NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009

703-246-2221 • Fax: 703-246-5496 • TDD: 703-352-4139

BRUCE D. WHITE, CHIEF JUDGE
RANDY I. BELLOWS
ROBERT J. SMITH
BRETT A. KASSABIAN
MICHAEL F. DEVINE
JOHN M. TRAN
GRACE BURKE CARROLL
DANIEL E. ORTIZ
PENNEY S. AZCARATE
STEPHEN C. SHANNON
THOMAS P. MANN
RICHARD E. GARDINER
DAVID BERNHARD
DAVID A. OBLON
DONTAÉ L. BUGG

JUDGES

COUNTY OF FAIRFAX CITY OF FAIRFAX

THOMAS A. FORTKORT
J. HOWE BROWN
F. BRUCE BACH
M. LANGHORNE KEITH
ARTHUR B. VIEREGG
KATHLEEN H. MACKAY
ROBERT W. WOOLDRIDGE, JR.
MICHAEL P. McWEENY
GAYLORD L. FINCH, JR.
STANLEY P. KLEIN
LESLIE M. ALDEN
MARCUS D. WILLIAMS
JONATHAN C. THACHER
CHARLES J. MAXFIELD
DENNIS J. SMITH
LORRAINE NORDLUND
DAVID S. SCHELL
JAN L. BRODIE

RETIRED JUDGES

August 21, 2020

James Ray Cottrell, Esquire
Amy W. Spain, Esquire
John K. Cottrell, Esquire
COTTRELL FLETCHER & COTTRELL PC
5845 Richmond Highway, Suite 800
Alexandria, Virginia 22303
Counsel for Plaintiff/Counter-Defendant

Matthew W. Edwards, Esquire
Sarah E. Mancinelli, Esquire
Sanford K. Ain, Esquire
AIN & BANK, P.C.
1900 M Street, N.W., Suite 600
Washington, D.C. 20036
Counsel for Defendant/Counter-Plaintiff

Re: ***Lisa Dwoskin v. Albert Dwoskin***
Case No. CL–2019–3494

Dear Counsel:

The parties executed an antenuptial agreement over thirty years ago that the Court must now interpret on a declaratory basis. The issue is whether the agreement protects separate property valuation increases from equitable distribution. This Court holds it does and declares that the following are contractually immune from equitable distribution: (1) each party's separate property at the time of the marriage; (2) separate property coming to each of them during the marriage; and (3) increases in value to both.

OPINION LETTER

I. FACTUAL OVERVIEW: A PLAN TO FAIL.

The parties had to know this moment was coming. They were courting during Defendant/Counter-Plaintiff Albert Dwoskin's ("Husband") contentious divorce proceedings with his then-second wife. Plaintiff/Counter-Defendant Lisa Dwoskin ("Wife") worked for one of Husband's companies. Husband was in his late forties and was an extremely successful real estate businessman. Wife was in her late twenties and was a recent *magna cum laude* college graduate preparing to become a certified public accountant ("CPA"). After his second divorce was finalized, Husband and Wife married. Stung from what he believed to be an expensive and distracting second divorce, he vowed to never get married again without an antenuptial agreement. With her knowledge that he harbored these sentiments, Wife signed the antenuptial agreement ("Agreement" (dated September 22, 1988)) that forms the subject of this case.

Another Judge of this Court previously held the Agreement to be conscionable against Wife's challenge. (Op. Letter, Nov. 19, 2019 (Kassabian, J.).) Yet another Judge held the term "separate property" as used in Paragraph 8 of the Agreement "is defined in its ordinary legal sense, and that 'separate property' has been classified" by that Paragraph. (Order, Mar. 11, 2020 (Mann, J.).) The Court specifically did "not make any ruling with respect to whether separate property, as defined by this Order, is immune to any claim for equitable distribution of any increase in value of separate property during the marriage that is attributable to the contribution of marital property or the personal efforts of either party as provided for under [Virginia] Code § 20-107.3(A)(1)." (*Id.*) The Court now seeks to do just that, to wit, rule on whether increases in value to separate property is contractually immune from equitable distribution.

The key provisions of the Agreement are as follows:

> 1. ALBERT J. DWOSKIN and LISA CLAIRE SEXTON shall each continue to be completely independent of the other with respect to the enjoyment and disposal of all property owned by either of them individually at the commencement of their marriage or coming to either of them individually during the course of their marriage. To the extent that the same is legally possible by their private act, declaration and agreement, all property belonging to either [Husband] and [Wife] at the commencement of their marriage or coming to either of them during their marriage shall be enjoyed by him or her, and shall be subject to disposition by him or her, as his or her separate property, with the power and right to use, enjoy, manage, convey, mortgage, grant, alienate and dispose of all and every part thereof, without interference by or from the other, independently from the other and in like manner as if their marriage had not taken place.
>
> 2. The provisions of this Agreement shall not be deemed to apply in any way to property which ALBERT J. DWOWSKIN and LISA CLAIRE SEXTON may acquire after their marriage as tenants by the entireties or as joint tenants with the right of survivorship . . . .
>
> 4. LISA CLAIRE SEXTON hereby disclaims every right . . . to or upon all or any of the property owned by ALBERT J. DWOSKIN at the commencement of their marriage or coming to [him] during their marriage by reason of her marriage to ALBERT J. DWOSKIN or by reason of her being, or by reason of her having been, the wife of ALBERT J. DWOSKIN, whether or not such right, claim or stake arises out of or from any provision of the laws of the Commonwealth of Virginia . . . .

> 8. In the event of the termination of the marriage . . . all the property held individually by each of the parties at the commencement of their marriage or coming to each of the parties during the course of their marriage shall be held by each of the parties as separate property . . . .
>
> 14. This Agreement contains the entire understanding of ALBERT J. DWOSKIN and LISA CLAIRE SEXTON . . ."

II. THE AGREEMENT IS AMBIGUOUS.

On June 25, 2020, the Court held a declaratory judgment hearing to determine whether it could facially decipher the Agreement using only the four corners of the contract. The Court, of course, did not take extrinsic evidence.

Courts determine whether a contract is ambiguous as a matter of law. *Video Zone, Inc. v. KF & F Properties, L.C.*, 267 Va. 621, 625 (2004) (citing *Utsch v. Utsch*, 266 Va. 124, 129 (2003) (additional citations removed)). They address contractual ambiguity in one of three ways. First, if no patent or latent ambiguities exist, courts enforce the plain meaning of the contract. *Smith v. Smith*, 43 Va. App. 279, 287 (2004). Second, if ambiguity exists, courts look to extrinsic evidence to discern the real meaning of the ambiguous provision. *Id.* Ambiguity means the contract can be understood in more than one sense at the same time. *Eure v. Norfolk Shipbuilding & Drydock Corp.*, 263 Va. 624, 632 (2002) (quoting *Granite State Ins. Co. v. Bottoms*, 243 Va. 228, 234 (1992)). Third, courts declare an ambiguous provision unenforceable if, even after receiving extrinsic evidence, the provision remains ambiguous. *Smith*, Va. App. at 287.

Courts may not use extrinsic evidence to create an ambiguity. *Amos v. Coffey*, 228 Va. 88, 93 (1984) (quotations and citations removed). Mere disagreement between parties is not ground to declare a contract ambiguous. *Pocahontas Min. Ltd. Liab. Co. v. CNX Gas Co., LLC*, 276 Va. 346, 353 (2008) (citations removed).

Once a court finds a contract ambiguous as a matter of law, the "court will [then] consider parol evidence to ascertain the intent of the parties." *Video Zone, Inc.*, 267 Va. at 626 (citing *Eure*, 263 Va. at 632; *Tuomala v. Regent Univ.*, 252 Va. 368, 374 (1996)). "Parol evidence is admissible, not to contradict or vary contract terms, but to establish the real contract between the parties." *Id.* (internal quotations and citations removed). "Such construction of an ambiguous contract is a matter submitted to the fact finder, who must consider the extrinsic evidence in determining the parties' intent." *Id.* at 627 (citing *Tuomala,* 252 Va. at 374; *Cascades N. Venture Ltd. P'ship v. PRC Inc.,* 249 Va. 574, 579 (1995) (parallel citations removed)).

If a court receives extrinsic evidence on an ambiguous contract, the evidence is limited to the joint state of minds of the contracting parties at the time of the contract execution, not their desired interpretations after the fact. *See Stroud v. Stroud*, 49 Va. App. 359, 367 (2007); *Shoup v. Shoup*, 31 Va. App. 621, 626 (2000); *see also Eure*, 263 Va. at 633; *Allen v. Green*, 229 Va. 588, 593 (1985).

In finding the Agreement is ambiguous, the Court considered it could fairly understand it in two senses.

A. The Agreement Could be Construed in Wife's Favor.

Wife largely uses silence as support. Wife points to items missing from the Agreement—such as provisions explicitly waiving equitable distribution or specifically addressing increases in value—to support her argument that she may be entitled to increases in value to Husband's separate property. The Agreement is silent as to the treatment of the increase in value to property. Indeed, even the phrases "increase in value" or "equitable distribution" are wholly absent from the Agreement.

Since antenuptial agreements are an abrogation of Virginia law, they must be construed against abrogation unless the parties clearly intended them to apply. *See VNB Mortg. Corp. v. Lone Star Indus., Inc.*, 215 Va. 366, 371 (1974). However, they are "interpreted and enforced no different than any other type of contract." *Smith*, 43 Va. App. at 286. The law presumes property acquired during marriage is marital, not separate, property. VA. CODE ANN. § 20-107.3(A)(2). Absent a contract to the contrary, income received from separate property during the marriage remains separate only if such income is not attributable to the personal effort of either the original owning or nonowning spouse. VA. CODE ANN. § 20-107.3(A)(1), (3)(a). In other words, only passive income remains separate; anything active transforms into marital. Increases in value are treated similarly with a slight nuance. Like income, the increase in value of separate property remains separate unless the personal efforts of either spouse have contributed to such increase.[1] *Id.* The difference is that to morph into marital, the personal efforts must be *significant and result in substantial appreciation. Id.* (emphasis added). It is also not an all-or-nothing approach. A little effort does not mean you get the whole pie—"only to the extent of the increases in value attributable to such contributions." *Id.* The nonowning spouse bears the burden of proof. *Id.* § (A)(3)(a).

Supporting her view, Wife can point to the provision of the Agreement addressing property the parties acquire post-marriage as "tenants by the entireties" or as "joint tenants with the right of survivorship." (Agreement ¶ 2.) The provision provides that their rights in such jointly owned property is "governed by the laws of the Commonwealth of Virginia applicable thereto." (*Id.*) Thus, she projects that anything coming to them after the couple says their "I Do's" is automatically jointly owned (subject only to the standard inheritance/gift exceptions).

In equitable distribution, courts are not completely constrained by the title of an asset. While a court cannot retitle an asset, it can consider that the asset is marital or hybrid based on the evidence. *See Barker v. Barker*, 27 Va. App. 519, 534 (1998). So, if the Agreement is silent as to increases in value to separate property, and if Virginia law presumes increases in value is marital, and the Agreement permits equitable distribution of property the parties jointly acquire after marriage, then the increase is subject to equitable distribution if read in Wife's favor.

[1] Or marital property was used to fund such increase.

B. The Agreement Could be Construed in Husband's Favor.

For benefit of Husband, the Court could read the Agreement to mean that each party may receive post-marriage property as separate property. The Court could read the Agreement to also mean that increases to pre-marriage separate property remain separate. Put differently, separate then means separate now; separate now also means separate forever. What one spouse came into the marriage with stays separate no matter how much it grew during marriage. What one spouse earns or accrues or acquires or buys during the marriage is not subject to the marital bucket (unless, of course, during the marriage the owning spouse chooses to share or convert).

The following provisions of the Agreement support Husband's interpretation:

Agreement ¶ 1: The parties "shall each continue to be completely independent of the other with respect to the enjoyment and disposal of all property . . . coming to either of them individually during the course of their marriage";

Agreement ¶ 4: "[Wife] hereby disclaims . . . property . . . coming to [Husband] during their marriage by reason of her marriage to [Husband]"; and

Agreement ¶ 8 "[Upon divorce] . . . all the property . . . coming to each of the parties during the course of their marriage shall be held by each of the parties as separate property."

Accordingly, the Agreement permits each party to receive separate property during the marriage that is kept as separate property otherwise in derogation of Virginia law. This could reasonably mean income from separate property. Absent an antenuptial agreement, property coming to a party during marriage is presumed to be marital property. *Smith*, 43 Va. App. at 286. The Agreement thus abrogates it.

As regarding the increase in value of separate property during the marriage, Husband can argue the Agreement abrogates Virginia law in that respect, too, when one considers increase in value is indistinguishable from incoming property. Consider an illustration involving stocks and dividends. If one holds a share of stock and receives a dividend on it, this dividend check is obviously new incoming property. The Agreement could be read to treat that dividend check (new incoming property) as separate property. So, the dividend is, by *contract*, separate property even though *Virginia law* would otherwise deem it marital property if a party's personal effort attributed to the earning. VA. CODE ANN. § 20-107.3(A)(3)(a). Less obvious is demand-driven increases in value. That share of stock can increase in value due to increased demand for it, such as by the company buying back its own shares. This unrealized gain is merely that. To realize the gain, the stockholder need sell the stock. It is for this reason why many companies rarely issue dividends, choosing to "buy back" shares with cash that could otherwise fund a dividend. People buy stock from "buy back" companies anyway, even knowing it does not pay dividends—it does not matter economically if a gain is in the form of a cash dividend or an increase in share price.[2]

[2] Of course, there are tax reasons why an investor might prefer "buy backs" versus dividends.

In either instance, the sale proceeds would come to a party, individually, and per the Agreement would be separate property. Wife would argue that this assumes a sale that never took place. However, the Agreement permits each party to dispose of separate property as if unmarried. (*See* Agreement ¶ 1.) To accept Wife's argument, one must read the Agreement to conclude that if Husband, post-marriage, earned a single $10,000 stock dividend from a separate, pre-maritally-acquired company, and immediately spent it on a vacation for himself he would be within his rights—but if a brokerage reinvested the dividend into the stock it would morph into marital property as an increase from the value of the underlying stock. Similarly, one must conclude Husband would be in his rights to immediately sell a stock the moment it increases in value by $10,000, and instantly spend it on the vacation, yet if he simply holds the stock it could be deemed marital property. Neither instance is logical nor consistent with the Agreement.

C. The Court Found the Agreement Ambiguous and Must Resort to Extrinsic Evidence to Resolve the Ambiguity.

With these two competing views, the Court held the Agreement is ambiguous because it could fairly understand it in two senses.[3] Each interpretation of the Agreement, as discussed above, could be correct. (Decl. J. Order, July 17, 2020.) Thus, it conducted an extrinsic evidence hearing on August 14, 2020.

In making this decision, the Court compared the Agreement with the very similar one in *Vilseck v. Vilseck*, 45 Va. App. 581, 585 (2005) (Kelsey, J. (now Supreme Court of Virginia Justice)). Both antenuptial agreements set forth that property owned by each spouse at the start of the marriage was separate and allowed for some post-marital money to come to a party as separate property. The Court of Appeals noted that "nothing in the contractual text [of the *Vilseck* agreement] states that separately titled property has a contractual immunity from equitable distribution." *Id.* at 590. The same is true with the Dwoskin Agreement. This Court would be very reckless, indeed, if it held the Dwoskin Agreement unambiguous after the Court of Appeals held the similar *Vilseck* contract ambiguous. So, the Court must resort to extrinsic evidence to help resolve the ambiguity, if it can.

The ambiguity is the treatment of the increase in value of separate property. On that point, without extrinsic evidence, the Court does not see express language directing the treatment of separate property valuation, as Wife argues. It does see a latent ambiguity to the extent the Agreement does contemplate property coming into the marriage as separate property post-marriage as Husband argues. The ambiguity is the meaning of Paragraphs 1, 2, 4, and 8, especially the treatment of property "coming to either [party] individually during the course of the marriage" (Agreement ¶ 1) and "property . . . coming to [Husband] during [the] marriage" (Agreement ¶¶ 4, 8).

---

[3] It is obvious, and the parties do not dispute, the Agreement protects as separate property all property each party had as of the wedding. This is consistent with default Virginia law. VA. CODE ANN. § 20-107.3(A)(i).

Wife's pointing to Paragraph 2, which governs jointly titled assets as being marital, as proof that increases in value are thereby marital, works against her. Paragraph 2 begins, "*The provisions of this Agreement shall not be deemed to apply in any way* to property [Husband and Wife] may acquire after their marriage as tenants by the entireties or as joint tenants with the right of survivorship . . . ." (Agreement ¶ 2 (emphasis added).) These inapplicable "provisions" are the core of the Agreement that is colloquially "what is mine is mine and what is yours is yours." Thus, Paragraph 2 is a limited *exception*, a carve-out that *retains* the Virginia equitable distribution system for jointly owned assets.

The Agreement is facially ambiguous.

III. SUPPLIED WITH EXTRINSIC EVIDENCE, THE COURT NOW FINDS HUSBAND'S INTERPRETATION IS THE CORRECT ONE.

Wife offered no credible extrinsic evidence to explain the ambiguity. Her position has been the entire Agreement is unconscionable and should not be enforced. She pleaded that the Court should do "what is fair" because this was one of Husband's intended "two pillars" of the Agreement,[4] and because it is a "contract of adhesion."[5] Another Judge of this Court already disagreed with her on this unconscionability point, and the extrinsic evidence hearing before the undersigned Judge was not noticed as a motion to reconsider. The Court could treat Wife's arguments as a motion to reconsider, but this would be very unfair to Husband who came prepared to argue how the Agreement treats value increases to separate property, and not to relitigate that which was already litigated, the outcome being in his favor. The Court addresses only the meaning of the Agreement in this Opinion Letter.[6]

Wife testified she was handed the Agreement three days prior to the wedding as they were going to or from wedding dancing lessons. She knew Husband went through an unwelcomed divorce proceeding with her immediate predecessor, but thought the five years during which she and Husband lived together created a font of trust that would make an antenuptial agreement inappropriate. She said she was in shock when Husband gave it to her and she signed it only because that was what Husband wanted and the wedding was planned, announced, and imminent. She claims she barely read and did not understand it.[7] By definition, she was unable to offer extrinsic evidence explaining a document she says she never really read or understood.

---

[4] The other "pillar" was to "protect his businesses [from divorce]."

[5] Wife also testified she "gave up" a career as a CPA, at Husband's request. She did not testify she objected to his request. She could have, for example, protested, citing the Agreement as reason and a need for her to continue her path toward public accounting and to be self-sustaining. She could have attempted to use his desire and pressure for her to skip the CPA exam, if true, as an opportunity for her to try to renegotiate the Agreement. There was no evidence she did so. Therefore, the Court treats this as a mutual decision.

[6] The Court has considered all the evidence in the record of this hearing, which includes the trial transcript of the unconscionability hearing, to help understand the Agreement.

[7] The Judge who decided the unconscionability issue did not believe Wife on these points for reasons stated in a written Opinion. (Op. Letter, Nov. 19, 2019 (Kassabian, J.).)

Husband testified the issue of an antenuptial agreement was effectively in the DNA of his relationship with Wife. They were courting during his divorce in the summer of 1986. They married the fall of 1988. He would talk of the time, expense, and frustration of having to comply with complicated discovery involving his business empire. Wife, as then-girlfriend, would commiserate. His source of income was not a single W-2 job. The financial statement attached to the Agreement as an exhibit disclosed his pre-marital net worth to be over $25 million.[8] He was owner (or part owner) of thirty-eight limited partnerships controlling apartments, mobile home parks, shopping centers, retail spaces, office buildings, and land. Discovery during a divorce trial with such assets would, indeed, seem complex. In this context, and the proximity between his second divorce and rapid remarriage, it is believable he and Wife discussed the Agreement.

As to the contents of these discussions, Husband testified his goal was to protect his businesses from divorce and be fair to Wife, and that she agreed. He said they agreed property in his name would be his, property in Wife's would be hers, and they would divide anything jointly owned upon divorce. This "title-driven" approach does not expressly address the treatment of increases in value to separate property. However, this is understandable considering the parties executed their Agreement September 22, 1988, during a particularly unusual time for Virginia law. This was after the Supreme Court of Virginia adopted a unitary theory of property in *Smoot v. Smoot*, 233 Va. 435 (1987). It was before the legislature effectively overturned *Smoot* in 1989, reigniting the concept of hybrid property kindled by the Court of Appeals[9] before the Supreme Court snuffed it out. The General Assembly enacted the modern dual classification system, effective in cases filed after July 1, 1990. *See* VA. CODE ANN. § 20-107.3(A)(3); Acts 1990, C. 636, cl. 2, and C. 764.[10] Changes in law do not void pre-change contracts. *Bragan v. Bragan*, 4 Va. App. 516, 519 (1987).[11] So, the fact the Agreement does not expressly reflect a legal concept yet a year in the future when drafted is understandable. Husband's testimony as to the parties' intent makes sense in a Commonwealth then subject to the *Smoot* unitary theory of property. His intent is consistent with the words of the Agreement reading each party may "continue to be completely independent of the other with respect to the enjoyment and disposal of all property owned by either of them individually at the commencement of their marriage or coming to either of them individually during the course of their marriage." (Agreement ¶ 1; *see also* Agreement ¶¶ 4, 8.) Husband's explanation also makes the apparent discrepancy between Paragraphs 4 and 8 make sense. Paragraph 4 deals, in part, with death (death of Husband; treatment of his will);

---

[8] Wife already knew some of this information. She worked for Husband when they met, and she accompanied him on site visits to his various properties.

[9] *See, e.g., Rexrode v. Rexrode*, 1 Va. App. 385 (1986).

[10] It is true, as Wife asserts, the law was obviously in flux during this time. The Court of Appeals in *Lambert v. Lambert*, 6 Va. App. 94, 103-104 (1988), decided April 5, 1988, months before the Agreement, tried to rekindle *Rexrode*, pressing the concept of transmutation of separate property into marital property, until the legislature definitively set the policy. However, the Court is persuaded by the evidence that the parties' Agreement intended to maintain increase in value to separate property as separate in abrogation of the default Virginia transmutation law even as then evolving.

[11] Wife offers to distinguish *Bragan* on the basis that the *Brogan* property settlement agreement contained a general release and the Agreement in the present case does not. The Court is persuaded of the intent of the parties per the evidence at this hearing, as discussed herein. It does not find the absence of a general release to be material to understanding the Agreement.

Paragraph 8 deals with divorce (death of the marriage). It would make no sense that Paragraph 4 strips widow-Wife of all Husband's property when Husband dies, presumably as a happily married couple—but she gets *more* when the two split with acrimony (Paragraph 8). Rather, in both circumstances, it makes sense that Wife would have no right to Husband's separate property brought to the marriage, coming during the marriage, or the value increases therein, upon *both* death and divorce.

As to "fairness," the Agreement would be applied equally, of course. At this point, the Court has no idea how much assets Wife has in her own name to which Husband cannot claim a portion of any increase in value. The Agreement referenced Husband giving Wife a 1988 Mercedes 560 SL automobile. (Agreement ¶ 10.) Most cars only depreciate, but not all. If this car turned out to be a rare classic, and wildly increased in value, and if Wife performed significant personal effort to aid that increase, Husband could not claim a share of that increase. And, although not directly applicable to the interpretation of the Agreement, they also agreed the issue of spousal support would be an open one. They did not know at that time whether they would have children or how long they would be married. Husband testified they rationalized that this information would be necessary to determine how much spousal support he should pay. Pointedly, the Agreement did not abrogate any obligation for spousal support. Considering the great wealth disparity between Husband and Wife at the commencement of marriage, the Court agrees it was fair to Wife to leave the issue of spousal support outside the Agreement when they could have affirmatively barred it.[12] Practically, she would not be left as a burden on the state; indeed, she would be better off than most.

The Court believed Husband on the issue of the parties' understanding of the Agreement's treatment of separate property that increases in value. It believed Wife shared that intent. The Agreement is consistent with this intent. In addition to a basic credibility determination to reach this conclusion, the Court considered (1) the fact the couple was courting during Husband's contentious second divorce where the complexity of his assets made the divorce particularly complex and difficult, and he expressed these sentiments to Wife as then-girlfriend; (2) the fact that both parties knew at the time of marriage it could be ephemeral—this would be Husband's third marriage; (3) Husband testified as to the illiquid nature of his businesses and the unique disruption it would cause him to sell illiquid real estate to fund an equitable distribution award and, knowing this from his second divorce, he did not want to go through that again; (4) the fact Wife, a well-educated woman with an accounting degree, and in pursuit of a CPA licensure, actually signed the Agreement and does not dispute that; and (5) the fact the Agreement did not contain a gross disparity and was otherwise fair. Wife did not enter into a "start-up" marriage where she and Husband built wealth together from scratch; she entered into a pre-existing "blue-chip" marriage with an existing wealth machine. It seems reasonable, and consistent with Husband's testimony and the text of the Agreement, the parties agreed

[12] John Ward, the lawyer who wrote the Agreement, testified. Much of the trial centered on him and his credibility. However, he did not contradict Husband's position. The Court found Husband's testimony sufficiently credible to reach its conclusions even without Mr. Ward's testimony. Therefore, specifically discussing Mr. Ward's credibility and which parts of his testimony the Court accepted or rejected is unnecessary.

Husband would not share either the machine or the product of that machine upon death or divorce, yet they would share the lifestyle they created together in the form of potential future spousal support and jointly titled property. And, there was no evidence Husband did not share his wealth with Wife while the two have been married.

The Court concludes the Agreement provisions relating to property "coming to [Husband] during the course of [the] marriage shall be held [] as separate property" means that incoming property, and the increase in value of pre-marital separate property from, is itself treated as separate property, and is not subject to equitable distribution.

IV. CONCLUSION.

The Court holds that the Agreement abrogates Virginia law so that increases in separate property due to significant marital effort are immune from equitable distribution. The Court will treat any increase in value to separate property to be separate property.

Kind regards,

[redacted]

David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure

OPINION LETTER

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

LISA CLAIRE DWOSKIN	)	
Plaintiff//Counter-Defendant	)	
v.	)	CL-2019-3494
	)	
ALBERT JAMES DWOSKIN	)	
Defendant/Counter-Plaintiff	)	

ORDER

This matter came before the Court on Defendant Albert Dwoskin's Motion for Declaratory Relief ("Motion"), argued August 10-11, 2020. It is

ADJUDGED, for the reasons set forth in the Court's Opinion Letter of August 21, 2020, which is fully incorporated by reference, the Motion should be granted; Therefore, it is

ORDERED the Motion is GRANTED; and

DECLARED, pursuant to the parties' antenuptial agreement, that each parties' separate property at the time of the marriage, and their separate property coming to each of them during the marriage, is contractually immune from equitable distribution, along with any increases in value to both; and

THIS CAUSE CONTINUES.

[redacted]

Judge David A. Oblon

AUG 2 1 2020

Entered

ENDORSEMENT OF THIS ORDER BY COUNSEL OF RECORD OF THE PARTIES IS WAIVED IN THE DISCRETION OF THE COURT PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA. ANY OBJECTIONS ARE DUE WITHIN 15 DAYS.