

>> THE NEXT CASE UP-- AND YOU
WILL HAVE TO HELP ME --
HAHAMOVITCH VERSUS HAHAMOVITCH.
HOPE I'M IN THE BALLPARK.

>> GOOD MORNING.
WHENEVER YOU'RE READY.
TAKE YOUR TIME.

>> MAY IT PLEASE THIS HONORABLE
COURT, JEANNE BRADY AND FRANK
BRADY AND KAREN WEINTRAUB ON
BEHALF OF DIANNE LYNN.

>> COULD I ASK YOU JUST TO SPEAK
UP A LITTLE BIT?

>> SURE.

>> BETTER?

>> MUCH BETTER.

>> OKAY.

GREAT.

WE'RE HERE ON TWO BASES TODAY.
WE HAVE THE CERTIFIED CONFLICT
OF DECISIONS WITH CONFLICT
BETWEEN THE FOURTH DISTRICT, THE
THIRD, THE SECOND AND SOME OTHER
INCONSISTENT CASE LAW THROUGHOUT
THE STATE UNDER THE PRE-KAAA
CASE LAW, WHICH I BELIEVE YOU
WROTE THAT OPINION.

ALSO WE HAVE A QUESTION WHICH
KIND OF DOVETAILS IN WITH THE
CONFLICT AND THEN ADDS A COUPLE
OF ISSUES.

TURNING TO THE CERTIFIED
QUESTION OR THE CERTIFIED
CONFLICT FIRST, BECAUSE I
BELIEVE THAT DOVETAILS INTO THE
QUESTION AND MAY RESOLVE SOME OF
YOUR QUESTIONS ALONG THE WAY,
I'D LIKE TO ADDRESS THE LANGUAGE
THAT STEMMED FROM THE VALDES
CASE AND THE IRWIN CASE IN
PARTICULAR, WHICH ARE THE TWO
CASES THAT WERE IDENTIFIED BY
THE FOURTH DISTRICT THAT HAD
CLAUSES WITH A TITLE
PRESUMPTION, WHICH WAS KEY TO
THE ANALYSIS OF THE FOURTH
DISTRICT COURT OF APPEAL IN THIS
CASE.

THE TITLE PRESUMPTION IN
PROVISION 17 OF THE ANTENUPTIAL

AGREEMENT ENTERED IN 1986 DOES NOT HAVE A DATE ATTACHED THERETO.

THE FOURTH READ THAT PROVISION WITH PROVISION TWO, PROVISION FIVE AND THEN THE TITLE PRESUMPTION, WHICH WAS UNDATED, TO SAY THAT IT WAS A WAIVER OF APPRECIATION AND SALARY WHEN THOSE WORDS WERE NOWHERE IN THE DOCUMENT.

BY PUTTING A DATE IN, ALL DISCOVERY OF THE WIFE'S SOLE PROPERTY WAS BARRED.

IF PROPERTY WAS NOT IN THE WIFE'S NAME ON THE DATE OF THE PETITION, THE DISSOLUTION PETITION, AND THE TITLE WAS IN HUSBAND'S NAME ALONE, WIFE COULDN'T DISCOVER IT, YET ALONE TAKE THE PROPERTY.

SO IT IS A VERY STRANGE READING AND AN INSERTION OF LANGUAGE WHICH WAS NOWHERE IN THE DOCUMENT.

AND THE REASONING WAS VERY CIRCULAR.

WELL, IF WE DON'T READ IT THIS WAY, HUSBAND WON'T BE PROTECTED.

WELL, THAT'S NOT APPROPRIATE LEGAL REASONING, IN MY ARGUMENT. THE LANGUAGE JUST ISN'T THERE.

SO --

>> THE LANGUAGE IN THIS AGREEMENT SEEMS TO BE EXCEPTIONALLY BROAD.

I MEAN, IT SEEMS TO BE ALL-INCLUSIVE.

I MEAN, IT SEEMS TO ME THAT RATHER THAN A STRANGE READING ON THE OTHER SIDE, YOUR READING IS THE STRANGE READING, WHERE YOU'RE READING IN LIMITATIONS THAT SIMPLY ARE NOT REASONABLE WHEN WE LOOK AT THE BROAD, INCLUSIVE LANGUAGE THAT'S IN THE ACTUAL AGREEMENT.

>> I'M VERY GLAD YOU'RE ASKING ME THAT QUESTION, JUSTICE CANADY, BECAUSE LET'S REALLY DIG

IN --

>> IT'S CANADY.

>> CANADY.

SORRY.

LET'S REALLY DIG INTO THE LANGUAGE, PARTICULARLY TO PARAGRAPH NINE, WHICH IS THE MUTUAL RELEASE.

THERE'S LANGUAGE IN THERE THAT IT'S A WAIVER OF PROPERTY ONLY UP TO THE DATE OF THE MARRIAGE, NOT AFTER THE DATE OF MARRIAGE. THAT'S IMPORTANT LANGUAGE WHEN YOU READ THESE PROVISIONS TOGETHER, OKAY?

WHEN WE GO TO DIANNE'S RELEASE, PARAGRAPH TWO, EXCEPT IF OTHERWISE PROVIDED HEREIN.

WHEN WE GO TO PARAGRAPH FIVE, SOLE PROPERTY NOW OWNED OR HEREBY ACQUIRED BY MEANS OF THE DOCUMENT, NOT HEREINAFTER HIRED AN THE PROVISIONS IN IRWIN AND VALDES, WHICH FOUND THE WIFE WAS TITLED TO APPRECIATION AND SALARY PROVIDED.

SO THIS IS NOT AS RESTRICTIVE OR AS BROAD AS FIRST GLANCE.

WE HAVE TO LOOK AT THOSE WORDS.

>> CAN I ASK A QUESTION ABOUT WHEN YOU'RE NOW GOING SPECIFICALLY TO AN AGREEMENT, AND MAYBE -- WE HAVE CERTIFIED THE QUESTION.

>> YES.

>> BUT WHAT I'M HAVING TROUBLE WITH IS THERE IS AN ASSERTION THAT THIS CASE IS IN CONFLICT WITH WEYMOUTH.

>> YES.

>> WEYMOUTH WAS WRITTEN BY JUDGE TAYLOR.

ARE YOU SAYING THERE'S NO DIFFERENCE IN THE LANGUAGE OF THE PRENUPTIAL AGREEMENT IN WEYMOUTH THAN THIS CASE?

IN OTHER WORDS, AREN'T THESE CASES DEPENDENT ON READING THE AGREEMENT AND LOOKING AT -- AS OPPOSED TO A BLANKET RULE?

BECAUSE WHAT I'M HEARING YOU SAY IS THAT UNLESS THERE IS A STATEMENT THAT THERE IS A WAIVER OF APPRECIATION --

>> RIGHT.

>> -- THAT PROPERTY THAT YOU HAD IN YOUR OWN NAME THAT YOU CLEARLY -- THE OTHER PARTY WAIVED, THAT IF IT APPRECIATES DURING A 20-YEAR MARRIAGE, THAT DESPITE WHAT LOOKS LIKE THE CLEAR LANGUAGE, THAT THE SPOUSE IS ENTITLED TO A CLAIM THE APPRECIATION OF PROPERTY THAT WAS SOLELY IN THE OTHER PERSON'S NAME AND THEY CLEARLY WAIVED ANY INTEREST IN THE PROPERTY.

SO CAN WE -- I GUESS I'M ASKING TWO OR THREE QUESTIONS, BUT YOU START WITH DISCOVERY AND ALL THESE OTHER ISSUES.

WHY -- IS WEYMOUTH -- IS JUDGE TAYLOR IN CONFLICT WITH HERSELF IN THESE TWO OPINIONS OR --

>> SHE'S NOT, ACTUALLY.

SHE DISTINGUISHED WEYMOUTH BECAUSE WEYMOUTH DID NOT HAVE A TOTAL PRESUMPTION CLAUSE IN IT.

>> SO YOU WOULD SAY THAT THESE CASES ARE ALL DEPENDENT ON THE LANGUAGE USED IN THE PRENUPTIAL AGREEMENT.

THIS IS SOMETHING FOR ATTORNEYS IN THE FUTURE OR IN THE PAST LOOKING BACK

>> THEY HAVE TO KNOW WHAT TO WRITE.

>> DO YOU HAVE TO SAY IN A PRENUPTIAL AGREEMENT THAT WE ARE WAIVING RIGHTS TO THE APPRECIATION IN THE PROPERTY, THAT IT'S NOT ENOUGH TO SAY THAT THEY WAIVE ANY INTEREST IN THE PROPERTY?

>> THAT'S EXACTLY WHAT VALDES SAYS AND THAT'S EXACTLY WHAT IRWIN SAYS.

>> SO YOU'RE SAYING THERE'S NO DIFFERENCE IN THE LANGUAGE AND THEIR PRENUPTIAL AGREEMENT THAN

IN THIS CASE.

>> THERE WAS DIFFERENCE AND IN THE FOURTH DISTRICT -- IT'S A CONFLICT.

>> IT SAYS NO MATTER HOW CLEAR THE PRENUPTIAL AGREEMENT IS, IF THEY DON'T SPECIFICALLY SAY THEY'RE WAIVING RIGHTS TO THE APPRECIATION --

>> THAT'S RIGHT.

>> -- THAT THEY GET THE PASSIVE APPRECIATION.

>> AND ACTIVE.

>> WELL, PASSIVE AND ACTIVE.

>> THEY DIDN'T REALLY DEAL WITH THE KAAA CASE PASSIVE, BUT THERE ARE CASES FROM OTHER DISTRICTS THAT DEAL WITH PASSIVE PRIOR TO THE KAAA OPINION AND THERE'S SOME CONFUSION OUT THERE BECAUSE OF THAT.

BUT THE FOURTH DISTRICT FOUND THAT THE AGREEMENTS, IRWIN, HAHAMOVITCH AND VALDES, WERE SUBSTANTIALLY SIMILAR AND IDENTICAL.

>> SO WHAT DO YOU DO WITH THE LANGUAGE THAT'S IN THE PRENUPTIAL AGREEMENT THAT SAYS THAT YOU'RE WAIVING ANY INTEREST IN THAT PROPERTY?

I MEAN, BECAUSE WHAT YOU'RE SAYING IS THAT THAT LANGUAGE DOESN'T REALLY MATTER BECAUSE UNLESS YOU USE SPECIFIC WORDS, YOU'RE GOING TO ALWAYS HAVE ACTIVE OR PASSIVE APPRECIATION.

>> AND THAT'S EXACTLY WHAT THE ANALYSIS WAS IN VALDES AND IN IRWIN.

>> WHY IS THAT GOOD POLICY? SO YOU'RE SAYING THERE'S AN ACTUAL CONFLICT.

>> THERE IS.

>> WHY IS IT -- BECAUSE WE'RE NOT HERE ON WHETHER THERE WAS DISCLOSURE --

>> CORRECT.

>> -- OR UNDUE INFLUENCE AND YOU GO IN YOUR BRIEF AND TALK

ABOUT THE AGE DIFFERENCE BETWEEN THESE TWO INDIVIDUALS AND I THINK THE RESPONDENTS RIGHTLY SAY, LOOK, THESE FACTS, THEY MAY SOUND SYMPATHETIC BUT WE'RE REALLY LOOKING AT WHETHER THERE WAS AN ARM'S LENGTH TRANSACTION. SO LET'S JUST TAKE TWO SOPHISTICATED 50-YEAR-OLDS, CORPORATE PRESIDENTS, AND THEY ENTER THIS.

ARE WE REALLY SAYING THAT A WAIVER OF INTEREST IN ALL PROPERTY DOES NOT MEAN WHAT IT SAYS?

AND THAT'S MY PROBLEM, IS I JUST DON'T SEE THERE'S ANYTHING -- I GUESS JUST AS JUSTICE CANADY IS SAYING, AMBIGUOUS ABOUT THAT PART.

I JUST WANT TO KNOW ABOUT THE PROPERTY.

>> WE LOOK THE EARNING, SALARY AND APPRECIATION.

REAL PROPERTY.

>> WE'RE TALKING FIRST ABOUT PROPERTY THAT WAS ALREADY IN THE HUSBAND'S NAME BEFORE THE MARRIAGE.

>> PREMARITAL.

>> OKAY.

SO THAT'S THE ONE THAT CAUSES ME THE MOST CONCERN, WHICH IS THAT I JUST CAN'T SEE THAT YOU KNOW THAT PROPERTIES IN THE SPOUSE'S NAME THAT YOU WAIVED ALL INTEREST, THAT THERE WOULD BE -- THAT YOU WOULD BE TITLED TO APPRECIATION.

SO LET'S GO TO THE NEXT ONE, THOUGH.

EARNINGS.

NOW, WHAT ARE YOU SAYING ABOUT EARNINGS?

>> ALL THREE ARE CODIFIED SINCE 1988 IN OUR STATUTE WHICH FOLLOWED THE COMMON LAW.

AND AS A MATTER OF PUBLIC POLICY, WE TALK ABOUT INCLUSION AND EXCLUSION OF PARTICULAR

PROPERTY WHICH IS ELABORATED AS INCLUDING APPRECIATION, EARNINGS

--

>> THIS WAS DRAFTED IN 1986?

>> NO.

IT DOES NOT UNDER THE ROBERTSON CASE FROM THIS COURT.

IT'S RETROACTIVE, WHICH WAS REVERSED BY THE FOURTH DISTRICT COURT OF APPEAL BECAUSE THE TRIAL COURT WAS WRONG ABOUT ITS ANALYSIS.

AND THEREFORE IT'S A RETROACTIVE APPLICATION.

AND UNDER THE COMMON LAW THERE WAS A STRING OF CASES TALKING ABOUT THE APPRECIATION AND THE SALARY.

AND AS A MATTER OF FACT, IN THIS RECORD ADMITTED BY THE HUSBAND IS A PRIOR DRAFT DIRECTING THE WIFE NOT TO GET APPRECIATION THAT INCREASES ANY OF THE PRENUP PROPERTY.

>> THAT'S AN INTERESTING CONTRACT QUESTION, BUT WE'RE HERE ON A QUESTION OF LAW.

>> RIGHT.

>> SO WHETHER THE ISSUE OF WHAT WAS INTENDED BECAUSE OF THAT PRIOR AGREEMENT, WE'RE NOW GETTING INTO FACTUAL DIFFERENCES THAT WE'RE NOT REALLY HERE TO RESOLVE.

SO WHETHER THEY INTENDED SOMETHING DIFFERENT, WE'RE LOOKING AT THE CLEAR LANGUAGE. BUT YOU RAISED -- THAT WAS AN INTERESTING POINT.

>> RIGHT.

SHOWS THEY DID NOT INTEND TO WAIVE IT, IN MY OPINION.

IT SHOWS THAT THEY NEGOTIATED THE APPRECIATION RIGHT INTO THE AGREEMENT.

AND WHEN WE LOOK AT THE CODE --

>> HOW CAN YOU RECONCILE THAT WITH THIS LANGUAGE?

THAT IS JUST UNQUALIFIED,, PARAGRAPH 9, PARAGRAPH 9, MUTUAL

RELEASE, WHERE IT SAYS WHAT WE DISCUSSED EARLIER.

BUT THEN IT SAYS THAT THAT PROPERTY THAT'S ACQUIRED PRIOR TO THE MARRIAGE WILL REMAIN RESPECTIVE SEPARATE PROPERTY OF EACH AFTER SAID MARRIAGE AND EACH AGREES NOT TO MAKE ANY CLAIM AGAINST THE PROPERTY OF THE OTHER?

I MEAN, THAT -- I JUST DON'T SEE HOW YOU CAN READ THAT IN A WAY THAT IS CONSISTENT WITH YOUR POSITION.

>> IT SAYS UP TO THE DATE OF THE MARRIAGE.

AND --

>> I UNDERSTAND THAT'S WHY SHE'S UPSET.

BUT IT GOES ON TO SAY THAT THAT PROPERTY 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.

THIS IS UNEQUIVOCAL LANGUAGE.

>> TO THE APPROXIMATELY \$10 MILLION, WHICH IS LISTED --

>> YOU TALK ABOUT -- IF YOU GO ON IN THIS AGREEMENT, IT SAYS 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.

I'M NOT SURE HOW MUCH CLEARER YOU COULD HAVE MADE THIS.

I MEAN, I'M SURE YOU'LL SAY YOU COULD HAVE MADE IT CLEARER BY PUTTING IN PASSIVE AND ACTIVE APPRECIATION AND THOSE KINDS OF TERMS, BUT THIS SEEMS VERY CLEAR, THAT EACH PARTY IS WAIVING THEIR INTEREST IN ANY PROPERTY THAT THEY HAVE OR ANY PROPERTY THAT THEY WILL ACQUIRE IN THEIR OWN NAME.

>> WELL, THE INTERESTING THING ABOUT THE OPINION, JUSTICE

QUINCE, IS THAT THE FOURTH DISTRICT HAD TO READ PARAGRAPH 17 TOGETHER WITH PARAGRAPH 2, WHICH IS DIANNE'S RELEASE, PARAGRAPH 5, SOLE PROPERTY, WHICH IS WHAT YOU ARE REFERRING TO.

>> WELL, IN THESE AGREEMENTS, AREN'T YOU SUPPOSED TO READ ALL OF THE PROVISIONS OF IT? AND BOTH OF THESE, BOTH NUMBER FIVE THAT I JUST READ A PART OF, AND NUMBER 17 ALL DEAL WITH WHO HAS THE RIGHT AND THE TITLE TO THE PROPERTY THAT IS OWNED BY THEM SEPARATELY.

>> RIGHT.

>> OR EVEN TOGETHER.

>> WE GET TO THE TITLE PRESUMPTION CLAUSE, WHICH THEY HAD TO INCLUDE IN THE READING, ALL IT TALKS ABOUT IS TITLE PROPERTY.

IT DOES NOT TALK ABOUT THE VOLUMINOUS PROPERTY THAT DOESN'T CARRY A TITLE.

>> WEREN'T BOTH OF THESE PEOPLE REPRESENTED BY COUNSEL?

>> YES, SIR.

>> (INAUDIBLE)

>> ONE MEETING, BUT CONTINUED NEGOTIATION AFTER THE MEETING.

>> IF THE SHOE WERE ON THE OTHER FOOT AND THE WIFE'S BUSINESS APPRECIATED -- BUT THEY BOTH HAD BUSINESSES, RIGHT?

>> THE WIFE DID NOT HAVE A BUSINESS.

SHE HAD PREMARITAL MONEY.

>> I THOUGHT THE RECORD SAID SHE WAS AN INTERIOR DESIGNER.

>> SHE WAS AN INTERIOR DESIGNER FOR A WHILE AND THEN SHE RETIRED TO TAKE CARE OF THE PARTY'S TWO CHILDREN.

THEY BOTH APPRECIATED AND MAKE GREAT EFFORTS TO BUILD THIS EMPIRE, YES.

>> IF THE SHOE WERE REVERSED AND SHE DID HAVE THIS INTERIOR

DESIGN COMPANY AND IT APPRECIATED, WOULD YOUR ARGUMENT BE THE SAME?

>> I THINK IT WOULD BE THE SAME, AND AS IT TURNS OUT, THE HUSBAND DID END UP TAKING HER SOLE PROPERTY UNDER THIS TITLE PRESUMPTION CLAUSE.

THAT'S JUST A FACT IN THIS CASE, WHETHER IT'S IN THE AMBIT WILL BE DECIDING OF COURSE IS UP TO THIS COURT, BUT IT'S WHAT HAPPENED.

>> LET'S GO BACK TO WEYMOUTH AND I'M GOING TO ASK THE RESPONDENT THE DIFFERENCE IN THE AGREEMENTS THERE BECAUSE YOU'RE IN THE REBUTTAL.

>> ALL RIGHT.

I SEE THAT I'M INTO MY REBUTTAL TIME, SO I WILL SIT DOWN AND THANK YOU FOR YOUR TIME AND BE BACK IN A FEW MINUTES.

>> MAY IT PLEASE THE COURT, JANE KREUSLER-WALSH HERE ON BEHALF OF THE RESPONDENT, HARRY HAHAMOVITCH, WHO'S THE FORMER HUSBAND.

LET'S BEGIN WITH THE AGREEMENT ITSELF, PARAGRAPH TWO.

IT IS VERY CLEAR THAT THIS IS A VERY BROAD WAIVER AND IT DOES WAIVE AND RELEASE, BAR ANY AND ALL RIGHTS OF EVERY KIND, NATURE AND DESCRIPTION THAT DIANNE MAY ACQUIRE, MAY BE ENTITLED TO, CARRIES PROPERTY OF EVERY KIND, NATURE AND DESCRIPTION AND, MOST IMPORTANTLY, IT WAIVES THE RIGHT TO EQUITABLE DISTRIBUTION.

EQUITABLE DISTRIBUTION, BY DEFINITION, INCLUDES THE RIGHT TO ENHANCEMENT AND APPRECIATION.

>> WOULD YOU ADDRESS THE CONFLICT ISSUE?

>> YES, SIR.

THE CONFLICT ISSUE IN VALDES. I BELIEVE VALDES AND IRWIN ARE DISTINGUISHABLE BECAUSE THE AGREEMENT IN THOSE CASES DO NOT

CONTAIN THE WORDS "EQUITABLE
DISTRIBUTION."

AND BECAUSE OF THAT, I BELIEVE
THAT THIS COURT COULD DISCHARGE
JURISDICTION.

THERE IS A CERTIFIED QUESTION,
TOO.

AND BECAUSE THERE IS A CERTIFIED
QUESTION, I DO BELIEVE THAT THIS
COURT COULD AND PROBABLY SHOULD
ADDRESS THE ISSUE.

>> WHY SHOULD WE?

>> WHY SHOULD WE.

BECAUSE I DO BELIEVE THAT, TO BE
FAIR, VALDES AND IRWIN I THINK
ARE WRONGFULLY DECIDED.

I THINK THEY'RE WRONGFULLY
DECIDED BECAUSE WHEN YOU LOOK AT
THE AGREEMENT IN BOTH OF THOSE
CASES, VALDES, FOR EXAMPLE, THE
AGREEMENT IN THAT CASE USES THE
WORD "STATUTORY."

THE WORD "STATUTORY."

LET'S LOOK AT THE AGREEMENT.

IT SAYS THAT THE WIFE INTENDS TO
RELINQUISH, WAIVE AND BAR HER
STATUTORY RIGHTS AND INTERESTS.
STATUTORY RIGHTS BY DEFINITION
IS THE RIGHT TO EQUITABLE
DISTRIBUTION.

THE RIGHT TO EQUITABLE
DISTRIBUTION, AS I SAID,
INCLUDES THE RIGHT OF
ENHANCEMENT.

SO IF YOU ARE GIVING UP THE
RIGHT TO ENHANCEMENT, YOU ARE,
BY DEFINITION, GIVING UP ALL OF
YOUR RIGHTS THAT YOU WOULD
ACCUMULATE DURING THE MARRIAGE.
IN IRWIN, THE WIFE IS GIVING UP,
WAIVING AND RELEASES ALL RIGHTS
IN THE PROPERTY THAT SHE IS
GOING TO ACQUIRE BY REASON OF
HER MARRIAGE TO TED IRWIN.

IF YOU ARE GIVING UP ALL RIGHTS
THAT YOU ARE GOING TO ACQUIRE BY
REASON OF YOUR MARRIAGE, BY
DEFINITION YOU ARE GIVING UP ALL
OF THE RIGHTS THAT YOU ARE GOING
TO ACQUIRE BY REASON OF YOUR

MARRIAGE.

SO YOU ARE GIVING UP EVERYTHING.
AGAIN, IT'S HARD TO DISTINGUISH,
BUT I CAN.

>> WEYMOUTH, WHICH IS NOT A
CONFLICT, BUT I'M STILL TRYING
TO UNDERSTAND, THERE MUST BE A
DIFFERENCE.

>> YES.

>> UNLESS JUDGE TAYLOR HAD A
SPLIT PERSONALITY.

>> NO.

SHE DOES NOT HAVE A SPLIT
PERSONALITY.

THE DIFFERENCE IS WEYMOUTH
CONTAINS A SENTENCE THAT IS
DIFFERENT THAN THE AGREEMENT IN
HAHAMOVITCH AND THE DIFFERENCE
IS THAT THE PARTIES IN THE
WEYMOUTH CASE HAVE A SENTENCE
THAT SAYS "ANY ASSETS ACQUIRED
AFTER THE MARRIAGE WILL BECOME
MARITAL PROPERTY."

THAT'S THE DIFFERENCE.

>> THAT'S A PRETTY BIG
DIFFERENCE.

>> THAT'S A VERY BIG DIFFERENCE.

>> TO ME IT'S A BIG DIFFERENCE.
SO WERE THEY INTERPRETING ASSETS
TO MEAN EQUITABLE -- THE
EQUITABLE DISTRIBUTION OF
PASSIVE AND ACTIVE APPRECIATION?

>> YES.

YES.

YES.

THAT'S EXACTLY RIGHT.

AND IN THE HAHAMOVITCH DECISION
TOWARD THE END THAT IS ONE OF
THE DISTINCTIONS THAT THE COURT
MAKES.

AND THAT'S THE REASON WHY THE
WEYMOUTH CASE IS DIFFERENT THAN
HAHAMOVITCH, AMONG OTHER
REASONS.

BUT I THINK THAT'S THE PRIMARY
DIFFERENCE.

>> WELL, WOULD YOU -- I MEAN,
INSTRUCTING A CLIENT TODAY ABOUT
WHAT YOU'D PUT IN A PRENUPTIAL
AGREEMENT, THE EASY FIX FOR THE

FUTURE IS TO SAY AND -- OKAY.
SO WE'RE SAYING -- IF WE QUASH
THE FOURTH DISTRICT, THAT YOU'VE
GOT TO SAY AND NOT ONLY WAIVE
EQUITABLE DISTRIBUTION, BUT BY
THAT WE MEAN THE ACTIVE AND
PASSIVE APPRECIATION OF THE
PROPERTY.

IS THAT A GOOD -- I MEAN, IN
OTHER WORDS, IF WE'RE REALLY
TRYING TO DO WHAT'S GOOD FOR
SPOUSES THAT MAY HAVE -- EVEN
THOUGH THEY HAVE A LAWYER,
OBVIOUSLY, THERE WAS A PRETTY
BIG DIFFERENCE IN AGE AND
SOPHISTICATION, AND IT'S BEFORE
A MARRIAGE, YOU KNOW.

YOU DON'T THINK YOU'RE GOING TO
GET GETTING DIVORCED.

ISN'T IT A BETTER POLICY TO SAY
THAT CLEAR LANGUAGE OUGHT TO BE
THERE SO THAT THE PARTIES KNOW
WHAT YOU'RE GETTING IS SET FORTH
IN THE AGREEMENT AND THERE IS NO
OTHER CLAIMS YOU CAN MAKE?

>> WELL, OBVIOUSLY I DISAGREE
WITH THE PREMISE OF YOUR
QUESTION BECAUSE I DON'T THINK
THAT THE -- I THINK THE
HAHAMOVITCH DECISION IS CORRECT
AND YOU SHOULD APPROVE THE
HAHAMOVITCH DECISION.

AND I THINK THE LANGUAGE IN THE
HAHAMOVITCH AGREEMENT IS REALLY
A MODEL FOR WAIVER.

IT'S BROAD.

IT TELLS THE CLIENTS EXACTLY
WHAT IT IS THAT THEY'RE WAIVING.
AND BY WAIVING EQUITABLE
DISTRIBUTION, YOU ARE WAIVING
THE UNIVERSE OF RIGHTS.

AND IT'S ACTUALLY THE SAFEST
THING FOR PRACTITIONERS AND FOR
CLIENTS BECAUSE IT'S NOT A TRAP
FOR THE UNWARY.

LEGISLATURES CAN CHANGE
STATUTES.

IT'S NOT INCLUDING TOO MUCH.

IT'S NOT INCLUDING TOO LITTLE.

IT'S THE BEST AND THE SAFEST.

>> WELL, YOU COULD SAY INCLUDING ANY APPRECIATION, PASSIVE AND ACTIVE, IN THE PROPERTY.

I MEAN, YOU COULD SAY THAT AND THEN THERE WOULD BE NO QUESTION ABOUT WHAT EQUITABLE DISTRIBUTION ACTUALLY IS MEANING TO ESPOUSE.

I MEAN, THAT'S I GUESS THE ARGUMENT, THAT THAT'S WHAT SHOULD BE IN THERE, RIGHT? THAT'S WHAT THE CERTIFIED QUESTION IS, ISN'T IT?

>> THAT'S THE CERTIFIED QUESTION.

>> IT IS.

>> AT THE TIME THAT THIS AGREEMENT WAS WRITTEN, HOWEVER, YOUR HONOR, THE CONCEPTS THAT YOU'RE TALKING THE KANAKARIS CASE WAS THE LAW, AND WHAT HAHAMOVITCH COVERS, THIS AGREEMENT COVERS.

SO IT REALLY TRULY WOULD NOT BE FAIR TO THE HAHAMOVITCHES TO INCLUDE THE LANGUAGE YOU'RE TALKING ABOUT.

IF YOU WANTED TO GO SOMETHING GOING FORWARD, THAT WOULD BE SOMETHING FOR THE COURT TO CONSIDER.

BUT FOR PURPOSES OF THESE PEOPLE AND THIS AGREEMENT, THAT WOULD BE SOMETHING FOR THE COURT, BUT REALLY AND TRULY NOT SOMETHING FOR THE HAHAMOVITCHES, DESPITE WHAT YOU'RE TALKING ABOUT WITH THE KAPLAN AGREEMENT.

NOW, THE KAPLAN AGREEMENT IS SOMETHING -- THESE PARTIES STIPULATED THAT THIS AGREEMENT WAS NOT AMBIGUOUS.

IT WAS -- AND IN TERMS --

>> I'M SORRY.

THE KAPLAN AGREEMENT?

>> THE KAPLAN DRAFT THAT MY OPPONENT WAS SPEAKING ABOUT.

>> THE PRIOR DRAFT.

>> THE PRIOR DRAFT.

AND I REALLY DON'T WANT TO GET

INTO IT BECAUSE WHEN YOU'RE TALKING ABOUT AN AGREEMENT THAT'S NOT AMBIGUOUS, IT'S REALLY NOT EVEN APPROPRIATE FOR THEM TO BE BRINGING IT UP, BECAUSE THEY STIPULATED THAT THE AGREEMENT WAS NOT AMBIGUOUS. AND WHEN MR. HAHAMOVITCH -- >> AGAIN, I THINK THAT THE PROBLEM HERE -- WHAT DO YOU MEAN?

WHO STIPULATED?

>> IT WAS STIPULATED AT TRIAL THAT THE AGREEMENT WAS NOT AMBIGUOUS, THAT THERE WAS NOT GOING TO BE ANY PAROLE EVIDENCE. SO THE FACT THAT THERE WERE PRIOR AGREEMENTS IS NOT SOMETHING THAT WAS EVEN RELEVANT.

SO FOR THAT SORT OF AN ARGUMENT TO BE COMING IN IS NOT APPROPRIATE.

>> WELL, I WOULD ARGUE -- AGAIN, AND IT'S A FRIENDLY QUESTION -- THAT IF YOU ARE REALLY CONSIDERING WHETHER WHEN YOU WAIVE ANY AND ALL RIGHT TO ALL PROPERTY OWNED OR HEREAFTER ACQUIRED, THAT IF YOU REALLY THINK YOU WOULD LIKE TO GET THE APPRECIATION, THAT OUGHT TO BE SPECIFICALLY IN THE AGREEMENT AS OPPOSED TO SAYING, WELL, I'M JUST GOING TO CLAIM IT AFTERWARDS.

SO IT SEEMS TO ME THAT THE WORST WOULD BE GOING FORWARD, HAVE ANOTHER PARAGRAPH SO THERE IS NO FURTHER LITIGATION ON THIS ISSUE.

BUT THAT'S JUST ME.

>> BUT THE LANGUAGE THAT'S INCLUDED IN THIS AGREEMENT, THE -- MR. HAHAMOVITCH IN THE -- ORIGINALLY HAD GONE TO A GENERALIST.

HE THEN WENT TO A SPECIALIST. THE SPECIALIST LOOKED AT THE AGREEMENT AS IT WAS ORIGINALLY

DRAFTED AND DECIDED THAT THE LANGUAGE THAT HAD BEEN INCLUDED WAS TOO SPECIFIC.

HE NEEDED BROADER LANGUAGE.

SO WHEN HE REDRAFTED THE AGREEMENT, HE DRAFTED IT WITH A MUCH MORE -- MUCH BROADER WAIVER, WHICH IS WHAT YOU SEE NOW, AND THAT'S WHY THE LANGUAGE THAT'S INCLUDED IS AS YOU SEE IT.

AND THE MUCH, MUCH BROADER LANGUAGE DOES EXACTLY WHAT IT'S MEANT TO DO.

IT WAIVES ANYTHING AND EVERYTHING FOR ALL TIME.

>> WE HAVE PRIOR ACQUIRED PROPERTY.

IS THERE AN ISSUE ON THE AFTER ACQUIRED AND THE EARNINGS?

>> THE AFTER ACQUIRED AND THE EARNINGS ARE INCLUDED IN PARAGRAPH 17, AND THAT'S THE TITLE PRESUMPTION AGREEMENT, AND THAT'S EXACTLY WHAT THE APPELLANT COURT, THE FOURTH DISTRICT, SAID IS THE PURPOSE OF THAT CLAUSE.

AND THAT'S THE ONE THAT SAYS IN THE SECOND TO THE LAST LINE, IF HARRY PURCHASES, ACQUIRES OR OTHERWISE OBTAINS PROPERTY IN HIS OWN NAME, THEN HARRY SHALL BE THE SOLE OWNER OF SAME.

>> WHAT ABOUT THE EARNINGS?

>> THE EARNINGS ARE INCLUDED IN THAT ALSO.

>> JUST SO I UNDERSTAND WHAT YOU'RE ASKING, YOU'RE OF THE POSITION THAT WE COULD DISCHARGE JURISDICTION BASED ON THE EXISTING LAW.

>> YES, YOUR HONOR.

>> YOU'RE ASKING US TO KEEP THE CASE TO CLARIFY, AND WHAT YOU'RE ASKING US TO DO IS TO WRITE AN OPINION THAT BASICALLY SAYS THAT THE TERM "EQUITABLE DISTRIBUTION" ENCOMPASSES EVERYTHING, INCLUDING PASSIVE

AND ACTIVE APPRECIATION.
IT INCLUDES EVERYTHING.
THAT WOULD OBVIOUSLY SIMPLIFY
THINGS FOR FUTURE PRACTITIONERS.
>> PLEASE DON'T MISUNDERSTAND
ME.

I WOULD BE VERY HAPPY IF YOU
DISCHARGED JURISDICTION.
THAT IS MY FIRST PREFERENCE.
THAT IS MY FIRST PREFERENCE.
>> REALLY AND TRULY, AGAIN, I
CAN SEE HOW THERE MIGHT NOT BE
CONFLICT, BUT I THINK YOU WERE
BEING HONEST ENOUGH TO SAY THAT
WHEN THEY WAIVED IN IRWIN THE
RELEASE OF STATUTORY RIGHTS,
IT'S HARD TO SAY --

>> IN VALDES.

>> IN VALDES.

>> CORRECT.

>> IS DIFFERENT THAN EQUITABLE
DISTRIBUTION.

I'M READING THESE OPINIONS AND
EVEN WEYMOUTH AND TRYING TO
FIGURE OUT WHERE THEY'RE
DIFFERENT.

AND SO IT SEEMS TO ME IN THE
WORLD OF LAWYERS AND PEOPLE
ENTERING INTO MARRIAGES THAT
THIS NEEDS TO BE CLARIFIED
BECAUSE THE FOURTH DISTRICT
SEEMED TO THINK THERE WAS A
CONFLICT.

SO THAT'S THE REASON.

I UNDERSTAND FROM YOUR NARROW
POINT OF VIEW.

FROM THE BROADER POINT OF VIEW,
I THINK YOU WERE HONEST TO SAY
IT LOOKS LIKE THERE'S CONFUSION
OUT THERE.

>> IT'S DIFFICULT TO READ THESE
AGREEMENTS AND TO SAY WITH
CANDOR TO THE COURT THAT -- TO
RECONCILE THEM.

IT'S HARD.

>> EXPLAIN TO ME HOW PARAGRAPH
17 INCLUDES SALARY.

I CAN UNDERSTAND IT TALKS ABOUT
PROPERTY, BUT SALARY?

HOW IS THAT A PART OF THAT?

>> IF HE ACQUIRES, OTHERWISE
OBTAINS PROPERTY IN HIS OWN
NAME.
IT'S AS HE'S WORKING.
>> SO YOU THINK -- THAT IS BROAD
ENOUGH TO INCLUDE SPOUSES.
YOU'RE MARRIED AND THERE'S A
SALARY COMING INTO THE HOUSE AND
THAT INCLUDES THAT SALARY.
>> YES, YOUR HONOR.
AND ALSO PARAGRAPH TWO.
>> IN PARAGRAPH 17 IF SHE WERE
WORKING AND PUTTING THAT MONEY
INTO HER OWN ACCOUNT, BANK
ACCOUNT, STOCKS OR WHATEVER IN
HER OWN NAME, THAT WOULD REMAIN
IN HER OWN NAME.
>> YES, IT WOULD, YOUR HONOR.
>> THIS DOES NOT INCLUDE MONIES
THAT SAY THEY HAVE A JOINT BANK
ACCOUNT.
>> YES, IT WOULD.
>> IT WOULD.
>> YES.
THAT'S ALSO UNDER THAT.
>> THAT'S AN INTERESTING --
>> WELL, THEY DIVIDED 50/50.
>> IT'S UNDER THE 50/50
PROVISION EARLIER IN THAT
PROVISION.
>> THIS IS A FORMULA FOR HOW SHE
WOULD GET HER ALIMONY.
>> YES, IT DOES.
>> WE'RE NOT -- SO THE ISSUE OF
THE EARNINGS IS THEY'RE USED TO
ACQUIRE AFTER-ACQUIRED PROPERTY
IN THEIR OWN NAME.
IF IT'S A BASIS FOR SAYING HE
MAKES MORE MONEY THAN SHE DOES,
THAT'S COVERED BY THE WAY THAT
ALIMONY IS CALCULATED, CORRECT?
>> YES.
YES.
AND THE -- MY OPPONENT MADE
MENTION OF THE "EXCEPT AS
OTHERWISE PROVIDED FOR HEREIN"
PROVISION.
THERE'S TWO ASPECTS --
>> AND WHICH PARAGRAPH IS THAT?
>> IT'S IN THE BEGINNING OF

PARAGRAPH TWO.

THERE'S TWO ASPECTS OF THAT, THAT THAT GOES TO THE CALCULATION OF ALIMONY, NUMBER ONE, BECAUSE IF THE WIFE WERE TO RECEIVE PROPERTY DURING THE MARRIAGE, THEN THAT PROPERTY IS INCLUDED IN THE CALCULATION OF ALIMONY AND ALSO THE EXCEPT AS PROVIDED FOR HEREIN IS ALSO CONSIDERED AS PROPERTY UNDER TITLE 17 UNDER THE CALCULATIONS FOR THAT, FOR BOTH THE HUSBAND AND FOR THE WIFE.

UNLESS THERE ARE ANY OTHER QUESTIONS, IT'S THE HUSBAND'S POSITION THAT THE LAW IN FLORIDA ALLOWS PEOPLE TO CONTRACT IN PRENUPS TO DO WHATEVER IT IS THAT THEY WANT TO DO.

AND IT'S THIS COURT'S JOB TO ENFORCE THE LANGUAGE IN THOSE PRENUPS.

THESE COURTS -- THIS COURT IN PARTICULAR RECOGNIZES THAT PARTIES CAN WAIVE ANY RIGHTS TO SHARE IN THE APPRECIATION OF NONMARITAL ASSETS IN A MARITAL AGREEMENT AND THAT IS EXACTLY WHAT THE PARTIES DID HERE IN AS BROAD OF LANGUAGE AS IS POSSIBLE.

THESE PEOPLE WAIVED THE RIGHT TO NONMARITAL APPRECIATION IN THIS AGREEMENT, AND WE WOULD RESPECTFULLY SUBMIT THAT THIS COURT SHOULD AFFIRM THE FOURTH DISTRICT'S OPINION AND DISCHARGE JURISDICTION AND, IF NOT, QUASH THE DECISIONS IN VALDES AND IN IRWIN.

THANK YOU.

>> THANK YOU.

>> YOU HAVE FOUR MINUTES FOR REBUTTAL.

>> I DON'T AGREE WITH THE TAKE ON THE TITLE PRESUMPTION CLAUSE IN PARAGRAPH 17.

SPECIFICALLY, IT DOES ONLY PERTAIN TO PROPERTY AND TITLE TO

SAID PROPERTY IN HARRY'S NAME.
AGAIN, THE NEXT SENTENCE DOES
NOT TALK ABOUT TITLE.
SO THERE'S ALL KINDS OF PROPERTY
THAT 17 DOES NOT ENCOMPASS.
TAX LOSS CARRY-FORWARDS, ACCRUED
INCOME.
>> (INAUDIBLE) THAT THIS WAS
UNAMBIGUOUS?
>> BOTH SIDES SAID IT WAS
UNAMBIGUOUS.
>> BUT NOW YOU'RE SAYING IT'S
AMBIGUOUS.
>> I'M SAYING IT DOESN'T SAY
WHAT THE FOURTH DISTRICT SAID IT
SAID.
>> SHE'S SAYING THIS IS CLEAR,
IT COULDN'T BE ANY CLEARER, THAT
YOU WAIVED THE RIGHT TO
EQUITABLE DISTRIBUTION, WHICH IS
PASSIVE AND ACTIVE APPRECIATION
AS PART OF EQUITABLE
DISTRIBUTION.
IT CAN'T BE CLEARER.
YOU'RE SAYING IT COULD BE NOT
ONLY CLEARER, BUT IT'S NOT EVEN
CLEAR THAT IT'S SAYING WHAT SHE
SAYS IT IS.
SO IT SEEMS TO ME YOU'RE SAYING
IT'S AMBIGUOUS.
>> I'M SAYING IT'S CLEAR THAT IT
WAS NOT WAIVED BECAUSE WHEN WE
LOOK AT THE CASE LAW THAT HAS
EVOLVED FROM 1988 --
>> YOU KNOW, YOU GOT THE
BROADEST RELEASE POSSIBLE.
BUT THEN YOU SAY, BUT, NO, I'M
GOING TO GO TO PARAGRAPH 17 AND
FIND SOMETHING ELSE THERE THAT
REALLY SAYS, YOU KNOW WHAT?
WE WEREN'T GOING TO SAY ANYTHING
ABOUT EQUITABLE DISTRIBUTION,
BUT WE SAID SOMETHING, BUT WE
REALLY DIDN'T MEAN WHAT WE SAID
WHEN WE RELEASED EQUITABLE
DISTRIBUTION.
I DON'T GET THAT.
>> IF YOU READ VALDES AND IRWIN
AND YOU LOOK AT THE RELEASE
LANGUAGES IN THOSE CASES,

THEY'RE VERY SIMILAR TO WHAT IS
IN THE HAHAMOVITCH AGREEMENT.

>> WE'RE NOT BOUND BY THIS
DECISION.

>> OF COURSE NOT.

>> AND THE PROBLEM HERE THAT WE
ALL KEEP COMING BACK TO IS THIS
BROAD LANGUAGE.

YOU GO TO SO MANY DIFFERENT
PLACES IN THE AGREEMENT, AND AS
YOUR OPPOSING COUNSEL THERE HAS
RIGHTLY POINTED OUT, PARAGRAPH
TWO, DIANNE'S RELEASE, THAT
REFERS SPECIFICALLY TO EQUITABLE
DISTRIBUTION SEEMS TO LEAVE YOU
NO ROOM TO MANEUVER.

WHY AM I WRONG?

>> WELL, WHEN WE LOOK AT VALDES,
IT BASICALLY SAYS THE SAME
THING.

ALL CLAIMS OF ALL KINDS --

>> VALDES MAY WELL BE WRONG AND
WE MAY WELL DISAPPROVE VALDES.

>> THAT'S WHY WE'RE HERE.

THAT'S HOW WE GOT UP ON CONFLICT
JURISDICTION.

THE STATE OF THE LAW IS ALL OVER
THE PLACE.

>> BUT YOUR TASK HERE IS TO TELL
US WHY YOUR CLIENT SHOULD WIN IN
THIS APPEAL AND I'M NOT HEARING
AN EXPLANATION OF HOW THIS
LANGUAGE CAN RATIONALLY BE
INTERPRETED IN THE WAY YOU
SUGGEST IT SHOULD BE
INTERPRETED.

NOW, WHAT AM I MISSING?

>> I THINK THE ANSWER IS IN ALL
THE CASE LAW THAT THE FOURTH
LOOKED AT -- AND IF I CAN GO
THROUGH IT REAL QUICK, CAMERON,
STERN AND OTHERS, EVERY WAIVER
THEY POINTED TO HAD A SPECIFIC
COMPANY NAMED IN THE DISCLOSURE
AND IN THE WAIVER.

FOR EXAMPLE, NSC CORPORATION,
ALL SUBSIDIARIES THEREOF, AFTER
ACQUIRED, WAIVED.

>> THE PROBLEM IS YOU CAN'T
REALLY PREDICT IN THE FUTURE

WHAT YOU'RE GOING TO PURCHASE,
ACQUIRE DURING THE COURSE OF A
20-YEAR MARRIAGE.

SO YOU COULDN'T PUT THOSE
SPECIFICS IN THERE.

BUT EVERYTHING, WITHOUT LIMIT,
GENERALITY TO FOREGO ALL RIGHTS,
I MEAN, HOW CLEARER CAN YOU GET?

>> THOSE WERE LONG MARRIAGES AND
THOSE HAD SPECIFIC COMPANIES,
STOCKS, A PLUMBING COMPANY.
THE CAMERON CASE, FOR EXAMPLE

--

>> THAT WOULD ASSUME -- I MEAN,
AND YOU'RE RIGHT.

ANYTHING ACQUIRED DURING THE
MARRIAGE THAT DIDN'T HAVE THIS
BROAD LANGUAGE WOULD BE MARITAL
PROPERTY.

>> RIGHT.

>> BUT SHE GIVES UP A RIGHT TO
EQUITABLE DISTRIBUTION, DIVISION
OF PROPERTY, SPECIAL EQUITIES.

I MEAN, EVERYTHING IN THE
FUTURE.

I MEAN, HOW DO YOU GET AROUND
THAT?

>> AND SO DID THE CAMERON CASE.
AND ALTHOUGH IT'S CITED IN THE
FOURTH DCA OPINION, WHAT THEY
FAILED TO APPRECIATE WAS THE
PREMARITAL PROPERTY WAS FOR THE
HUSBAND.

THE POST-MARITAL PROPERTY TURNED
ON AMBIGUITY OF THE AGREEMENT
AND TESTIMONY, YET IT WAS READ
AS A MATTER OF LAW TO SUPPORT
THE HAHAMOVITCH OPINION.

THAT IS SOMETHING THAT'S VERY
IMPORTANT IN THIS CASE.

SO THE ANALYSIS IS INCORRECT IN
THIS FOURTH DCA OPINION.

>> YOUR TIME IS UP.

>> THANK YOU VERY MUCH FOR YOUR
TIME.

WE ASK FOR THE OPINION TO BE
QUASHED AND FOR APPRECIATION AND
SALARY.

THANK YOU VERY MUCH.

