1080971541⑈ ⑈0661209756⑈ 2079900413603⑈



"B"

Marybeth Desjardins  
21 Red Gate Rd  
Tyngsboro, MA 01879-1907

Insured: Marybeth Desjardins  
Policy Number: L3066471

February 14, 2025

Dear Marybeth Desjardins:

I am writing to provide you with the information you recently requested. Please review the enclosed document(s).

Thank you for choosing Prudential for your life insurance needs.

Your Customer Service Team



Marybeth Desjardins  
21 Red Gate Rd  
Tyngsboro, MA 01879-1907

Insured: Marybeth Desjardins  
Policy Number: L3066471

December 18, 2024

Dear Marybeth Desjardins:

Thank you for your recent application for reinstatement of your life insurance policy.

I am writing to let you know that we have now received all of the information needed to consider your application for reinstatement of your life insurance policy, and have reached a decision.

I'm sorry to inform you that we have declined your application for reinstatement because of your prescription medication history and/or medical claims history given to us in a report from Milliman IntelliScript. To reinstate a lapsed policy, you must qualify for the same risk class as the policy that was originally issued. Changes in health, the progression of an existing condition, the diagnosis of a new condition, or the participation in new activities can change a person's risk classification for insurance purposes. You will receive a check for \$678.44 under separate cover.

Our decision was based on information given to us in a report from Milliman IntelliScript. You may reach them via postal mail at P.O. Box 2223, Brookfield, WI 53008; via telephone toll-free at (877) 211-4816; or by email at [FCRAreport@milliman.com](mailto:FCRAreport@milliman.com). Please understand that Milliman IntelliScript didn't make the decision to decline your application for reinstatement and will not be able to provide you with the specific reasons for the decision.

You have the right to request a free copy of the report from Milliman IntelliScript within 60 days of this letter and, you have the right to dispute the accuracy or completeness of any information in the report with Milliman IntelliScript.

It's important that you understand your rights concerning our decision. You are entitled to know the specific information we used and the source of that information. You may see and obtain copies of any documents we used to make our decision; however, the consumer report mentioned above must be obtained directly from the consumer-reporting agency. There may be some medical information that I may not be able to give directly to you, which I can send to your physician. You have the right to ask us, in writing, to correct, amend, or delete any personal information in our file that you think is inaccurate. If we disagree, you may give us a statement of what you believe is the correct information. We will place your statement in our file, where it will be seen during any review of our records.

If you want more information about our decision, please send us your request in writing within 90 business days of the date of this letter and a response will be provided to you within 21 business days.

If you have any questions or would like more information, please call our customer service office at (800) 778-2255 and refer to reference number SPC09514928. We are available Monday through Friday between 8:00 a.m. and 8:00 p.m. Eastern time. If you are using a telecommunications device for

Life insurance is issued by The Prudential Insurance Company of America, Pruco Life Insurance Company (except in NY), or Pruco Life Insurance Company of New Jersey (in NY). Page 1 of 2

the hearing impaired, please call (800) 778-2255, Monday through Friday between 8:00 a.m. and 8:00 p.m. Eastern time. One of our customer service representatives will be glad to help you.

Thank you for choosing us for your insurance and financial needs.

Your Customer Service Team



COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION

DOCKET NO.: MI24D-0080DR

STEVEN J. DESJARDINS

PLAINTIFF

v.

MARYBETH A. DESJARDINS,

DEFENDANT

Middlesex, SS 5/5/25

The Above Motion is Hereby  
~~Allowed - Denied~~

*allowed in part  
and denied  
in part.*

*Manisha H. Bhatt*

Justice of Probate

*Reference to lump sum payment at Findings  
120 and in rationale amended. Findings  
28, 29, 30, 32, 33, 34, 41 and 43 in the  
procedural history section are stricken.*

*See amended procedural history, finding  
of fact and  
rationale*

**MOTION FOR NEW TRIAL OR TO ALTER OR AMEND THE BIFURCATED JUDGMENT and  
FINDINGS DATED APRIL 10, 2025 (BHATT, M.) PURSUANT TO RULE 59(a) and RULE 59(e)**

**& REQUEST FOR A HEARING**

Defendant, Marybeth A. Desjardins ("Wife"), pursuant to Standing Order 2-99 and Mass.  
R. Dom. Rel. P. Rule 59(a) and Rule 59(e), and respectfully requests this Honorable Court to  
order a New Trial or, in the alternative, correct, alter or amend the Judgment and Findings as  
follows:

1. Delete the language of the Judgment upholding the 2019 Prenuptial Agreement as fair  
and reasonable when entered and presently conscionable, and replace it with the  
following: The prenuptial agreement signed by Steven Desjardins ("Husband") on May  
3, 2019, and by MaryBeth (Kotsonas) Desjardins ("Wife") on May 6, 2019, is invalid and  
void *ab initio*. [Or, in the alternative: *The prenuptial agreement signed by Steven  
Desjardins ("Husband") on May 3, 2019, and by MaryBeth (Kotsonas) Desjardins  
("Wife") on May 6, 2019, is unconscionable at this time and shall not be enforced in any  
manner.*]
2. Correct and change the erroneous reference to \$50,000 at Findings 120 to \$75,000, and  
delete the reference to \$60,000 at pg. 20 of the Rationale. (See accompanying Statement

Page 1 of 3

**FILED**

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**S**

*e89*

*NO*  
MAY 05 2025 *WP*

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION

DOCKET NO.: MI24D-0080DR

STEVEN J. DESJARDINS

PLAINTIFF

v.

MARYBETH A. DESJARDINS,

DEFENDANT

**MOTION FOR NEW TRIAL OR TO ALTER OR AMEND THE BIFURCATED JUDGMENT and  
FINDINGS DATED APRIL 10, 2025 (BHATT, M.) PURSUANT TO RULE 59(a) and RULE 59(e)**

**& REQUEST FOR A HEARING**

Defendant, Marybeth A. Desjardins ("Wife"), pursuant to Standing Order 2-99 and Mass. R. Dom. Rel. P. Rule 59(a) and Rule 59(e), and respectfully requests this Honorable Court to order a New Trial or, in the alternative, correct, alter or amend the Judgment and Findings as follows:

1. Delete the language of the Judgment upholding the 2019 Prenuptial Agreement as fair and reasonable when entered and presently conscionable, and replace it with the following: The prenuptial agreement signed by Steven Desjardins ("Husband") on May 3, 2019, and by MaryBeth (Kotsonas) Desjardins ("Wife") on May 6, 2019, is invalid and void *ab initio*. [Or, in the alternative: *The prenuptial agreement signed by Steven Desjardins ("Husband") on May 3, 2019, and by MaryBeth (Kotsonas) Desjardins ("Wife") on May 6, 2019, is unconscionable at this time and shall not be enforced in any manner.*]
2. Correct and change the erroneous reference to \$50,000 at Findings 120 to \$75,000, and delete the reference to \$60,000 at pg. 20 of the Rationale. (See accompanying Statement

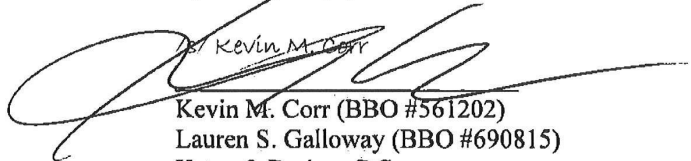
*Signed under pains and penalties of perjury.*

DocuSigned by:



Marybeth Desjardins

Respectfully submitted,  
Marybeth Desjardins,  
By her attorneys,



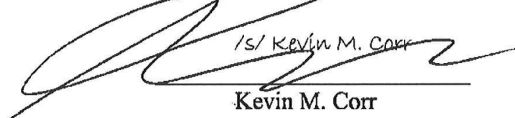
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Boston, MA 02110  
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[kcorr@katesbarlow.com](mailto:kcorr@katesbarlow.com)

Date: April 18, 2025

CERTIFICATE OF SERVICE

I, Kevin M. Corr, hereby certify that a true copy of the within document / court filing was this day served upon Plaintiff via ~~first class mail~~ and email to David Cherny, Atwood & Cherny PC, 177 Huntington Ave., 23<sup>rd</sup> Floor, Boston, MA, 02115; [dcherny@atwoodcherny.com](mailto:dcherny@atwoodcherny.com)

Dated: April 18, 2025



/s/ Kevin M. Corr  
Kevin M. Corr

**COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT**

**MIDDLESEX DIVISION**

**DOCKET NO.: MI24D-0080DR**

STEVEN J. DESJARDINS

PLAINTIFF

v.

MARYBETH A. DESJARDINS,

DEFENDANT

**Statement of Facts and Law in Support of Why Defendant's Motion  
For New Trial or to Alter / Amend Judgment and Findings Should be Granted**

Defendant, Marybeth Desjardins, (the "MaryBeth") respectfully submits this Statement in support of her accompanying Motion for New Trial or to Alter and Amend the Bifurcated Judgment and Findings (Bhatt, J.) dated April 10, 2025.

**Judge Bhatt's Findings that Wife Breached the Agreement Violate Public Policy**

Massachusetts has a fundamental public policy interest in protecting the rights of spouses when they divorce.<sup>1</sup> When Husband filed his January 2024 Complaint for Divorce seeking enforcement of the 2019 Prenuptial Agreement [Exhibit 15], Wife filed her Answer and Counterclaim [Exhibit 14] in which her fifth affirmative defense was the allegation that the Agreement was not fair and reasonable at its inception and that a present enforcement would be unconscionable. The case was immediately bifurcated such that only the issues of the Agreement's validity and enforceability were before the Court.<sup>2</sup> Accordingly, none of the litigation that occurred in this case involved anything to do with the alimony and property issues Wife plead in the alternative by way of her Counterclaim, i.e., in the event the Agreement was

<sup>1</sup> DeMatteo v. DeMatteo, 436 Mass. 18, 31 (2002).

<sup>2</sup> Wife never filed a Motion for Temporary Support, and her Motion for Counsel Fees Pendente Lite (which Judge Bhatt denied originally and on reconsideration) sought fees only for litigation and trial of the bifurcated issues.



than she entered into the marriage with..." Rationale p. 20.<sup>5</sup> As noted above, Judge Bhatt's conclusion that Wife's filing of a Counterclaim renders her liable for Husband's fees in this bifurcated proceeding will, unless reversed, leave Wife with debts exceeding the value of all she owns.

At the time of the marriage, Wife was the owner for the benefit of her three children of a \$500,000 Prudential Life Insurance policy that lapsed in January and can no longer exist, ever because Husband failed without justification to honor his Prenuptial Agreement obligation to "pay and be responsible for all premiums due and payable on the Prudential policy." [Exhibit 1, pg. 10]. Judge Bhatt made not one single finding about this unconditional payment obligation and she ignores all of the evidence that Husband BREACHED this Prenuptial Agreement obligation, and it was Husband's breach that caused the policy to lapse.<sup>6</sup> Judge Bhatt adopted Husband's distortion and twisting of this provision's language to, incredibly, find that Wife was in breach, not Husband. That language – "MaryBeth agrees [the Prudential policy] will remain in full force and effect" – is inseparable from the Husband's primary obligation to pay all premiums "due and payable." Wife's only affirmative obligation under this provision is to designate Husband as the beneficiary of the Prudential policy, and she honored that obligation without fault. The only proper interpretation of that provision as a whole is that, on the condition that Husband timely pays all of the premiums, Wife agrees she will not remove Husband as the beneficiary. It is beyond comprehension, on this record, that Wife can be deemed in breach of this provision while not one single word is said about Husband's failure to pay the premiums when they came due in and after January 2024 when he filed this divorce.<sup>7</sup>

At the time of the marriage, Wife had a state pension that could have been taken in a lump sum of approximately \$120,000, or which could have been allowed to increase greatly in value to the Wife if she retired at age 65 or later. Because of the trust she placed in Husband and

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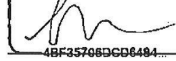
<sup>5</sup> This provision of Judge Bhatt's Rationale was essentially verbatim adoption of Husband's and Attorney Cherny's Proposed Rationale at p. 22.

<sup>6</sup> Nor does Judge Bhatt make a single finding about Husband's reach of his provision to obtain a \$100,000 life insurance policy for Wife pursuant to the provisions at pg. 10 of the Prenuptial Agreement (Exhibit 1), nor his misleading testimony concerning the policy he obtained for his sister's benefit which he attempted to claim was for Wife's benefit from the outset.

<sup>7</sup> Judge Bhatt's finding that Wife took no action to reinstate the Prudential policy is inconsistent with testimony given by both Wife and Husband about reinstatement. It is undisputed that Husband wrote the check that needed to be sent in with Wife's reinstatement application. And it was discovered that Husband knew before trial the reinstatement application was denied, and he kept that fact to himself during the trial. See Wife's post-trial Motion to Reopen the Evidence.

*Signed under pains and penalties of perjury.*

DocuSigned by:

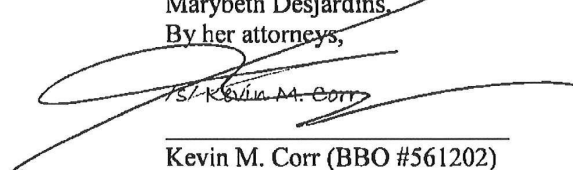


Marybeth Desjardins

Respectfully submitted,

Marybeth Desjardins.

By her attorneys,



/s/ Kevin M. Corr

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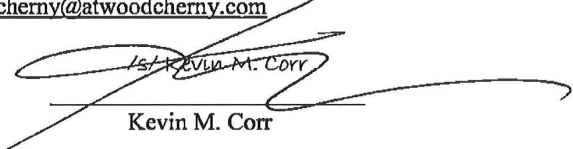
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Date: April 18, 2025

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Dated: April 18, 2025



/s/ Kevin M. Corr

Kevin M. Corr

**CERTIFICATE OF COMPLIANCE**

**Pursuant to Rules 11(b) and 16(k) of the  
Massachusetts Rules of Appellate Procedure**

I, Kevin M. Corr, hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 11(b) (contents of application, form)

Mass. R. A. P. 20 (form and length of briefs and other documents); and

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12, 10 characters per inch, the margins were personally measured by me, the Argument section is less than 10 pages and less than 2,000 words, and the form was reconciled with briefs in other matters that have are known to have been accepted for filing.

/s/ Kevin M. Corr  
Kevin M. Corr, BBO #561202

Date: July 3, 2025

**CERTIFICATE OF SERVICE**

I, Kevin M. Corr, hereby certify under penalty of perjury that on the date below, a true copy of the foregoing Application for Direct Appellate Review of Appellant was served on the Appellee, Steven Desjardins, by the Electronic Filing System and email to his counsel of record as follows:

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Respectfully submitted,  
MaryBeth Desjardins,  
By her attorney,

/s/ Kevin M. Corr  
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Dated: July 3, 2025