NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Courthouse
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February 23, 2023

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Re: Oyunchimeg Munhuu v. Andrew Joiner, CL-2022-1126
In Re: Bernard Vincent Joiner, Deceased, FI-2021-538

Dear Counsel:

This case came before this Court for a bench trial on January 11, 2023, on Plaintiff's action for declaratory judgment to determine the validity of the September 5, 2019 premarital agreement executed by Plaintiff and her deceased husband, Bernard Vincent Joiner ("Mr. Joiner"). At the close of evidence, the Court took the matter under advisement and granted the parties' request to submit written closing arguments and post-trial briefs. The Court made factual determinations as to the evidence presented and weighed the credibility of the witnesses. After reviewing the trial transcripts, the evidence, and the memoranda of law and arguments submitted by Counsel, the Court issues the following opinion finding the premarital agreement at issue valid and enforceable.

OPINION LETTER

BACKGROUND

Plaintiff Oyunchimeg Munhuu ("Plaintiff") and Mr. Joiner married at the courthouse in Fairfax County on September 11, 2019. Plaintiff met Mr. Joiner in 2015 at a dance class in Herndon, Virginia. The two became dance partners and started dating approximately six months after meeting. Their relationship was described as "friendly and caring" by Defendant. Trial Tr. 237:9-11. The couple discussed marriage early in their relationship in 2017, but it was not until May 2019 when they decided to marry. Mr. Joiner was sponsoring Plaintiff's application for a green card, which Plaintiff admitted at trial "of course" had something to do with their decision to marry. Trial Tr. 94:19-21.

Discussions of a premarital agreement first came up around July 2019. Plaintiff maintains she believed a premarital agreement was something all engaged American citizens did and believed it was a form of licensure. In August 2019, Plaintiff and Mr. Joiner met with Mr. Joiner's lawyer, Karen Leiser ("Ms. Leiser"), to discuss the premarital agreement. The meeting lasted approximately fifteen to twenty minutes, which Ms. Leiser insisted would have included a standard conversation about the fact she represented only Mr. Joiner in the matter. Plaintiff claimed to understand the meeting was about the requirement to register to marry.

Ms. Leiser followed up with Mr. Joiner about the premarital agreement via email on August 25, 2019. The next day, Mr. Joiner requested a copy of the draft premarital agreement for review, with Plaintiff copied on the email. Ms. Leiser and Mr. Joiner exchanged emails about whether the parties' assets would be included in the agreement. Mr. Joiner ultimately told Ms. Leiser Plaintiff was not in favor of including their assets in the agreement and the parties would rather not include them unless the inclusion was advantageous. Ms. Leiser finalized the draft of the premarital agreement and emailed it to both Mr. Joiner and Plaintiff late on August 29, 2019. The next afternoon, Mr. Joiner confirmed the agreement looked good and asked when the parties could come to sign it.

On September 5, 2019, Plaintiff and Mr. Joiner went to Ms. Leiser's office to sign the premarital agreement. Since Ms. Leiser was not present, a staff member presented the agreement for signature. The premarital agreement, amongst other things, provided both parties fully disclosed their financial condition, waived each party's right to equitable distribution, and stated upon the death of either party, the "surviving spouse shall have no claim or right to receive any asset of the decedent" unless provided otherwise in the decedent's will. Pl. Ex. 20. The couple signed it in the office and married at the courthouse six days later.

Mr. Joiner passed away on January 12, 2021, after getting COVID-19 and a subsequent lung infection. He died without a will and with an estate worth in excess of six million dollars. In March of 2021, Defendant Andrew Joiner, Mr. Joiner's son, qualified as administrator of his father's estate. Defendant subsequently filed a list of heirs and listed himself and Plaintiff, but stated Plaintiff was disqualified due to the premarital agreement. Defendant filed an amended list of heirs in December 2021, listing himself and Plaintiff without mention of the premarital agreement. As administrator, Defendant transferred most of the estate assets to himself. A

motion was made to remove Defendant as administrator, and the parties agreed to remove him pending the decision on this case.

The matter proceeded to a bench trial on January 11, 2023, and this opinion follows. The Court will address the Dead Man's Statute issues first and the validity of the premarital agreement subsequently.

ANALYSIS

I. Statements Challenged Under the Dead Man's Statute

Virginia's Dead Man Statute prohibits certain evidence from being introduced against a person or their representative if the person is incapable of testifying. *Shelton v. Chippenham & Johnston Willis Hospitals, Inc.*, 68 Va. Cir. 468, 469 (2005). Virginia Code § 8.01–397 provides in pertinent part:

> In an action by or against a person who, from any cause, is incapable of testifying, or by or against the committee, trustee, executor, administrator, heir, or other representative of the person so incapable of testifying, no judgment or decree shall be rendered in favor of an adverse or interested party founded on his uncorroborated testimony.

The Dead Man's Statute replaced the stricter common law rule barring an adverse party from testifying on their own behalf in an action against an incapacitated or deceased litigant. *Va. Home for Boys & Girls v. Phillips*, 279 Va. 279, 286-87, 688 S.E.2d 284, 287 (2010). The statute is designed to prevent a litigant from benefiting from his own testimony, which the personal representative of the decedent or incapacitated person cannot rebut. *Williams v. Condit*, 265 Va. 49, 52, 574 S.E.2d 241, 243 (2003).

Under the statute, testimony must be corroborated if offered by an adverse or interested party and presents an essential element which would be fatal to the case. *Hereford v. Paytes,* 226 Va. 604, 608, 311 S.E.2d 790, 792 (1984). An adverse party is a party of record seeking judgment or against whom judgment is sought. *Merchants' Supply Co., Inc. v. Hughes' Ex'rs,* 129 Va. 212, 216, 123 S.E. 355, 356 (1924)). An interested party is a person or entity "who is pecuniarily interested in the result of the suit." *Id.* An interested party need not be a party of record. *Johnson v. Raviotta*, 264 Va. 27, 34, 563 S.E.2d 727, 731 (2022). To determine if someone is an "interested party," a court may consider the following nonexclusive factors:

> (a) being liable for the debt of the party for whom he testified, (b) being liable to reimburse such a party, (c) having an interest in the property at issue in the action, (d) having an interest in the money being recovered, (e) being liable for the costs of the suit, or (f) being relieved of liability to the party for whom he testified if such party recovered from the incapacitated party.

Jones v. Williams, 280 Va. 635, 639, 701 S.E.2d 405, 407 (2010) (citing *Ratliff v, Jewell*, 153 Va. 315, 325-26, 149 S.E. 409, 412 (1929)).[1]

Corroborating evidence "tends to confirm and strengthen the testimony of the witness sought to be corroborated." *Whitmer v. Marcum*, 214 Va. 64, 67, 196 S.E.2d 907, 909 (1973) (quoting *Brooks v. Worthington*, 206 Va. 352, 357, 143 S.E.2d 841, 845 (1965)). Corroboration can be supplied by evidence tending, to some degree, to independently support the essential element to the adverse or interested party's case. *Johnson*, 264 Va. at 32. The testimony "need not be corroborated on all material points." *Id.* Corroborating evidence can be circumstantial evidence or come from another witness. *Id.* The testimony of an adverse party cannot be corroborated by an interested party unless the corroborating witness lacks a pecuniary interest in common with the person whose testimony needs corroboration. *Jones*, 289 Va. at 639.

At trial, Plaintiff objected to two statements, one made by Anne Westley and the other by Defendant, on the basis of the Dead Man's Statute. Defendant objected to a statement of Plaintiff on the same grounds in a post-trial brief but failed to object at trial, waiving the objection.

A. Anne Westley's Challenged Testimony

Anne Westley ("Ms. Westley"), Mr. Joiner's sister, testified about a prior conversation she had with Mr. Joiner regarding the possibility of him marrying Plaintiff. Ms. Westley specifically testified Mr. Joiner was considering marrying Plaintiff because she "needed to have a chance to get legal residency so that she could leave the country" and Plaintiff said "if he would not marry her she would find someone else who would." Trial Tr. 272:15-19. Ms. Westley went on to testify she:

> remembered my brother telling me a while back that he had not yet written a will. So I said to him, "Well, if you go through with this marriage I hope you take care of securing Andrew's inheritance." And he said "Yes, of course." He said "We've already discussed" – he and Ms. Munhuu – "they if they were to get married there would be a prenup keeping each of their assets separate, what was his was his and what was hers would be hers."

Trial Tr. 274:9-17.

In this case, Ms. Westley's testimony does not require corroboration under the Dead Man's Statute as she is not an adverse or interested party. Unlike the plaintiff in *Ratliff,* Ms. Westley has no interest in this litigation. Ms. Westley is not liable to any party and has no interest in the money or property at stake. *See Jones*, 280 Va. at 639. While Ms. Westley may ultimately benefit if more money is secured for Defendant rather than Plaintiff, it does not render her testimony "interested" under the Dead Man's Statute and does not require corroboration.

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[1] The Virginia Supreme Court, in *Ratliff v. Jewell*, held the defendant's wife's testimony required corroboration under the Dead Man's Statute as she was an interested party because she could be held liable for the defendant's debts. 153 Va. 315, 325, 149 S.E. 409, 412 (1929).

B. Defendant's Challenged Testimony

The second piece of testimony challenged by Plaintiff under the Dead Man's Statute was Defendant's testimony about a conversation he had with Mr. Joiner about the possibility of marrying Plaintiff. Defendant testified:

> [Plaintiff] wanted a green card, and my dad wanted to help her with that. And I told him "I don't think you should do it. You should marry out of love. There's multiple ways to help her." And he told me "I will. Don't worry. I will get a lawyer. I will make sure your inheritance isn't touched and everything is separate."

Trial Tr. 226:1-7. Defendant's testimony requires corroboration under the Dead Man's Statute as an adverse party to the record against whom judgment is sought. *Merchants' Supply Co.,* 129 Va. at 216. Defendant offers the premarital agreement at issue as corroboration for his testimony, which provided Defendant would be the sole beneficiary of Mr. Joiner's assets.

There is no case law directly on point to whether a premarital agreement can operate as corroboration under the Dead Man's Statute, making this issue one of first impression. Corroborating evidence "tends to confirm and strengthen the testimony of the witness sought to be corroborated." *Whitmer*, 214 Va. at 67 (quoting *Brooks*, 2016 Va. at 357). Ms. Leiser, Mr. Joiner's attorney, prepared the agreement waiving the parties' right to equitable distribution upon dissolution and providing each party released claims to the separate estate of the other. Pl. Ex. 20. The agreement further stated neither party was obligated to provide for the other in their will or had the right to receive any assets of the decedent upon their death. *Id.* These provisions in the agreement directly supports Defendant's statement that Mr. Joiner told him he would ensure his inheritance would remain separate. As the premarital agreement "tends to confirm and strengthen" Defendant's testimony, it is sufficient to corroborate Defendant's testimony about Mr. Joiner obtaining a lawyer to ensure Defendant's inheritance remained separate.

Further, the Court notes Plaintiff's own testimony corroborated Defendant's testimony regarding Mr. Joiner wanting to assist Plaintiff with obtaining a green card. While Plaintiff is an adverse party, she lacks the same pecuniary interest in testifying as Defendant as she seeks to invalidate the premarital agreement. Her testimony about the marriage between the couple "of course" having something to do with Mr. Joiner's assistance in getting her a green card can then, under the Dead Man's Statute, offer corroboration for the remainder of Defendant's testimony.

As such, Plaintiff's objections to the statements made by Anne Westley and Defendant are overruled.

II. Enforceability of the Premarital Agreement

Pursuant to Virginia's Premarital Agreement Act, a premarital agreement is not enforceable if the person against whom enforcement is sought proves:

1. That person did not execute the agreement voluntarily; or

> 2. The agreement was unconscionable when it was executed and, before execution of the agreement, that person (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; and (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

Va. Code § 20-151(A). Any recitations in the premarital agreement create a "prima facie presumption" they are factually correct. Va. Code § 20-151(B). Marital property settlements entered for lawful purposes by competent parties are favored and will be enforced unless their illegality "is clear and certain." *Cooley v. Cooley,* 220 Va. 749, 752, 263 S.E.2d 49, 52 (1980) (referencing *Wallihan v. Hughes,* 196 Va. 117, 125, 82 S.E.2d 553, 558 (1954)). Therefore, the party seeking to invalidate the premarital agreement must prove non-enforceability by clear and convincing evidence. *See Drewry v. Drewry*, 8 Va. App. 460, 463, 383 S.E.2d 12, 13 (1989).

A. Voluntariness

At the very least, an agreement must be executed voluntarily to be enforceable. Voluntariness "is a question of fact to be determined from the totality of all the circumstances." *Chaplain v. Chaplain*, No. 1301-10-1, 2011 WL 134104, at *5 (Va. Ct. App. Jan. 18, 2011) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 227, 93 S.Ct. 2041, 2048 (1973)). An action taken under coercion or duress without capacity or knowledge of essential facts is not voluntary. *Dwoskin v. Dwoskin*, CL-2019-3494, 2019 WL 11909351, at *1 (Fairfax Cnty. Cir. Ct. Nov. 19, 2019). Factors helpful in assessing whether a premarital agreement was executed voluntarily include, but are not limited to:

> the coercion that may arise from the proximity of the execution of the agreement to the wedding, or from surprise in the presentation of the agreement; the presence or absence of independent counsel or of an opportunity to consult independent counsel; inequality of bargaining power—in some cases indicated by the relative age and sophistication of the parties; whether there was full disclosure of assets; and the parties' understanding of the rights being waived under the agreement or at least their awareness of the intent of the agreement.

Chaplain, 2011 WL 134104, at *5; *see also Dwoskin*, 2019 WL 11909351, at *1.

The Virginia Court of Appeals, in *Chaplain v. Chaplain*, affirmed the trial court's determination the premarital agreement executed between a husband and wife was voluntary. 2011 WL 134104, at *1. The wife challenged the premarital agreement between the parties in part based on her inability to speak and understand English proficiently. *Id.* at *2. However, the evidence presented at trial established she spoke and understood English, even if it may have been somewhat broken. *Id.* The Court further agreed the evidence showed while the husband was an older and more successful businessman, at the time of signing the wife was still forty, college educated, and financially independent. *Id.* Nothing prevented the wife from getting independent

legal advice before signing if she wished, and there was no time pressure coercing her into signing. *Id.* at *6. Considering all the evidence in the record, the Court affirmed the trial court's finding the agreement was voluntarily executed. *Id.* at *7.

Plaintiff has failed to meet the burden of showing the premarital agreement was involuntary under the factors identified in *Chaplain* and its progeny.

i. Inequality in Bargaining Power

Regarding inequality in bargaining power, the evidence presented established Plaintiff was eighteen years younger than Mr. Joiner but was well-educated and financially independent. Plaintiff is fluent in Mongolian and held herself out as proficient in English. While in Mongolia, she graduated from Mongolian State University with a bachelor's degree in finance and a master's degree in economics and began working for Gobi Industry. She first worked as an economist and eventually was the senior manager of sales agents for Belgium, Russia and China. At one point, Plaintiff served as a sales representative for corporate divisions in the United States. Additionally, Plaintiff worked in the United States for a short period between 1997 and 1998, earning two certificates for English as a second language.

Plaintiff moved to the United States in 2002 with her two young children and her then-husband. Her husband returned to Mongolia soon after their arrival. They divorced in 2012 in Alexandria with the assistance of an attorney. When Plaintiff came to the Northern Virginia area, she did a wide variety of work, including working as a cashier in a sandwich store, preparing food, caregiving, working at a laundromat, cleaning, and operating her own delivery business. Mr. Joiner advised Plaintiff improving on her English would assist her in finding work, so she enrolled in various English classes, earning three additional certificates between 2018 and 2019. While Plaintiff called her sister or daughter to translate on occasion, she did not consistently require their use and spoke a mix of English and Mongolian with her daughter.

Most notably to the Court, Plaintiff did not use her translator for the entirety of trial. While the interpreter sat next to Plaintiff, she did not interpret at all times but only did so occasionally and when Plaintiff testified. The evidence presented at trial established Plaintiff, like the plaintiff in *Chaplain,* had a "sufficient grasp of English such no language barrier prevented her from communicating . . . or from reading and understanding the agreement" executed by Plaintiff and Mr. Joiner. *Id.* at *5.

While Mr. Joiner was older and had far more assets to his name, Plaintiff had an advanced degree in economics and successfully ran her own business. She lived independently in the United States for thirteen years before meeting Mr. Joiner. Accordingly, the Court finds Plaintiff was not coerced into signing the agreement due to an inequality in bargaining power.

ii. Full Disclosure of Assets

Premarital agreements are typically enforced and interpreted like all other contracts. *Perez v. Draskinis*, 88 Va. Cir. 195, 199 (2014) (citing *Smith v. Smith*, 43 Va. App. 279, 287, 597

S.E.2d 250, 254 (2004)). However, parties engaged to be married have a confidential relationship toward each other, giving them "a high obligation to make a full and frank disclosure of all facts and circumstances" involving the rights to be affected by settlement. *Batleman v. Rubin,* 199 Va. 156, 160, 98 S.E.2d 519, 522 (1957). Any recitations in the premarital agreement create a prima facie presumption the recitations are factually correct. Va. Code § 20-151(B). The failure to include the actual disclosures themselves is not fatal.[2]

The premarital agreement executed by Plaintiff and Mr. Joiner stated it was made with full and complete disclosure of the financial condition of each party. Pl. Ex. 20. Plaintiff bears the burden of proving the recitation was false. The series of emails exchanged between Mr. Joiner and Ms. Leiser, occasionally including Plaintiff, illustrate disclosure occurred in conformity with the recitation provided in the agreement. Mr. Joiner initially indicated he and Plaintiff would provide Ms. Leiser with a list of assets and debts in a general mode. Pl. Ex. 17. Mr. Joiner emailed Ms. Leiser two days later, copying Plaintiff on the message. *Id.* He informed her after speaking with Plaintiff the parties did not want to include their assets in their agreement unless there was a real advantage to including them. *Id.* These emails prove the premarital agreement was made with full and complete disclosure of assets occurring between the parties regardless of whether the disclosures were included in the agreement.

Furthermore, Plaintiff knew Mr. Joiner owned at least two properties, one in Vienna, where she lived, and one in Arlington. Plaintiff knew he had assets in Peru from a prior marriage. Plaintiff received money from him when he purchased her a car worth over $20,000 and when she went on trips paid for by him. Plaintiff also knew, despite all these purchases, Mr. Joiner was retired, making her aware to some degree of Mr. Joiner's significant assets. While Plaintiff testified there was no disclosure of assets, Plaintiff failed to overcome the presumption of correctness attributed to the recitation of full disclosure of assets as corroborated by Mr. Joiner's emails to Ms. Leiser and Plaintiff's direct use of some of Mr. Joiner's assets.

iii. Proximity and Surprise Factors

Although the premarital agreement between the couple was executed six days prior to marriage, it did not make the agreement involuntary. The marriage was not scheduled until after the signing of the premarital agreement and occurred only when the parties voluntarily showed up to the courthouse. No lavish ceremony or small scheduled ceremony depended on the signing of the premarital agreement which could have rendered the agreement involuntary due to proximity to the wedding.

The premarital agreement was no surprise to Plaintiff, as discussions about having a premarital agreement occurred as early as July 2019, only two months after getting engaged.

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[2] The Virginia Court of Appeals, in *Remillard v. Remillard*, held there was no fair and reasonable disclosure of assets between a couple when the premarital agreement referenced exhibits supposed to be disclosures of assets but the exhibits were in fact blank documents save for the title. No. 1063-21-2, 2022 WL 4073320, at *7-8 (Va. Ct. App. Sept. 6, 2022). In the case at bar, the premarital agreement did not reference any included disclosures but simply stated disclosure had occurred between the parties.

Like the marriage in *Chaplain,* this marriage was also intended to benefit the wife by assisting Plaintiff's application for a green card. *See Chaplain*, 2011 WL 134104, at *6 (describing how the wife wanted to marry the husband after learning of his substantial real estate holdings). Mr. Joiner reasonably wanted to protect his assets through a premarital agreement. His desire to do so should have come as no surprise to Plaintiff, as it was first discussed three months before the parties married.

iv. Understanding of the Nature and Intent of Agreement

The testimony of Plaintiff's daughter, Khulan Batmunkh, established Plaintiff understood the intent of the premarital agreement. Plaintiff testified at trial she did not understand the agreement until discussing it with lawyers for this case. However, Ms. Batmunkh testified Plaintiff informed her she entered into a premarital agreement with Mr. Joiner before marriage around Christmastime in 2019. Trial Tr. 135:14-22. For Plaintiff to inform her daughter of the premarital agreement when the agreement the year it was executed implies Plaintiff was, at the very least, aware of the intent of the agreement.

v. Opportunity to Consult Independent Counsel

Finally, Plaintiff had the opportunity to consult with independent counsel but chose not to do so. Plaintiff knew of the desire for a premarital agreement as early as July 2019 and had a joint meeting in August with Mr. Joiner and Ms. Leiser to discuss the agreement prior to the drafting.

Ms. Leiser did not specifically recall the meeting, but the Court found credible her testimony she would have made clear at the meeting she only represented Mr. Joiner and advised Plaintiff to retain her own counsel. Ms. Leiser gave the parties a copy of the draft agreement via email for their review after meeting, allowing Plaintiff to review the document and make any suggestions or changes. As indicated in the emails to Ms. Leiser, the evidence showed Plaintiff had discussions with Mr. Joiner about the contents of the premarital agreement and the parties' assets. Plaintiff then voluntarily went to Ms. Leiser's office along with Mr. Joiner multiple days later without objection and without requesting counsel to sign the agreement. While Ms. Leiser may not have adhered to best practices in certain respects, it did not render the premarital agreement reached between the parties involuntary. In addition, Plaintiff utilized the services of an attorney on two prior occasions on her own behalf, both for a divorce and for immigration purposes, meaning she was familiar with the process and had the ability to obtain independent legal counsel.

Plaintiff argued she failed to obtain her own counsel in part due to her lack of understanding of the nature of the premarital agreement. The Court, as described above, does not find this persuasive. Plaintiff further alleged she does not check her email regularly and assumes emails not from Mongolia are spam, meaning she never received a copy of the agreement to review. However, this is contradicted by evidence Plaintiff utilized email to communicate with her teacher the same year for assistance with her resume. Pl. Ex. 23.

The statutory evidentiary threshold cannot be reached by unsupported statements which contradict the weight of the evidence. Considering all the factors discussed above, including Plaintiff's willful failure to obtain independent counsel, the Court finds the September 5, 2019 premarital agreement to have been voluntarily entered into by Plaintiff and Mr. Joiner.

B. Unconscionability

In addition to the agreement being voluntary, it also must not be unconscionable. Historically, courts considered a bargain unconscionable "if it was 'such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other.'" *Derby v. Derby*, 8 Va. App. 19, 28, 378 S.E.2d 74, 78-79 (1989). In determining whether an agreement is unconscionable as considered by the Premarital Agreement Act, the court must consider whether a gross disparity existed in the division of assets and whether the evidence shows overreaching or oppressive influences. *Galloway v. Galloway*, 47 Va. App. 83, 92, 622 S.E.2d 267, 271 (2005) (referencing *Shenk v. Shenk*, 39 Va. App. 161, 179 n. 13, 571 S.E.2d 896, 905 n. 13 (2002)). Even if the court finds a premarital agreement unconscionable, the court still must also find the parties did not fairly disclose their assets and did not waive the requirement in writing before finding it unenforceable. Va. Code § 20-151(A).

i. Disparity in Assets

A party may legally make a bad bargain or agree to partially gift their property. *Galloway,* 47 Va. App. at 90. However, "gross disparity in value exchanged" is a significant factor in determining whether an agreement is unconscionable. *Id.* at 91. If inequality in value is the only indicia of unconscionability, the case must be "extreme" to allow equitable relief. *Derby*, 8 Va. App. at 90.

The Court of Appeals in *Galloway v. Galloway* dealt with a property settlement agreement giving the husband approximately ninety-four percent of the marital assets. 47 Va. App. at 92. The Court presumed the disparity established the first prong of the unconscionability test but failed to find any overreaching or oppressive influences rendering the agreement unconscionable. *Id.* at 94. Nothing in the record indicated the husband acted in bad faith or coerced the wife into entering into the agreement. *Id.* Even the gross disparity in the division of marital assets, leaving the wife with only six percent of the assets, was not enough alone to find the agreement unconscionable. *Id.*

There is no question Plaintiff's assets pale in comparison to those of Mr. Joiner, a disparity left virtually untouched by the premarital agreement. The agreement waived both parties' right to equitable distribution and spousal support while ensuring their property would remain separate. It also allowed each party to prove by clear and convincing evidence what, if any, property is marital, at which point it would be distributed equally between the parties. It further waived the ability of each spouse to inherit from the other unless provided for in a will and provided Mr. Joiner would retain the properties in Arlington and Vienna along with any increase in their value. At the time of the execution of the premarital agreement, Plaintiff had

approximately $72,000 in assets[3] and made $15,721 in 2019 from her business, while Mr. Joiner was retired with assets exceeding $6 million.[4]

While the premarital agreement divided assets disparately based on what the parties entered the marriage with, Plaintiff must also show there were overreaching or oppressive influences rendering the agreement unconscionable.

ii. Overreaching or Oppressive Influences

Proof of overreaching or oppressive influences can be established in one of two ways. It can be shown either by bad faith, "such as concealments, misrepresentations, undue advantage, or oppression on the part of the one who obtains the benefit" or by "ignorance, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like on the part of the other." *Sims v. Sims*, 55 Va. App. 340, 349-50, 685 S.E.2d 869, 873 (2009) (citing *Derby*, 8 Va. App. at 28-29).

In *Sims v. Sims*, the Court of Appeals contrasted the overreaching of the husband with the husband's lack of overreaching in *Galloway.* The Court in *Sims* concluded the premarital agreement left the wife "literally . . . penniless with no practical means for supporting herself" after the agreement waived spousal support and relinquished almost one hundred percent of the marital estate to the husband. 55 Va. App. at 353. While the husband did not personally engage in overt overreaching or oppressive conduct, the agreement was still unconscionable as it left a gross disparity in the division of assets and left the wife in need of pecuniary necessities. *Id.* The Court contrasted the agreement at issue with the agreement in *Galloway*, explaining how the *Galloway* agreement was not unconscionable as the wife was employed outside the home and had both numerous job skills and assets of her own. *Id.*

While Plaintiff established a gross disparity of assets, the evidence did not establish oppressive influences. The evidence sufficiently shows no language barrier preventedPlaintiff from understanding the agreement or communicating any questions.[5] No other oppressive influences identified by Plaintiff would impact the unconscionability of the premarital agreement.

Moreover, Plaintiff failed to show overreaching influences on Mr. Joiner's part. Nothing indicates Mr. Joiner acted in bad faith, purposefully misled Plaintiff, or concealed material provisions of the premarital agreement. *See Rogers v. Yourshaw*, 18 Va. App. 816, 823, 448

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[3] Plaintiff's assets included a condominium in Mongolia worth approximately $41,000, a 2017 Toyota Prius worth approximately $27,000, a bank account with a balance of $2,104, bitcoin worth $2,000, and some jewelry.
[4] Mr. Joiner's assets included real property worth $1,526,540, three cars valued at approximately $24,000, a checking account with $52,000, personal effects valued at $5,000, and a variety of stocks and retirement funds worth more than $4.5 million.
[5] In *Chaplain v. Chaplain*, the Court of Appeals held Plaintiff's lack of fluency in English was not oppressive influence which rendered the premarital agreement unconscionable as the evidence showed no language barrier prevented her from reading and understanding the agreement or from communicating with her husband. 2011 WL 134104, at *5.

S.E.2d 884, 888 (1994). In fact, the correspondence between Mr. Joiner and Ms. Leiser indicates Mr. Joiner openly discussed the agreement with Plaintiff, including the question of whether to include their disclosures of assets. Plaintiff could have obtained independent legal counsel but declined to do so, instead signing the premarital agreement. Unlike the circumstances in *Sims,* these circumstances do not arise to any overreaching influence on Plaintiff from Mr. Joiner.

CONCLUSION

For the above stated reasons, the Court denies Plaintiff's request for declaratory judgment and finds the September 5, 2019 premarital agreement valid and enforceable. The Court requests Defendant's counsel to prepare an order reflecting the Court's ruling.

[redacted]

Penney S. Azcarate, Chief Judge
Fairfax County Circuit Court

PSA/hcm