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IN THE SUPREME COURT OF FLORIDA

APPEAL NO. SC 14-277

DIANNE L. HAHAMOVITCH N/K/A DIANNE LYNN
Petitioner,
v.
HARRY H. HAHAMOVITCH
Respondent.

INITIAL BRIEF ON THE MERITS OF PETITIONER, DIANNE L. HAHAMOVITCH N/K/A DIANNE LYNN

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEALS
4th DCA CASE NO. 4D10-3051
L.T. NO. 502008DR001392XXSB

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PRELIMINARY STATEMENT

This appeal evolves from the complex dissolution of a long term, 22 year marriage, with a hotly contested prenuptial agreement dated January 20, 1986 (the "PA"). Former Wife, DIANNE L. HAMMOVITCH n/k/a DIANNE LYNN, is referred to as "Wife". Former Husband, HARRY H. HAHAMOVITCH, is referred to as "Husband". The record is referred to with the abbreviation "R" followed by the page assigned by the Index to the Consolidated Record on Appeal. Hearings took place on May 18, 2009 through May 21st, 2009, May 24th, 2010 through May 27th, 2010, January 4th and 5th, 2011, February 14th, 15th, 16th, 23rd and 25th, 2011 and March 2nd, 2011. Hearing on the parties' respective rehearing motions took place on August 22, 2011. Transcripts of the PA's validity and interpretation trial, conducted May 18, 2009 through May 21st, 2009, are in the record at volumes 38 through 42, and references to same are prefaced by "T1" followed by the page of the particular transcript referred to. Transcripts of the dissolution trial, conducted May 24th through May 27th, 2010, are in the record at volumes 56 through 62, and references to same are prefaced by "T2" followed by the page of the transcript referred to. Transcripts of the trial on personal property and remaining issues, conducted on January 4th and 5th, 2011, February 14th, 15th, 16th, 23rd 25th, 2011 and March 2nd, 2011, are in this record at volumes 64 through 72 and references are prefaced by "T3" followed by the page

number of the transcript referred to. Transcripts of various motion hearings and other mini-trials are prefaced by "T" followed by the date of the hearing and page number of the particular transcript. The abbreviation "e.s." means emphasis supplied.

CERTIFICATE OF INTERESTED PERSONS

The Honorable Martin C. Colin	Trial Court
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Jeanne C. Brady, Esq. Frank R. Brady, Esq. Brady & Brady, P.A.	Wife's appeal counsel
Robert W. Sidweber, Esq. Karen B. Weintraub, Esq. Sidweber & Weintraub, P.A.	Wife's trial counsel and appeal co-counsel
Roberta B. Stanley, Esq.	Wife's former trial counsel
Jane Kruesler-Walsh, Esq.	Husband's appeal counsel
Joel M. Weissman, Esq.	Husband's trial and appeal co-counsel
The Honorable Carol Taylor The Honorable Burton C. Connor The Honorable M.W. Klingensmith	Appellate Court Panel

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STATEMENT OF THE CASE AND FACTS

A. Introduction and Statement of Jurisdiction:

This Petition evolves from the dissolution of a long term 22 year marriage, with a hotly contested prenuptial agreement dated January 20, 1986 (the "PA"). This Court accepted certified question jurisdiction[1] over the Fourth District's January 8, 2014 decision, which found a recurring legal issue of great impact on the citizens of this state, and certified it to be of great public importance:

> WHERE A PRENUPTIAL AGREEMENT PROVIDES THAT NEITHER SPOUSE WILL EVER CLAIM ANY INTEREST IN THE OTHER'S PROPERTY, STATES THAT EACH SPOUSE SHALL BE THE SOLE OWNER OF PROPERTY PURCHASED OR ACQUIRED IN HIS OR HER NAME, AND CONTAINS LANGUAGE ***PURPORTING*** TO WAIVE AND RELEASE ALL RIGHTS AND CLAIMS THAT A SPOUSE MAY BE ENTITLED TO AS A RESULT OF THE MARRIAGE, DO SUCH PROVISIONS SERVE TO WAIVE A SPOUSE'S RIGHT TO ANY SHARE OF ASSETS TITLED IN THE OTHER SPOUSE'S NAME, EVEN IF THOSE ASSETS WERE ACQUIRED DURING THE MARRIAGE DUE TO THE PARTIES' MARITAL EFFORTS OR APPRECIATED IN VALUE DURING THE MARRIAGE DUE TO THE PARTIES' MARITAL EFFORTS?

Hahamovitch v. Hahamovitch, 133 So. 3d 1008, 1017 (Fla. 4th DCA, ***reh'g den.,*** Feb. 3rd, 2014) (e.s.) (the "Decision").[2] This Court also took certified conflict

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[1] ***Fla. Const. Article V § 3(b)(4)***; ***Rule 9.030(a)(2)(v), Fla.R.App.P.***

[2] For ease of reference, a copy of the Decision is contained in Wife's Appendix to this Brief as Exhibit A-4.

jurisdiction on the same point of law[3] as ***Valdes v. Valdes***, 894 So. 2d 264 (Fla. 3rd DCA 2004), and ***Irwin v. Irwin***, 857 So. 2d 247 (Fla. 2nd DCA 2003) (agreements with substantially similar title presumption clauses and no express exclusion of appreciation or enhancement due to marital labor or salary insufficient to waive or release same from marital estate). ***Hahamovitch*** at 1016. As explained in ***Savoie v. State***, 422 So. 2d 308, 310 (Fla.1982):

> [O]nce this Court has jurisdiction of a cause, it has jurisdiction to consider all issues appropriately raised in the appellate process, as though the case had originally come to this Court on appeal. This authority to consider issues other than those upon which jurisdiction is based is discretionary with this Court and should be exercised only when these other issues have been properly briefed and argued and are dispositive of the case.

B. Statement of the Facts:

Two trials led to this Decision. The first - on validity and interpretation of the PA[4] [R 1189-1203 p. 1, 1354-85]. The second - on final dissolution, equitable distribution, support and what is due Wife under this PA (even if valid) [R 1189-1203, 1354-85, 1972-73].

PA Invalidity under Casto I & II

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[3] ***Fla. Const. Article V, §§ 3(b)(3)*** and ***(4); Rule 9.030(a)(2)(A)(vi), Fla.R.App.P***.

[4] The PA went into evidence at T1 pp. 156-157. A copy is contained in Wife's Appendix to this Brief at Exhibit A-1 thereof.

Wife challenged the PA's validity under ***Casto II*** [R 21-32 ¶17C]. Her ***Casto I*** claim was added by agreed inter-lineation once Husband's expert CPA, Mr. Lundy, devised a chart of Husband's 1985 finances for the validity trial [T1 pp. 59-60; R 1842-87 pp. 10-12 ¶17]. Husband's deficient PA financial "disclosure" consisted of his hand scrawled, single line "approximating" his net worth at $10 million, contained in exhibit "A" to the PA [A-1 p. 15]. There was no income or list of assets disclosed in the PA or separately.[5] As it turns out, Husband *intentionally overstated his net worth* in Exhibit "A" by as much as $5.5 million with no further disclosure, even though this PA's material terms are expressly tied directly to his purported "net worth" [T1 pp. 55-56, 79, 202-05, 768-69, 801; R 982-1000 p. 10 ¶17] (e.s.).

By way of background, Wife was 21 when the couple met [T1 pp. 355-56, 625-26].[6] Husband was an experienced 39 year old commercial developer [T1 p. 506]. Wife worked for an interior designer that Husband hired to decorate his office [Id.]. Soon after, he hired Wife to work for him at $30,000 per annum. She moved into his unfurnished 1,200 square foot apartment, valued at $120,000 [T1 pp. 335, 358, 506-07, 666]. They lived together for 5 years. Husband paid expenses [T1 pp. 362-63].

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[5] The trial court never saw a PA like this one, said no case law assisted it and dubbed this a "*de novo*" situation [T1 pp. 811-12].

[6] On the date of Husband's petition, Wife was 49 and Husband was 68 years old [T2 p. 544].

He bought Wife a 1974 Cutlass and paid for gas [T1 pp. 357, 363]. They traveled. Husband gave Wife a diamond ring estimated between 2.4 and 4 karats, with no evidence of cost or quality [Id.]. Husband took delivery of a couple of foreign cars when in Europe – with zero evidence of cost [T1 p. 511]. When the PA was signed, Husband was 46 and Wife was 27. They were both in good health [R 1189-1203 ¶¶5-6; T1 pp. 56, 626, 684].

Husband initially hired attorney Abby Kaplan in the fall of 1985 to begin drafting the PA. Mr. Kaplan drafted an agreement requiring *full detailed financial disclosure* to be attached to the agreement (the "Kaplan Draft") [T1 pp. 105, 618-20; H Ex. 37; A-3 p. 2 ¶3] (e.s.). Husband's hand written note on the Kaplan Draft disagreed with full detailed disclosure [A-3 p. 2 ¶3]. Attorney, Kaplan was eventually replaced by lawyer, Sandor Genet ("Genet") [T1 pp. 30, 104, 170, 179]. Genet began negotiations with Wife's counsel, Mr. MacLaren ("MacLaren"), in November, 1985 [T1 pp. 174-75]. Genet reviewed the Kaplan Draft and prepared the signed PA [T1 pp. 175-76]. There was only one meeting among the parties and their lawyers concerning the PA, held on December 22, 1985 in Husband's CPA, Lipson's office (the "December 22nd meeting") [T1 pp. 40, 76, 107-08, 117-18, 139, 165]. Both lawyers spent more hours on this PA after that, and changes were made before signing [T1 pp. 227, 287-88]. Husband and Genet said MacLaren is the most aggressive

lawyer they have ever encountered [T1 pp. 191-92]. MacLaren asked for more financial disclosure, but was refused [T1 pp. 192-93].

At the validity trial, Husband insisted his PA "disclosure" was "approximate" even though intentionally off by as much as double, without an accounting methodology, or any asset or income disclosed [T1 pp. 143-45, 214-15]. Genet, admitted he would *never* recommend any client estimate his net worth at double its actual value [T1 pp. 144-45, 214-19] (e.s.). Genet does not trust what his clients say [Id.]. He did not rely on CPA Lipson either [Id.]. Genet had <u>no</u> financial statement from Husband to attach to the PA [T1 pp. 228-29] (e.s.). He confessed that he didn't know if Wife had *any* knowledge of Husband's assets <u>or</u> income when she signed the PA [T1 pp. 230-31] (e.s.).

Just before the validity trial, Husband served a one page "Chart, Summary and/or Calculation of Husband's Assets and Liabilities as of 12/31/85 ..." (the "Lundy Chart"), devised by his trial expert, CPA Lundy [T1 pp. 59-61, 452, 497; W Ex. 13; A-2]. It reflects assets and liabilities of only $4.4 million in December, 1985 [T1 p. 59; A-2 p. 2].[7] It also reflects wildly diverse holdings and percentage ownership interests in undescribed real estate [A-2]. In order to decipher the Lundy Chart, one

[7] When the December 22nd meeting took place, Husband materially misrepresented his net worth at "approximately $10 million" in Exhibit "A" of this PA [A-1 p. 15].

must know what property Husband had, the building process sequence, sale contracts, profitability, liabilities, others funding property portions, and whether obtained for speculation [A-2]. Husband's own accountant didn't even know that at the validity trial [T1 p. 768-69]. Thus, his own trial CPA and lawyer proved a detrimental, material misrepresentation of his net worth "disclosure", stating that it was impossible, given the Lundy Chart and Husband's absence of details, for this interior designer Wife to understand the value of such convoluted deals, let alone Husband's income, by any reasonable means before she signed the PA [T1 pp. 80-81, 765].

Husband Misstated Net Worth and Refused to Disclose Assets and Income

At the validity trial, Husband and CPA Lipson admitted that they purposely "highballed" and "bumped up" his 1985 PA net worth "disclosure" by as much as $5.5 million [T1 pp. 142-43, 609-10]. Husband claimed his real 1985 net worth was between $5 million and less than $8 million [T1 pp. 59, 62, 79, 82, 156-62, 166]. The false "approximately $10 million" PA disclosure was materially detrimental to Wife because her alimony and death benefits under the PA are tied directly to a percentage of Husband's "net worth" [T1 pp. 64, 85, 298, 301, 544, 689-90, 799; A-1 ¶¶13, 19].

When pressed, even CPA Lipson admitted that it was *near impossible to ascertain Husband's 1985 net worth merely from records and complicated transactions,* absent property appraisals – which Wife was admittedly never privy to

[T1 pp. 155, 165-66] (e.s.). At the December 22nd meeting, Husband's financial records were *supposed to be displayed* for her counsel's review, but remained *hidden* in cabinets [T1 pp. 76, 108, 140-42, 171-72] (e.s.). The court even quizzed Lipson about how Wife or her counsel could know what to ask for without seeing what was hidden in Husband's file cabinets [T1 pp. 140-42]. Lipson had no explanation [Id.]. He failed to prepare a financial document list for Wife's lawyer [T1 pp. 142, 186]. Husband's personal financial information was not there either [T1 p. 141]. Attorney Genet didn't furnish Wife's counsel with Husband's financial documents either [T1 pp. 185-86].

At trial Husband didn't verify his assets, liabilities or income in any financial affidavit either [R 182-207, 220, 2830-31].[8] Wife was surprised at Husband's purported $10 million net worth when she signed the PA [T1 pp. 337-38]. As it turns out, he had nowhere near that worth [T1 pp. 81, 117, 771].[9] Wife thought this relationship was built on trust [T1 p. 457]. Had she known then of Husband's detrimentally deceptive, concealed net worth misrepresentation, Wife would not have

[8] Astonishingly, one financial affidavit remained *unsigned*, and the other left a plethora of assets with no value and, although signed, contained a footnote stating Husband could *not vouch for the veracity* of the affidavit's contents [T1 pp. 549, 560-61 W Ex. 43, 44 & 45; R 132-51, 161-81] (e.s.).

[9] No matter what method was employed, be it book or market value.

trusted him, invested her own money with him – *or married him* [T1 pp. 688, 802-3, 456-57] (e.s.). Wife could have gone on with her own very bright career, kept her nonmarital assets and taken a different life path. Instead, Wife detrimentally relied on Husband's (false) "disclosure" [T1 pp. 298, 301, 689-90, 789-93].

The Specific Waiver of Increases in Property Value During Marriage Was Removed from the Final PA

Attorney Genet admitted that in 1986 financial disclosure was required for a prenuptial agreement's validity [T1 p. 187]. He *deleted* the Kaplan Draft's *full disclosure* and the *increase in value during marriage* provisions [T1 pp. 218-19; A-1 ¶10; A-3 ¶¶3, 5] (e.s.). Initially Genet said Wife had "approximate knowledge" of Husband's assets from her interior design work in his businesses [T1 pp. 199-200]. When pressed, he finally confessed that he had *no idea* if Wife knew Husband's income at all [T1 p. 201] (e.s.). Genet admitted that he didn't know if Wife knew *anything* about Husband's finances, business *liabilities* or building *values* at all [T1 pp. 199-201, 204-5, 226-27, 231] (e.s.). Husband's handwritten notes on the Kaplan Draft state he'd rather state his net worth as "approximate" [A-3 ¶3 p. 2]. He wanted the least amount of disclosure to Wife, and had all financial details *excluded* from the PA [T1 pp. 520, 521, 524] (e.s.). Husband admitted to having plenty of documents to show his true net worth [T1 p. 604]. Husband just said his "disclosure" came from Lipson [T1 p. 612].

CPA Lipson Confesses He Did Not Do a Good Job on Disclosure to Wife

CPA Lipson worked for Husband some 40 years. He has financial interests in Husband's business [T1 pp. 107, 129]. Lipson didn't supply tax returns or any other information to Wife or her counsel [T1 pp. 124-6, 133, 142-62]. He confessed at the validity trial that he didn't do a good job providing tax returns [T1 p. 152]. Attorney Weissman abruptly cut Lipson off, instructing him *not to comment* on that problem [T1 p. 152] (e.s.).

Even Husband Finally Admits That He Did Not List His Assets with an Approximate Value in this PA

When pressed, Husband admitted that his disclosure figure was purposely "highballed" and "bumped up" and that he had documents to demonstrate his true (substantially smaller) net worth [T1 p. 557]. He then, finally confessed that he *could have listed* his assets with an approximate value, but *didn't* because attorney Genet purportedly said what he did was sufficient [T1 p. 559] (e.s.). Conversely, Genet said Husband's disclosure was *inadequate*, and would *never* advise any client to double his net worth in a financial disclosure, as here [T1 pp. 214, 217] (e.s.).

Prior to PA signing, MacLaren went through its provisions with Wife based on Husband's "approximate" disclosure figure [T1 p. 250]. He asked for more financial information plus a tax return from Genet. Genet refused [T1 p. 264]. MacLaren advised Wife that more information was needed to confirm the net worth in Exhibit

"A", but didn't know that figure to be false [T1 p. 297]. Wife elected to sign the PA, believing Husband's disclosure was true, because she trusted him [T1 p. 457].[10]

Due to Husband's false PA disclosure, Wife believed that upon Husband's death she would receive $1.6 million or $2.5 million, depending on whether Husband's parents survived him [T1 pp. 85, 298-99].[11] Paragraph 13 of the PA ties alimony obligations directly to Husband's net worth, and specifies 16.667% of his total net worth as the maximum alimony, without identifying any accounting methodology for determining his net worth [A-1 ¶¶13-16]. Paragraphs 15A & B provide that if Wife's property distribution exceeds the PA's sliding alimony scale, then she *keeps all* property distribution and can forego the sliding alimony scale [Id. ¶¶13-16] (e.s.). Consequently, Husband's net worth is a very material term of this PA [T1 pp. 62, 82-83].

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[10] MacLaren corroborated Wife's testimony that during the December 22nd meeting, Wife met privately with Husband in a separate room [T1 pp. 291-92]. Wife testified that Husband took her aside and promised her: "Baby, baby, you know, I'll take care of you always. This is just boilerplate stuff" [T1 pp. 415, 418, 464]. Husband said that was a "fabrication", while conversely insisting he has no recollection of anything else at that December 22nd meeting [T1 pp. 539, 545-46]. The court gave Wife's testimony no weight on this issue, but believed her testimony otherwise. The court noted she was busy with wedding preparations [T1 pp. 776-77].

[11] The PA provides Wife with a death benefit of 16.667% of Husband's adjusted gross estate, unless his parents predecease him [T1 pp. 298, 799]. If so, then she receives 25% of his adjusted-gross estate [Id.].

Husband Relied on Sales "Propaganda" He Admitted Did Not Exist

Husband dubbed his office as "grandiose" in 1985 to attract speculators into his warehouse building business [T1 p. 511]. Appearance of affluence was very important to him [Id.]. Husband relied on his own sales "propaganda" for *investors* to establish *Wife's* approximate knowledge of his assets and income [T1 p. 513] (e.s.). He then admitted that his "propaganda" didn't even exist when the PA was signed [T1 pp. 513-15]. Husband even attempted to rely on a 1969 sales transaction. Wife was only 11 years old in 1969 [T1 p. 516].

When the PA was signed, Husband had a college degree, 20 years of business experience and was Wife's employer [Id. ¶¶7-8]. Conversely, Wife was never married and had been with Husband since age 21. She has a two year degree from the Art Institute of Fort Lauderdale [T1 pp. 39, 56].[12] Wife gave up her own job and career when she became involved with, and began working for, Husband. Her role was limited to decorating and assisting architects with design [T1 pp. 369-70]. Wife was never involved in Husband's finances. Furniture or design material purchases were all approved by Husband [T1 p. 769]. Wife worked for Husband until their second child was born. Then by agreement, Wife's sole job for the rest of this marriage was

[12] Although Wife lived with Husband, she didn't own real estate individually, and was beneficiary of a trust her father managed [T 702-03]. When she signed the PA she was worth about $300,000, mainly from her trust [T 450].

wife, mother and homemaker. Wife also helped care for Husband's elderly parents [T1 p. 364; T2 p. 544].

Wife is Barred from Financial Discovery as Irrelevant

At the validity trial, Wife contested the Lundy Chart, which was the only financial statement Husband produced [T1 pp. 59-61, 452, 497; A-2]. He slyly invoked attorney/accountant privileges until the court finally ordered him to elect a litigation lane just before trial [T1 pp. 31, 52, 316-18, 320]. He convinced the court to deem most financial discovery irrelevant, asserting no reasonable likelihood that Wife's discovery requests could ever lead to *relevant evidence* concerning what she takes under the PA [R 1974-75 ¶6, 1980-83 ¶3] (e.s.). To circumvent discovery, Husband stipulated to his ability to pay *any amount* ordered and to Wife's needs [T3 pp. 70, 859, 1477]. Missing that it's not Husband's ability to pay — but rather *what he owes*, the whereabouts of Wife's property and what Husband did with that, along with a plethora of joint property — the court denied Wife's discovery requests looking to its prior bifurcation and PA interpretation orders, which turned on the notion that financial discovery would not be needed then [R 1974-75 ¶6, 1980-83 ¶3] (e.s.). PA provisions for gifts, property distribution, Wife's sole property, joint property and partition actions were all ignored [A-1 ¶¶15A &B, 22, 26]. Wife's loans to and investments with Husband from her nonmarital funds were not paid back. Many joint

property transfers took place during marriage that generated large joint proceeds, but all were left unaccounted for [T1 pp. 680, 682-83]. So were the profits and rents [id.].

Court Chastises Wife for Proffering Some Financial Documents She Unearthed

There was some evidence proffered, over Husband's strong objection, as to what Wife is entitled to under this PA [T2 pp. 440-41, 696-701, 704]. The court harshly admonished her counsel when he insisted on a proffer by her CPA. He tried to trace the records found in the public domain concerning Wife's property interests. The court warned: "You can appeal until the cows come home on that. Good luck to you" [T2 p. 432]. The trial judge then abruptly left the courtroom and refused to listen to the proffer or look at any of the proffered documents [T2 pp. 630, 696]. The proffer went on anyway while the court stayed out of the courtroom [T2 pp. 696-706].

The PA Provides for Alimony, Gifts, Death Benefits and Property Distribution

The PA provides for alimony, gifts, death benefits and property distribution. Under paragraphs 12 and 13, there is a sliding scale of alimony payable to Wife, based on the marriage length at the time a dissolution petition is filed, and an alimony cap tied to 16.667% of Husband's net worth [A-1 ¶¶12,13]. No accounting method as to "net worth" is identified. When signing the PA, the parties struck (and initialed) the last sentence of ¶13, which had provided that all sums payable upon dissolution "shall be considered alimony" [A-1 ¶13]. The court found the payments to Wife under the

PA a "blend of alimony and property distribution" [R 2313-20 ¶6 p. 3]. CPA, Ellrich testified that "alimony" under the PA fails to come close to Wife's lifestyle up to the petition date [T1 p. 650].

Section 20 of the PA provides that upon either party's filing for dissolution or written notice of a desire to dissolve the marriage, Wife shall vacate the marital residence and remove herself and/or her personal effects therefrom [A-1 p. 12 ¶20]. The PA also provides Wife with a $50,000 payment for her "immediate" needs when vacating it in the event of a dissolution petition [Id. p. 7 ¶14].[13] That provision of the PA is contradictory about ownership and rights to marital residence(s) [A-1 p. 12 ¶20]. It provides that (a) regardless of "anything" in the PA to the contrary, it is understood that all marital residences used during marriage shall be Husband's sole property, and Wife specifically waives any rights that she may have in and to said residences; and conversely (b) notwithstanding this *specific* provision, if Wife owns or jointly owns *any* of said residences, this provision does not preclude her ownership of one-half of any such residence(s), however she is required to yield immediate possession of same [Id.]. Thus, the marital residence provision purportedly "waives" Wife's rights to such property, while she also retains ownership of all residences she

[13] The court erroneously credited this $50,000 sum against the total amount payable to Wife, instead of the temporary support it is under ***Belcher v. Belcher***, 271 So. 2d 7 (Fla.1972) [R 2313-20 ¶8].

owns or jointly owns [A-1 p. 12 ¶20]. The word "title" is absent from ¶20, and there is no bar to Wife's ownership by equitable, beneficial or legal title – or equitable distribution [Id.].

The "Retention of Sole Property" clause starts with the gaping proviso that "Except to the extent that the Parties may otherwise desire . . ." [A-1 p. 3 ¶5]. The "otherwise desires" of the parties should have been established by discovery; however, the court precluded all meaningful discovery based on its construction of the title presumption clause [R 1354-85 ¶13d; T 03/09/10 pp. 93-97, 104-12, 119-22]. If title wasn't in Wife's name on the petition date, it found that Wife had *no interest* in her property – no matter what Husband did with it or how he did so – including the plethora of joint property, rents, profits, proceeds and commingling of same into replacement property [Id.] (e.s.). Yet, that title presumption provision is *silent on the date on which title is presumed* [A-1 p. 10 ¶17] (e.s.). Further, the PA's respective "release" provisions each contain the broad proviso that "except as otherwise provided for herein" [Id. ¶¶1,2]. This PA *provides otherwise* for alimony, property distribution, joint property, gifts and death benefits in more detailed provisions [A-1 ¶¶13-16, 19, 20, 26] (e.s.). Then there is the partition clause, in which either party has the right to bring a partition action upon death or divorce [A-1 ¶22].

Wife's Marital Labor and Efforts Are Great

From the very limited discovery allowed as to properties titled in Wife's name on the petition date, records reflect that joint commercial real property included Congress Ave., Mt. Dora Marketplace, and Rutgers Plaza [T2 p. 437]. Husband failed to give Wife all income she earned on the properties during marriage, despite her own K-1's showing $600,000 of income to her for several years [T2 pp. 700-701; T 03/09/10 pp. 719-20, 1126-27]. The court read the title presumption provision to prohibit discovery and any award of property to Wife if not titled in her name on the petition date. It ignored all joint property proceeds, commingled proceeds, the fruits of same and bank accounts as irrelevant [T 03/09/10 pp. 93-97,104-12, 119-22]. The court also prohibited tracing of property, unless titled in Wife's name on the petition date – no matter what Husband did with Wife's properties and the proceeds and fruits thereof [Id.].

During marriage, Wife owned many properties, purchased others and loaned and invested upwards of $300,000 of her own nonmarital money with Husband [T1 pp. 39, 42, 67-68, 562, 600, 682]. There was evidence that Husband gifted commercial real property in International Plaza and a property referred to as "CPP" where Wife made a loan to Husband and then re-invested her own money [T1 p. 496]. Husband never repaid that loan, and kept all rents, profits, proceeds and replacement property, despite commingling [T1 pp. 679-80, 682]. There was also evidence that

some of Wife's properties sold for substantial profits and had rental income. Husband kept that, too [Id.]. Husband pocketed and reinvested all money for himself, and the court found that was just fine, failing to consider that properties were then commingled or owned outright by Wife [Id.; T 03-09-10 pp. 93-97, 104-12, 119-22].

Husband's Financial Affidavit Is Unsigned

The parties' financial affidavits show great disparity. Husband's *unsigned* financial affidavit shows net worth of $59 million (with large assets and bank accounts unvalued) [R 245-67 pp. 9-10, 18] (e.s.). His monthly income is $357,000 [Id. p. 4; T1 pp. 16, 68]. Wife's initial financial affidavit reflects nonmarital assets of about $200,000 and monthly net income of $1,300 [R 105-19 p. 3]. At trial, Wife's CPA, Ellrich, only had Husband's *unsigned* affidavit to go on [T1 pp. 642-43] (e.s.). Husband's counsel objected and moved to strike his testimony as unreliable because the *affidavit was unsigned by Husband* [T1 p. 643;R 161-81 p. 3] (e.s.). Ellrich compared Wife's annual living expenses to the sliding alimony scale under the PA [T1 p. 648]. He estimated Wife's 1986 monthly needs at $5,000, excluding the $3,000 monthly mortgage payment, robust housing expenses and extensive travel [T1 pp. 648-49]. As of the petition date, PA payments (that were awarded) come nowhere near the marital lifestyle [T1 pp. 650-51]. Wife's monthly needs in concert with this marital lifestyle exceed $36,000 [T2 pp. 566-68; R 105-19 p.7].

According to Husband, If Wife Doesn't Know She Owns Property, She Has No Interest in the Unknown Property

During marriage, Husband just put papers in front of Wife, instructed her to sign them, and informed her when transactions were complete. Wife trusted him [T1 pp. 588-9]. According to Husband, if Wife didn't know about the [many] entities she owned during marriage, then she had *no* interest in them at all [T2 pp. 426-27; T 03-09-10 pp. 93-97, 104-12, 119-22] (e.s.). During marriage, Husband focused on businesses.[14] Wife supported and assisted him, entertained his clients, raised children and ran their lavish marital home [T2 pp. 647-49]. The court found Husband to be dominant in this PA, and ruled that Wife's 2-year interior design degree rendered her "well educated" [R 1189-1203 ¶7; T1 pp. 755, 806].

Wife had *no* knowledge of Husband's books or records before or during marriage [T1 p. 604] (e.s.). Even so, the court didn't allow discovery and tracing. Nor did it require Husband to do so either. It did not even award Wife's own property to her — no matter what Husband did with it [Id.]. The court didn't order Husband to repay loans or investments owed to Wife from her own nonmarital money. Wife was shut out of all fruits of the marital labor – even though her own proceeds, funds,

[14] He has a business degree and is president of four corporations [T1 pp. 16, 351-52, 507-08].

joint and commingled property, commingled funds and labor were used to generate even more fruits – all of which were barred.

Husband Offers Wife's Counsel a Job in Exchange for Favorable Testimony

During the marriage Husband contacted Wife's attorney, MacLaren, and offered him a job as <u>*his*</u> business counsel. His offer was conditioned on MacLaren affirming in court that Husband's PA's financial "disclosure" was fair and adequate [T1 pp. 306-07] (e.s.). MacLaren refused [Id.]. Then, Husband unsuccessfully sought a postnuptial agreement [T1 pp. 469-70]. Wife was astonished at such poor treatment after a long dedicated marriage that produced two beautiful children the parties didn't contemplate when they married [Id.].

The Trial Court's Rulings

Husband concealed his income and assets. His "disclosure" was insufficient and the PA unfair to Wife at dissolution [R 1189-1203 ¶¶35-36]. Nevertheless, the court found Wife knew or "should have known" enough of Husband's financial situation by living and working with him to know he could afford the PA benefits [Id.]. This despite the inability of Husband and his own his parade of professionals to explain the "value" of Husband's 1985 assets, multilayered and convoluted businesses, *net worth* and *income* [T1 pp. 76-77, 80-81, 158, 166, 764-65] (e.s.). The court ignored that and relied, instead, on the parties' premarital cohabitation, an

unfurnished 1,200 square foot apartment, decorating some buildings, travels, a 1974 Cutlass with no evidence of cost, a ring of an uncertain diamond size and cost, some entertainment and some gas [T1 pp. 356-58, 506-07, 511]. According to the court, Wife knew Husband was wealthy, but had no details about his purported wealth [R 1189-1203 ¶31h]. The court ignored cases finding such evidence insufficient as a matter of law to support validity.

Rejecting ***Casto I*** invalidity, the court excused Husband's intentional and materially misrepresented net worth as the difference between book and market value, despite an intentionally highballed disclosure figure off by at least $2 million, no asset identified, no value method stated in Exhibit "A" – and both methods being off by millions [T1 pp. 404-09, 773-75, 806-07]. Even though Wife's counsel was the most aggressive Husband and his counsel ever encountered, and more legal hours were spent after the December 22nd meeting leading to changes, the court nonsensically found that Wife didn't care about PA provisions [T1 p. 191; R 1189-1203 ¶¶13, 38]. This even though Husband's own accountant at the time could not quantify his 1985 assets and income at trial [T1 p. 768].

Under the PA Wife is entitled to her own assets, alimony, joint assets, property distribution and gifts, among other things [A-1 ¶¶12, 13, 15A, 15B, 26]. The PA is *silent on appreciation* of nonmarital and marital assets as a result of marital efforts,

labor or earnings, and Husband's *salary* [R 1354-85 ¶¶13d, 14] (e.s.). Nevertheless, the court interpreted the PA to contain a waiver of all appreciation when paragraph 2 is read in *pari materia* with the title presumption paragraph 17 [Id. ¶¶16, 30, 35]. It read paragraph 17 to contain the petition date, even though it contains no such date. Property owned by either or both parties during marriage remained mostly unknown to Wife due to orders limiting discovery and prohibiting tracing [T 03-09-10 pp. 93-97, 104-12, 119-22; R 1974-75, 1980-83; T2 p. 151].[15]

The court found the amount owed to Wife under the PA to be a "combination" of property distribution and alimony [R 2313-20 ¶6; A-1 ¶¶12, 14-16]. Based on the length of marriage, the court awarded Wife $1.932 million, payable in monthly installments over 7 years, along with a convoluted adjustable interest calculation [R 2313-20 ¶5; A-1 ¶¶12, 14,16]. The PA also states that if any portion of the payments to Wife are determined to be not tax deductible to Husband, then payments are reduced by the *highest* tax bracket at which *Husband* is taxed [A-1 ¶14] (e.s.).[16]

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[15] The court even refused to order Husband to update his financial affidavit to set child support, finding no legal authority to order one, despite Husband's good fortune motions and property Husband valued at "TBD" [T 3/10/10 pp. 25-31;R 2011-12 ¶1].

[16] Paragraph 17 says that if Wife is sole owner of property then she shall remain so [A-1 ¶17]. In 1991 Husband issued jointly titled stock with Wife in corporations that own real estate named Congress Square, Rutgers and Mt. Dora [T1 pp. 70, 563-70]. Properties remained under Husband's control [T1 pp. 574-

The Fourth District's Decision

The PA provides in pertinent part:

> 1. HARRY'S RELEASE. Except as otherwise provided for herein, in the event either of the Parties hereto institutes legal proceedings for separate maintenance and/or dissolution of marriage and/or divorce, and/or any other claim for support or maintenance, HARRY hereby waives and releases, and is hereby barred from any and all rights and claims of every kind, nature and description that he may acquire or to which he may be entitled under the laws of any jurisdiction us a result of the marriage between the Parties, in and to any of DIANNE'S property, including. but without intending thereby to limit the generality of the foregoing, any and all right to alimony, either lump sum, rehabilitative, permanent, or otherwise support and maintenance, equitable distribution, division of property, special equities, attorney's fees, or any, other rights that HARRY may have against DIANNE relative to financial issues.
>
> 2. DIANNE'S RELEASE. Except as otherwise provided for herein, in the event either of the Parties hereto institutes legal proceedings for dissolution of marriage, DIANNE hereby waives and releases, and is hereby barred from any and all rights and claims of every kind, nature and description that she may acquire or to which she may be entitled under the laws of any jurisdiction as a result of the marriage between the Parties, in and to any of HARRY's property, including, but without intending thereby to limit the generality of the foregoing, any and all right to alimony, either lump sum, rehabilitative, permanent, or otherwise, support and maintenance, equitable distribution, division of

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77]. When he realized the affect of the PA's setoff and credit provision, he attempted to retract that conveyance memorialized by stock certificates signed by Husband 18 years ago. Wife had K-1s reporting income during marriage. Her 2006 individual tax return shows a $600,000 distribution from Congress Square [T1 pp. 73, 700-01]. Yet, she *didn't* receive any income or distribution let alone one half share of the proceeds, profits or rents. Husband kept that too [T1 pp. 682-83] (e.s.).

> property, special equities, attorney's fees, or any other rights that DIANNE may have against HARRY relative to financial issues.
> . . .
>
> 5. RETENTION OF SOLE PROPERTY. Except to the extent that the parties may otherwise desire, HARRY and DIANNE shall, during their respective lifetimes, keep and retain sole ownership, control, enjoyment and power of disposition with respect to all property, real, personal or mixed, now owned or hereby acquired by each of them respectively, free and clear of any claim by the other.
> . . .
>
> 9. MUTUAL RELEASE. In consideration of the marriage of the Parties to each other, and in consideration of the other provisions herein contained, each party agrees that neither will ever claim any interest in the other's property and that the property of every kind, nature and description which either one has on the date of the marriage will remain the respective separate property of each after said marriage, and each agrees not to make any claim against the property of the other.
> . . .
>
> 17. TITLE PRESUMPTIONS. It is additionally understood that if HARRY purchases, acquires, or otherwise obtains, property and title to said property is in HARRY's name with DIANNE and no explanation is made as to the percentages of interest that either party has, then it shall be presumed that they shall be 50% – 50% owners of said property. If HARRY purchases, acquires, or otherwise obtains, property in his own name, then HARRY shall be the sole owner of same. If DIANNE purchases property in her name, then DIANNE shall be the sole owner of same. . . .

[A-1 pp. 1-4, 10, ¶¶1,2,5,9,17]; ***Hahamovitch*** at 1012.

This Decision deems this PA's language substantially identical to prenuptial agreements in the Second District's ***Irwin*** decision and the Third District's ***Valdes*** decision where salary and appreciation were ***not*** waived and certified direct conflict.

Hahamovitch at 1016 (e.s.). Nevertheless, the Decision deemed this PA's title presumption and release provisions "broad enough" if read together to waive Wife's right to any asset titled in Husband's name that was acquired or enhanced during marriage with marital labor or earnings, even though all waivers are silent on the specific issues of appreciation of marital and nonmarital property and marital salary. ***Id***. In framing the certified question, the Decision even refers to the PA's release provisions as "*purporting*" to waive or release appreciation, plainly flagging a significant question as to whether this PA does anything to exclude marital labor, active and passive appreciation, or the fruits thereof. ***Hahamovitch*** at 1017 (e.s.).

The Decision goes on to detail many inconsistencies in the case law among all District Courts as to waiver of active versus passive appreciation under prenuptial agreements. ***Id***. at 1012-16. The Decision conflicts with the Second District, which holds that a simple express waiver of appreciation waives *only passive* appreciation – but not value increases attributable to marital labor and funds. ***Hahamovitch*** at 1014 (citing ***Doig***, 787 So. 2d at 103) (e.s.). After ***Doig***, this Court deemed passive appreciation of nonmarital property to be marital property under the equitable distribution statute. ***Kaaa v. Kaaa***, 58 So. 3d 867 (Fla. 2010). Conversely, this Decision deems both active and passive appreciation of nonmarital property and Husband's income waived, even though the PA is silent as to marital salary and all

appreciation of marital and nonmarital property that occurs as a result of marital labor or marital income. ***Hahamovitch*** at 1016. In fact, the final PA removed such provisions [A-3 p. 2 ¶3; A-1 ¶2]. Nevertheless, the Decision aligns itself with ***Cameron v. Cameron***, 591 So. 2d 275, 276-77 (Fla. 5th DCA 1991), on waiver of both active and passive appreciation, even though ***Cameron*** requires an *express reference to appreciation* in an agreement for it to be waived, and awarded that wife one half of all property after marriage. ***Hahamovitch*** at 1015-16 (e.s.).[17]

SUMMARY OF THE ARGUMENT

The Decision incorrectly read salary and active and passive appreciation into the waiver/release provisions of the PA, even though absent. It erroneously rewrote and inserted terms absent from this PA. The Certified Question must be answered in the negative. The Decision incorrectly affirmed the trial court's limitation on Wife's discovery requests by reading paragraph 17 of the PA to prohibit discovery of anything not titled in Wife's name on the date of Husband's petition, even though that provision is silent on a date. No matter what paragraph 17 says, Wife should have been permitted to discover how all property was titled and to trace it along with the proceeds thereof. For that matter, Husband should have been required to trace what

[17] Further, the Decision is undercut by ***Kaaa*** (passive appreciation marital property under equitable distribution statute).

he insisted was all his. A presumption is just that, bursting upon proofs to the contrary. The Decision incorrectly declined to invalidate this PA. The PA was unfair to Wife on its face when entered because the title presumption provision was interpreted to (a) strip her of her own nonmarital money loaned to Husband, and (b) strip her of any ability to discover what became of her own nonmarital and marital property, and the proceeds thereof. That being so, this PA was unfair when entered under ***Casto II***, and the Decision erred by declining to reach the rest of ***Casto II's*** invalidity analysis. Further, Husband, his own lawyer and both of his CPA's all proved up a material misrepresentation detrimental to Wife under ***Casto I***. Accordingly, this Court should invalidate this PA. Even if this Court declines to invalidate this PA, it should still quash the Decision, adopt ***Irwin*** and ***Valdes***, order discovery, distributions to Wife, and answer this Certified Question in the negative.

ARGUMENT

I. THE FOURTH DISTRICT WAS INCORRECT TO EXCLUDE WIFE FROM ACTIVE AND PASSIVE APPRECIATION, SALARY AND THE FRUITS OF MARITAL LABOR UNDER THE PA AND THE CERTIFIED QUESTION MUST BE ANSWERED IN THE NEGATIVE

Guiding Principles, Standard of Review and Analysis:

PA interpretation is reviewed *de novo*. ***Heiny v. Heiny***, 113 So. 3d 897, 900 (Fla. 2nd DCA 2013). The parties' intentions govern construction and the best

evidence of intent is the PA's plain language. ***Royal Oak Landing Homeowner Ass'n v. Pelletier***, 620 So. 2d 786, 788 (Fla. 4th DCA 1993). Application of an incorrect rule is erroneous as a matter of law. ***See Files v. State***, 613 So. 2d 1301, 1304 (Fla. 1992). Even though the parties agreed this PA is not ambiguous, this Court can certainly reach a different conclusion. ***Dows v. Nike, Inc***., 846 So. 2d 595, 601 (Fla. 4th DCA 2003). Contract ambiguity is a question of law reviewed *de novo*. ***See Imagine Ins. Co., Ltd. v. State ex rel. Dept. of Financial Services***, 999 So. 2d 693 (Fla. 1st DCA 2008). Express or inferential non-jury fact findings may be set aside when there is no substantial evidence to sustain them, if clearly against the weight of the evidence, or induced by an erroneous view of the law. A finding based on undisputed evidence does not carry the same conclusiveness as one resting on disputed facts, as it is tantamount to a legal conclusion. ***Id***. When the law is misapplied to the facts, the decision is clearly erroneous and must be reversed because it fails to give legal effect to the evidence in its entirety. ***Id.*** at 258.

Section 61.075, our equitable distribution statute, was enacted in 1988,[18] and governs equitable distribution. It was a codification of then existing case law. ***Robertson v. Robertson***, 593 So. 2d 491, 493 (Fla. 1991) (so stating). Section 61.075

[18] ***Florida Laws 1988, c. 88-98 § 1***. ***See also §4*** (providing that act "applies to all proceedings commenced after effective date of this act"). The Dissolution Code itself was enacted in 1971. ***See Florida Laws 1971, c. 71-241.***

established presumptions for categorizing assets and liabilities for equitable distribution. ***Id***. at 493. The statute sets equitable distribution when the specifics of a prenuptial agreement are insufficient or ambiguous. ***See Bowen v. Bowen***, 345 S.C. 243, 547 S.E.2d 877, 881 (2001); ***cf. Hannon v. Hannon***, 740 So. 2d 1181, 1187 (Fla. 4th DCA 1999) (so stating); ***Valdes***; ***Irwin***.

Section 61.075 provides, in pertinent part, that marital assets include the "enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both." ***Fla.Stat. § 61.075(5)(a)***. Section 61.075(6)(a), provides that assets and liabilities excluded from a marital estate by valid written agreement are nonmarital. ***Witowski***, 758 So. 2d at 1184. This Court now deems active and passive appreciation of nonmarital property during a marriage to be marital property. ***Kaaa***.

Marital appreciation of separately owned assets is subject to equitable distribution, no matter which spouse spent marital labor on the assets. ***E.g. Sanders v. Sanders***, 492 So. 2d 705 (Fla. 1st DCA 1986). This was so before enactment of the section 61.075. ***E.g. Turner v. Turner***, 529 So. 2d 1138, 1141 (Fla. 1st DCA 1988). When a prenuptial agreement does not "specifically protect" the husband's salary from consideration as a separate asset, even if placed in a nonmarital account, it does

not put the funds beyond the other spouse's reach. ***Witowski*** at 1154. Thus by extension, when there is a valid prenuptial agreement, it fails to protect property husband may have purchased with unprotected income from being considered a marital asset. ***Id***. This is so even when an agreement provides that neither party shall make any claim or acquire any interest in the other's separate property if it's value increases during marriage. ***E.g., Doig*** at 103; ***Valdes***

As here, where the PA makes no specific reference to appreciation or enhancement in value of nonmarital property attributable to marital labor or funds, the enhanced value is subject to equitable distribution. ***Id***. No prenuptial agreement waives any rights unless that waiver is unambiguously and very specifically expressed therein. ***E.g., White v White***, 617 So. 2d 732 (Fla. 2nd DCA 1993); ***Baas v. Baas***, 718 So. 2d 359 (Fla. 2nd DCA 1998). When a purported waiver does not very specifically address appreciation or value increases, the equitable distribution statute applies to deem value increases of nonmarital assets attributable to marital labor and funds subject to equitable distribution.[19] Enhancement of a nonmarital business during

[19] Marital assets include all assets acquired individually or jointly during marriage, and all inter-spousal gifts, vested and nonvested benefits, rights and funds accrued during the marriage in retirement, pension, profit sharing, annuity, deferred compensation, insurance programs. . . .***Fla.Stat. § 61.075(6)(a)***

marriage is a marital asset if the enhancement results from either party's efforts or labor. ***E.g. Gill v. Gill***, 632 So. 2d 226, 227 (2nd DCA 1994) (so holding).

Marital assets are those acquired during marriage, created or produced by work efforts, services, or earnings of one or both spouses. ***Witowski***; ***Steiner v. Steiner***, 746 So. 2d 1149 (Fla. 2nd DCA 1999). Status as a marital asset *does not* turn on which spouse holds title. ***Id***. (e.s.). This PA is silent as to increases, additions, enhancement value and salary. Such language was included in the prior Kaplan Draft, but *deleted* from the final PA [A-2 p. 2 ¶5]. Even if the PA included a waiver of those terms, the waiver would only apply to passive appreciation of premarital value, not active marital contribution. ***E.g., Witowski***. When an antenuptial agreement does not contain a very specific provision that a husband's salary will be his separate property, its not a protected asset. ***Id***.; ***Irwin***.

The Decision's "broad" reading of this PA is inconsistent with the Legislative intent of the Dissolution Act. No fault dissolution is intended to be encumbered by provisions protecting economically needy spouses and recognition of non-monetary contributions to marriage. The statute's language speaks in terms of property exclusion, as opposed to waiver of rights to equitable distribution. That plainly points right at its purpose not to permit one spouse to bar the other from benefits by invoking a nonspecific "general" waiver of rights provided for in the Act. If that were not so,

our Legislature would not have set forth so many factors that all courts must determine with specificity as to whether property is marital or nonmarital, excluded or included, and then valued in an award.

The Decision erroneously looked at the title presumption provision (A-1 ¶17) to circularly reason that if it is to mean anything, then it has to be "broad enough" to waive Wife's right to any and all assets titled in Husband's name that were acquired or enhanced during this long term marriage with marital labor or earnings. ***Hahamovitch*** at 1015. That analysis not only begs the question, it ignores the Kaplan Draft's inclusion of a specific wavier of value increase during marriage that was *taken out* before execution of the final PA [A-2 pp. 2-3 ¶5] (e.s.). Further, this PA provides, in pertinent part, that *except to the extent the parties may otherwise desire to do so*, they may keep sole ownership, control, enjoyment and power to dispose of all property [A-1 ¶5] (e.s.). Both parties' releases contain the broad proviso: "except as otherwise provided herein". This PA "otherwise provides" for alimony, property distribution, joint property, gifts, partitioning, Wife's property, joint property and marital residences owned or jointly owned by Wife [A-1 ¶¶13-16, 20, 26]. Thus, the purported "release" by Wife is plainly trumped by other far more specific PA provisions, which have no wavier.

The Decision details cases that award equitable distribution of active and passive appreciation under §61.075, despite prenuptial agreements that purportedly waive such property. ***Id***. at 1013-16. For example, ***Weymouth v. Weymouth***, 87 So. 3d 30, 34 (Fla. 4th DCA 2012), held that "[w]here a prenuptial agreement does not address the right to enhanced value of a nonmarital asset (as here), that value is subject to equitable distribution." That agreement did not contain a waiver of rights wife had to the appreciation value of a house that was husband's nonmarital asset before marriage. ***Hahamovitch*** at 1013 (citing ***Weymouth*** at 34). The ***Weymouth*** agreement stated that wife specifically waived any and all claim she might have in and to the real and personal property of [the husband], owned before marriage. ***Id***. (citing ***Weymouth*** at 32). This PA does <u>not</u> contain an *express waiver* of growth or appreciation of premarital or nonmarital assets that occurred during marriage. ***See id***. (e.s.). Thus, there is no waiver of appreciation under § 61.075 here. ***Id***.; ***Valdes***; ***Irwin***; ***Doig***.

Weymouth turned on ***Valdes***, where the wife *did not* waive equitable distribution of enhanced value of nonmarital property when the prenuptial agreement was *silent on enhancement or appreciation* of nonmarital property. ***Hahamovitch***, at 1013 (citing ***Valdes***) (e.s.). ***Valdes*** found no waiver of appreciation, despite provisions stating that (1) the parties would have no interest in or to property acquired

prior to marriage or make any claim against said property, and (2) assets acquired by parties, wherein ownership or title was not taken jointly or as tenants by entireties, would be presumed nonmarital assets, and would be considered separate property of the spouse acquiring same. ***Valdes*** at 265–67. Similarly, ***Irwin*** holds that when a prenuptial agreement does not *specifically* designate a spouse's *earnings* as separate property, *all assets acquired* with those earnings are treated as marital and distributable under § 61.075. ***Irwin*** at 248–9 (e.s.) (agreement did not *specifically* reserve husband's marital earnings as separate property, and thus did not exclude wife's claim to share in value of assets purchased with those earnings; nor did it *specifically* waive wife's claim to share enhanced value of husband's separate property resulting from contribution of marital funds or labor); ***Witowski***, 758 So. 2d at 1185 (without *specific provision* in agreement stating husband's salary will be his separate property, it's <u>not</u> a protected asset) (e.s.).

Further, the Decision detailed the Second District's holding that a *simple express waiver* of appreciation or increase in value waives *only passive appreciation*, not active appreciation attributable to marital labor and funds. ***Hahamovitch*** at 1014 (citing ***Worley v. Worley***, 855 So. 2d 632, 635 (Fla. 2nd DCA 2003), and ***Doig***) (e.s.) (agreement providing "neither party shall make any claim or acquire any interest in the other party's separate property if it increases in value during the marriage"

addresses only passive appreciation and does not preclude application of § 61.075). Since then, this Court has deemed passive appreciation to constitute marital property under § 61.075, and devised the formula to calculate and distribute same. ***Kaaa***. It necessarily follows that a general waiver in a prenuptial agreement is ineffectual to waive either form of marital property under § 61.075.

The ***Worley*** wife didn't waive assets titled in husband's name and acquired during marriage as a result of husband's contribution of marital labor and funds. That agreement had provisions substantially similar to this PA, and pertained to distribution of property acquired <u>*after*</u> marriage:

> . . . Any property, either real or personal, acquired by either prospective spouse, before *or after* their marriage, shall be the separate property of the party owning or obtaining the property, and the other party shall make no claim or demand on the separate property, or on the heirs or personal representatives of the owner's state for that separate property. Each of the parties forever waives, releases and relinquishes any right or *claim of any kind, character or nature whatsoever*, which either may have in or to the estate, property, assets or other effects of the other under any present or future law of the State of Florida, or of any other state of the United States, except as otherwise specifically provided for in this Agreement or any subsequent agreement executed by the parties.

Id., 885 So. 2d at 634 (e.s.). ***Worley*** *reversed* a ruling that assets acquired during marriage from contribution of marital labor or funds and enhanced or appreciated value of husband's separately titled assets were waived. ***Id***. (e.s.). In sharp contrast to ***Worley***, this Decision erroneously prohibited Wife from establishing the litany of

properties obtained with marital funds and labor, and those enhanced with marital contributions, under a title presumption that is silent as to title date. ***Hahamovitch***, at 1017 (limiting discovery based on PA ¶17).

In ***Valdes***, a specific waiver of enhanced value of nonmarital properties acquired *after* the marriage was *again rejected* as far too general, where that title presumption clause was more specific than this PA's ¶17. ***Valdes*** provided:

> PROPERTY ACQUIRED AFTER MARRIAGE: Each Party acknowledges and agrees that the other Party may purchase any real, personal or mixed property subsequent to their marriage and if said property is taken or titled in the individual name of said Party purchasing same, the other Party shall have no interest in said after acquired property, nor make any claim to said property should this marriage be dissolved ...
>
> PROPERTY ACQUIRED AFTER MARRIAGE, NOT TO BE CONSIDERED MARITAL ASSETS: The Parties agree that any and all assets acquired by them, wherein ownership or title is not taken jointly or as tenants by the entireties, shall be presumed to be nonmarital assets, and shall be considered the separate property of the person acquiring same (e.s.).

Id. 894 So. 2d at 265. Relying on ***Worley, Doig, Witowski*** and ***Cameron***, the Third District found wife didn't waive enhanced value of nonmarital properties because that agreement was silent on enhancement and appreciation of nonmarital property. ***Valdes***, at 267. That is precisely the case here. As a result, the increase of Husband's net worth from about $4.4 million to over $55 million due to marital efforts, contribution of marital funds, loans from Wife, appreciation, the proceeds thereof and

so on should have been equitably distributed to Wife under § 61.075. ***Worley, Doig, Witowski***, ***Valdes*** and ***Cameron***. Moreover the PA calls for joint property, which is *per se* marital. Wife should have been permitted to discover it and receive her share.

The Decision found the case law to be very inconsistent. It looked to the Fifth District's ***Cameron*** decision, were wife was denied all equitable distribution of properties owned by husband before marriage, even though they appreciated in value due to marital labor and income. ***Hahamovitch*** at 1014-15 (citing ***Cameron***). The ***Cameron*** agreement said that each party "may keep and retain what was his or her own property before marriage." ***Id***., 591 So. 2d at 276. It also stated that it was wife's *intention* to "waive, relinquish and bar her rights of dower and other statutory rights and interests as wife ... of Richard E. Cameron ... to ... property owned by Richard E. Cameron at the present time or to be acquired by him in the future." ***Id***. ***Cameron*** concluded that if the agreement "is to effectively shield such properties from Phyllis' claims, it must also include any appreciation in value." ***Id***. at 277. ***Cameron*** affirmed the ruling that the agreement was intended to shield husband's plumbing company, but *did not* encompass marital assets *acquired after* the parties' marriage — due to wife's testimony and agreement ambiguity. ***Id***. at 276 (e.s.).

Cameron doesn't support our Decision because § 61.075 was not yet effective when that petition was filed. ***Id***. at 277 n. 1. Further, Mrs. Cameron was awarded one

half of ***all*** property *acquired during marriage*. ***Id***. at 278 (e.s.). Thus, if anything ***Cameron*** supports Wife's claim to appreciation, enhanced value of nonmarital property plus ½ of all property acquired during marriage.

Reliance on ***Timble v. Timble***, 616 So. 2d 1188 (Fla. 4th DCA 1993), is misplaced, too. ***Timble*** denied wife's claim for enhancement value of husband's stock in a company *specifically named in an exacting waiver provision*. ***Id***. at 1189 (agreement provided each party released any claim to property of other by reason of marriage, and husband "is given full rights ... in all respects the same as he would have if not married to use, enjoy, manage, convey, bequeath, mortgage, grant, sell, invest, reinvest, alienate and dispose of all and every part of any stock or other interest he owns ... or may hereafter acquire in Headco Industries") (e.s.). ***Timble*** does not describe the Headco stock's enhanced value, but suggests it was not all passive. ***Hahamovitch*** at 1015. ***Timble*** is distinguishable because the excluded stock was very specifically identified and exactingly waived in their agreement; whereas here, *no specific asset is even identified* in any "waiver" provision, let alone anyplace else in this PA.

The Decision refers to ***Stern v. Stern***, 636 So. 2d 735, 737-40 (Fla. 4th DCA 1993), which relied on ***Cameron*** and ***Timble*** to find waiver of husband's right to share appreciation of wife's interest in her businesses. Yet ***Stern*** is another case

where, unlike here, the agreement very specifically waived appreciation in a very specifically named business. ***Hahamovitch*** at 1015 (citing ***Stern*** at 737–40 where husband "waives any right to any stock in *NRC Electronics, Inc*. currently belonging to [the wife] as of this date" and that "same shall apply to any future subsidiaries of *NRC Electronics, Inc*.") (e.s.). Our PA contains no such specificity. ***Irwin***; ***Valdes***.

Unlike ***Stern, Cameron*** and ***Timble***, this PA does not specify any particular company, stock or other property Wife purportedly waived. This PA is so deficient, there is no identification of any of Husband's particular property. Therefore, reliance on ***Stern, Cameron*** and ***Timble*** fails to support any finding of a "broad enough" waiver of appreciation and enhancement due to marital efforts here. Then there is all of the property acquired after marriage that was not even discovered, let alone waived. In fact the language in this PA is virtually identical to that in ***Irwin*** and ***Valdes***, where those wives did not waive salary or any appreciation – especially that acquired after marriage – even though those waivers mentioned undenominated property *acquired after marriage* and contained title presumption clauses. In short, any waiver must be *very specific* to effectively waive marital property.

Reliance on ***Ledea–Genaro v. Genaro***, 963 So. 2d 749 (Fla. 4th DCA 2007), is also misguided. That agreement unambiguously required wife to quit-claim her entire interest in a home to husband if a dissolution petition was filed, in exchange for relief

of responsibility to pay the mortgage. ***Hahamovitch*** at 1013 n. 4 (citing ***Ledea–Genaro***). In stark contrast, this PA only requires Wife to vacate the marital residence upon filing for dissolution, but states that she *retains ownership* of any residences used as marital if owned or jointly owned by her [A-1 ¶20] (e.s.). The word "title" is not used in that provision and states that other contrary provisions do not apply. There are no quit-claim requirements in the PA. Further, with the trial court prohibiting discovery by Wife due to the title presumption clause, she was precluded from proving (and Husband was relieved of showing) that he expended great marital sums, Wife's income, nonmarital money, commingled funds, sale proceeds, profits and rent to build his empire – much, if not all, of which is marital and subject to distribution. ***See Adkins v. Adkins***, 650 So. 2d 61, 67 (Fla. 3d DCA 1994); ***see also Gaetani-Slade v. Slade***, 852 So. 2d 343, 346 (Fla. 1st DCA 2003). Husband should have been required to show that all funds expended or invested in his business ventures were nonmarital both prior to and during marriage. ***See Jahnke v. Jahnke***, 804 So. 2d 513, 517 (Fla. 3rd DCA 2001); ***Adkins***, 650 So. 2d at 68. The increased value of all property is a marital asset subject to equitable distribution. ***Perrin v. Perrin***, 795 So. 2d 1023 (Fla. 2nd DCA 2001); ***Cornette v. Cornette***, 704 So. 2d 667, 668 (Fla. 2nd DCA 1998). Here, the trial court didn't even value assets, let alone characterize them. ***Winney v. Winney***, 979 So. 2d 396 (Fla. 1st DCA 2008)

(findings must reflect understanding that if one party's nonmarital property appreciates due to efforts of either party during marriage or contribution or expenditure thereon of marital funds or other forms of marital assets, appreciation is marital and must be accounted for in equitable distribution scheme).

The Decision erroneously distinguishes ***Witowski***, stating that this case is more like ***Timble***, where that wife "relinquished any possibility of equitable distribution of marital contributions to the husband's stock." ***Hahamovitch*** at 1015 (citing ***Witowski*** at 1184). ***Witowski***'s theory for distinguishing ***Cameron*** and ***Timble*** was that those agreements <u>*specifically*</u> addressed husband's *future acquisition* of property during marriage. ***Id*** at 1015 (e.s.). Our Decision fails to appreciate that Mrs. Cameron was awarded one half of all assets *acquired after marriage with marital income and labor*. ***Cameron***, 591 So. 2d at 278 (e.s.). Further, ***Cameron*** was decided before enactment of section 61.075, and is expressly limited to equitable distribution under ***Canakaris***. Even so, she was entitled to equitable distribution of one half of all marital assets. ***Id***. at 278. Unlike our PA, ***Timble*** has no property distribution or title presumption clauses. Thus, this case is nothing like ***Timble***. Nevertheless, our Decision says this PA is more like ***Timble*** than ***Witowski*** because of its title presumption provision in paragraph 17. That is legal error.

The Decision concluded erroneously that paragraph 17, when read with other provisions of the PA, is sufficient to waive future enhancement of nonmarital property, even if due to marital earnings or labor. ***Id***. at 1016. In circular fashion, the Decision then wrongly concludes that to hold otherwise would read the title presumption provision out of the PA. ***Id***. at 1015-16. Implicitly recognizing that the PA is silent on salary and appreciation, our Decision found that if this PA is to effectively shield Husband's assets from Wife's claims, it must also include any appreciation in value. ***Id***. at 1016. That impermissibly rewrote the PA to contain a specific waiver of appreciation value and salary, even though silent on both and such a waiver in the Kaplan Draft was *removed* from the final signed PA. ***Id***. That is legal error. ***See, e.g., Beach Resort Hotel Corp. v. Wieder***, 79 So. 2d 659, 663 (Fla.1955) (*courts may not rewrite contracts*, interfere with freedom of contract or substitute their judgment for that of parties to relieve one from apparent hardship of improvident bargain) (e.s.). In so doing, the Decision acknowledged conflict with the ***Irwin*** and ***Valdes***, which construe prenuptial agreements with substantially similar title provisions as *insufficient to waive* a spouse's claim to the enhanced value of the other spouse's nonmarital property that results from marital earnings. ***Hahamovitch*** at 1016 (e.s.). Further, ***Irwin*** and ***Valdes*** both involved agreements pertaining to property to

be acquired in the future right within their waiver provisions, which do not contain the proper scope of specificity – just like here. ***Id***.

The Decision is wrong for additional reasons. The title presumption provision cannot establish title to tangible property or intangibles that have no written title, such as cashier's checks, accounts receivable and accrued income. Thus, reliance on that provision to limit discovery of property is legal error. Further, the PA's purported "release" of equitable distribution (in ¶¶2 and 5) contains the caveat "except as otherwise provided" in this PA. It also has an expansive caveat in the retention of sole property provision, stating "except as the parties otherwise desire" [A-1 pp. 2, 3 ¶¶2, 5]. As property distribution is otherwise provided for in multiple places, neither paragraphs 2 nor 3 do anything to waive appreciation, salary or other property distributions. For example, this PA expressly permits Wife to opt out of the sliding alimony scale and overtake it with property distribution [Id. ¶¶12, 13, 14, 15A & B]. Likewise, there is nothing about the "sole property" clause that waives appreciation, salary, equitable distribution or property distribution [A-1 ¶15B]. Further, the "mutual release" and "Dianne's release" clauses cannot reasonably be construed to prohibit such distribution, as neither provision contains any express reference to appreciation of premarital assets and income or assets derived from or enhanced with marital efforts or marital income. ***Irwin***, ***Valdes***, ***Doig***, ***Witowski***.

As this PA is silent on appreciation and salary, it was error to exclude enhancement value and appreciation of nonmarital assets resulting from expenditure of joint funds or joint work efforts under § 61.075. It was also error not to award Wife the fruits of marital labor. Such assets must be disposed of by operation of section 61.075. This Court should answer the Certified Question in the negative. It should also quash the Decision and approve ***Irwin*** and ***Valdes*** as the correct statement of the law. To do otherwise will upend decades of case law.

II. THE COURT ERRED IN CURTAILING DISCOVERY AS TO WIFE'S PROPERTY

Guiding Principles, Standard of Review and Analysis:

Failure to order the proper scope of discovery is a fatal abuse of discretion. ***See Walton v. Walton***, 537 So. 2d 658, 660 (Fla. 1st DCA), ***rev. den***., 545 So. 2d 1370 (Fla. 1989). During marriage there were commingled funds, jointly owned real property, sale proceeds, marital gifts and deposit of Husband's salary and other income into the parties' joint bank account, among other things [T2 pp. 312-13]. There was also rent, profits and proceeds of Wife's sole and joint property. The court erroneously refused to allow discovery about most matters, and barred award of such items. It also declined to make Husband account for any of it by tracing or otherwise. These rulings erroneously turn on Husband's concession of his ability to pay any amount owed, as opposed to *what is in fact owed* under this PA. When a party

concedes ability to pay any award, the court must still insure that the parties are not precluded from discovering the whole factual picture and presenting it for the court's independent and complete understanding and evaluation. ***E.g., Eyster v. Eyster***, 503 So. 2d 340 (Fla. 1st DCA 1987). There is no legitimate adverse impact or financial disadvantage visited upon Husband should he comply with Wife's discovery requests so the court can award her what she is due under this PA. ***Id***. at 342.

Wife is entitled to know about her own nonmarital money and all fruits gained with Husband's use of same, along with proceeds of joint property even if purchased with Husband's nonmarital funds – no matter the present title. ***E.g., Van Duyne v. Van Duyne***, 856 So. 2d 1094 (Fla. 1st DCA 2003) (gifts from one spouse to another are marital property that must be distributed like other marital assets); ***Archer v. Archer***, 712 So. 2d 1198 (Fla. 5th DCA 1998) (presumption of gift is established when separate or nonmarital property conveyed to tenancy by entireties, and burden to prove claim of special equity, or that no gift was intended, is upon donor spouse). Similarly, the *burden of disproving* the presumption that a *gift was intended* when a spouse commingles nonmarital assets with marital assets is on the party claiming that no gift was intended. ***Lakin v. Lakin***, 901 So. 2d 186 (Fla. 4th DCA 2005) (e.s.).

Pfrengle v. Pfrengle, 976 So. 2d 1134, 1136 (Fla. 2nd DCA 2008), is instructive. Mr. Pfrengle purchased and sold real property during marriage through corporations.

He claimed them as nonmarital because they were acquired with *sale proceeds of properties* he solely owned before marriage. ***Id***. (e.s.). However, sale proceeds were deposited into an account where husband also deposited his earned income during marriage as a salesman. ***Id***. When he commingled sale proceeds with marital income, the *entire amount* lost its status as nonmarital property. ***Id***. (citing ***Steiner***) (e.s.). Further, as husband titled two nonmarital properties in joint names with wife, a presumption arose that he intended gifts under § 61.075(5)(a)(5). ***Id***. at 1137. It was then *husband's* burden to disprove the presumption, which he failed to do. ***Id***. (e.s.). The funds in business accounts became commingled such that they became marital funds, which were used to purchase real properties. Properties bought during marriage with the corporate account were marital assets too. ***Id***. at 1136. Thus, precluding tracing here was legal error. ***Id***.

Plainly this PA's title presumption provision is not a discovery cutoff provision. The term presumption only means that one thing will be assumed true *in the absence of proof otherwise*. ***Random House College Dictionary***, revised edition (1980) p. 1050 (e.s.); ***e.g., Berwick v. Prudential Property and Cas. Ins. Co.***, 436 So. 2d 239 (Fla. 3rd DCA 1983) (presumption requires fact finder to assume existence of presumed fact unless credible evidence sufficient to sustain finding of nonexistence thereof introduced, in which event bubble bursts and existence of fact determined

without regard to presumption). To read a discovery cut off into paragraph 17 when none is stated let Husband go about transferring Wife's sole or joint property into his name, without consideration of her equitable or legal title. Further, all sorts of property has no written title documents. Even if they do, it may still be marital property. Thus, title presumption is only a means to start the inquiry into Wife's property distribution– not stop it. Moreover, when property claimed to be nonmarital is no longer owned, the nonmarital claimant must trace previously owned property into a presently owned specific asset. ***E.g., Murley v. Wiedamann***, 25 So. 3d 27, 31 (Fla. 2nd DCA 2009). The reason for tracing arises from the equitable distribution statute itself, which defines all property *acquired after the marriage* as marital property. ***Fla.Stat. § 61.075(6)(a)*** (e.s.). This alone supports adoption of ***Irwin*** and ***Valdes*** and its distribution analysis under § 61.075.

This PA clearly contemplates Wife's ownership of joint and separate property. It contains explicit language allowing title to joint property, along with a provision that Wife will enjoy 50% when not clear as to her share. The PA is silent as to whether separate assets will be purchased from separate funds. There is evidence of commingled assets in joint accounts and more. It follows that joint property sale proceeds remain joint and commingled, even if put into an account Husband deems his "sole" account. Once joint proceeds are deposited, they are commingled and Wife

has an interest no matter how that property or account is presently titled. Husband cannot just fall back on a title presumption provision and ignore tracing to claim nonmarital interests in all undenominated property. The "value" of all property is contemplated no matter the present form. If Wife's property exceeds the alimony owed, she keeps it and neither party owes the other. Nothing in the PA sufficiently states that Wife is not entitled to her share of the value of any asset acquired, enhanced or commingled with marital labor, earnings, income or funds during marriage. Then there are proceeds of her own property, which were plainly commingled with what Husband claims is his. It was legal error to refuse discovery to unravel Wife's property, joint property and gifts during marriage. Plainly flagging the instability of its rulings, the trial court *sua sponte* issued another order on Wife's 11th, amended 11th and 12th discovery requests to "*stabilize*" this appeal record [T 03/10/10 p. 3; R 1974-75, 1980-83] (e.s.). The rulings adversely affected a plethora of property Wife owned, and millions of dollars generated from gifts, rents, profits, sale proceeds and so on. These errors are harmful, and the Decision must be quashed.

III. THE TRIAL COURT AND 4TH DCA ERRED IN FAILING TO INVALIDATE THE PA

Guiding Principles, Standard of Review and Analysis:

The review standard is set out in Point I above. The Decision held the PA valid under ***Casto I*** ruling that Wife failed to establish fraud, misrepresentation, coercion,

deceit *or* duress. ***Hahamovitch*** at 1013. Yet Husband, his own accountants, Lipson and Lundy, and his own lawyer, Genet, established material misrepresentation and deceit as to Husband's disclosure, to Wife's detriment when this PA was entered. This PA should be invalidated for that reason alone under ***Casto I***.

As to ***Casto II*** invalidity, this PA is unfair or unreasonable under the parties' financial circumstances when entered and now. There was no full, frank disclosure of Husband's income or assets when signed. There was *insufficient* general or approximate knowledge of Husband's assets *and* income by Wife, as challenging spouse. ***Id***. (e.s.). The Decision erroneously declined to reach all ***Casto II*** issues, finding the PA fair when entered, even though courts deem facts this trial court ruled on insufficient as a matter of law to validate an agreement. ***E.g., Stemler v. Stemler***, 36 So. 3d 54 (Ala.Civ.App. 2009) (prenuptial agreement invalid under Florida law because no list of assets stating value or disclosure of income at signing, and <u>*cohabitation prior to marriage*</u>, participating in husband's lifestyle and viewing some of his assets insufficient to charge wife with approximate general knowledge) (e.s.). Given that this PA was interpreted in a manner that stripped Wife of her own nonmarital loans to Husband, and all ability to discovery what became of them, along with appreciation and fruits of same, the PA was unfair or unreasonable on its face when entered. At the time, Wife's means were certainly disproportionate to

Husband's, given the divergent net worth approximations on the PA's face. Wife did not enter this PA to give up her nonmarital property, money loaned to Husband for his business enterprises, or the fruits of her own labor.

Casto II invalidity should have been fully analyzed even if the element of fairness is measured only at the time of PA execution. ***Del Vecchio v. Del Vecchio***, 143 So. 2d 17, 20 (Fla. 1962). The trial court found Husband hid and concealed assets, failed to disclose them and the PA was unfair at dissolution. Wife was not privy to Husband's income or assets when she signed this PA. Nothing about this record evinces a reasonable understanding of Husband's assets and income. Given the title presumption interpretation, this PA was really unfair and unreasonable when entered. Husband took the unconscionable position that if Wife did not know what property she owned, she can't have it and had Wife prohibited from tracing her interests. This left Husband unfettered control over Wife's distribution. That is *per se* unfair then and now. If not quashed under ***Casto I***, the Decision should be quashed under ***Casto II***. Husband's "disclosure" was and remains deceptive and concealed – to put it charitably.

CONCLUSION

Wife very respectfully asks this Court to quash the Decision, and to approve ***Irwin*** and ***Valdes***. This Court should remand for Wife's discovery, Husband's full

disclosure and equitable distribution of marital and nonmarital assets, including distribution of all appreciation and property obtained with marital salary and the like. Should this Court quash the Decision under ***Casto***, then remand for discovery and equitable distribution under the Act is still required.

Respectfully submitted,

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CERTIFICATE OF TYPESETTING AND EFILING COMPLIANCE:

The undersigned certifies that this Jurisdictional Brief complies with ***Rule 9.210(a) (2), Fla.R.App.P.***, as it is typed with times new roman 14 point font in Corel WordPerfect® X5 format. The Brief has been filed electronically and a copy supplied to all counsel listed in the certificate of service.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this Initial Brief was filed electronically on June 18th, 2014 and a true and authentic copy has been furnished via electronic mail to **Jane Kreusler-Walsh, Esq**. Kreusler-Walsh, Compiani & Vargas, P.A. (Husband's appellate counsel), 501 S. Flagler Drive, Suite 503 West Palm Beach, Fl 33401-5913 email: janewalsh@kwcvpa.com, rvargas@kwcvpa.com, sserafin@kwcvpa.com and eservice@kwcvpa.com; **Joel M. Weissman, Esq.** (Husband's trial counsel), 515 N. Flagler Drive, Suite 1100, West Palm Beach, FL 33401, email Joel@jmwpa.com; and **Robert W. Sidweber**, **Esq.**, and **Karen B. Weintraub**, **Esq**. Sidweber & Weintraub, P.A. (Wife's trial and appeal co-counsel), The Tides at Bridge side Square 3020 NE 32nd Avenue, Suite 301, Ft. Lauderdale, FL 33308, email: Bob@Sidweberlaw.com and Karen@sidweberlaw.com all this 18th day June 2014.

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