Maine Supreme Judicial Court
Sitting as the Law Court

Docket No. Cum-25-196

ROBERT J. HUTCHINSON,

Appellee,

v.

ROSANNA PAOLA CORDOBA GOMEZ,

Appellant.

On Appeal from the District Court, Portland, Maine

BRIEF OF APPELLEE ROBERT J. HUTCHINSON

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I. STATEMENT OF FACTS

The Appellee, in accordance with Rule 7A (b), Me. R. App. P. sets forth his own statement of facts finding that the Appellant's amalgamation of facts, procedural history and argument fail to present an orderly and comprehensive assessment of the critical features of the case, including the couple's pre and post Agreement conduct, the terms of the Premarital Agreement, and the factual findings of the District Court on significant issues now raised on appeal.

A. General Background

Plaintiff Roby Hutchinson and Defendant Rosanna Cordoba Gomez met in February 2012 and started dating shortly thereafter. (App. at 39). Roby was raised in Maine, attended Brunswick public schools, graduated from Kents Hill School (10/2/24 Trans. at 23), and received an undergraduate degree from Arizona State University. (App. at 41). His primary occupation since 2009 has been assisting his mother, Patricia Hutchinson, in operating a 108-unit rental complex in New Jersey, known as *Lexington Gardens, LLC* ("LG"). (App. at 39). Roby inherited Lexington Gardens from his mother sometime after she passed in February 2021. (App. at 41).

Rosanna has an undergraduate degree in law and a graduate degree in taxation from schools in her native Columbia. (App. at 46). She practiced law briefly in Columbia but is not licensed to practice law in the United States. (App. at 39). The

couple moved to Maine in 2013. (App. at 46). Rosana is now a United States citizen having achieved that status in 2022. (App. at 46; 12/5/24 Trans. at 35).

Before her U.S. citizenship, Rosanna applied to the Fashion Institute of Technology ("FIT"), in 2014, to pursue a career in the fashion industry. (12/5/24 Trans. at 14 & 34-35). Her application was denied because of her inability to retrieve document stamps from Columbia. (*Id*.). A second application in 2018 was accepted and Rosanna became a student at FIT in 2019. (App. at 41; 12/5/24 Trans. at 14).

The couple were engaged in April 2014. (12/5/24 Trans. at 32). Both before and after the marriage, Rosanna engaged in some schooling in Maine to increase her proficiency in English. (12/5/24 Trans. at 32). She attended Southern Maine Community College and took art-related classes in photography and design, and later, at the Maine College of Art, studying textiles. (*Id*. at 32-33).

The original intent was that the couple would stay in Maine for six (6) months so Roby could "do some things in Maine" and then they "eventually would move to New York so Rosanna could attend fashion school." (12/5/24 Trans. at 9-10). Notwithstanding Roby's continuing support for Rosanna to attend school in the United States, (*Id*. at 84; 10/2/24 Trans. at 27), Rosanna's plan to obtain an education in fashion was delayed by approximately six (6) years. (12/5/24 Trans. at 13).

During the marriage, and before Rosanna's admission at FIT, Roby supported Rosanna's attempts to become a fashion influencer in swimwear through the

couple's frequent travels to places such as Mexico, Thailand, and Sri Lanka. (App. at 46; 12/5/24 Trans. at 35-37). Although Rosanna's Instagram effort into the fashion arena served as a preliminary introduction to the industry (12/5/24 Trans. at 37), her business efforts did not prove lucrative. (App. at 46; 12/5/24 Trans. at 36-37 & 40). Otherwise, Rosanna's only employment during the marriage was a short stint at "Forever 21" as a retail clerk. (10/2/24 Trans. at 31).

During the marriage the couple resided in various places in Maine. Initially, the couple lived in a home owned by Ms. Hutchinson in Brunswick while she was living in a condominium at Chandler's Wharf in Portland. (App. at 41-42). The Chandler's Wharf property was originally purchased as housing for Ms. Hutchinson as she was suffering from Parkinson's disease. (App. at 42). The Chandler's Wharf property belonged to the late Ms. Hutchinson and was never part of the marital estate. (App. at 42).

During the couple's stay in Brunswick, the home underwent renovations after Ms. Hutchinson's care was transferred to a nursing facility in Kennebunkport and then Arizona in 2018. (10/2/24 Trans. at 25-26; App. at 41). Both parties participated in the renovations. (*Id*.; 12/5/24 Trans. at 86). There was no enforceable contract between Roby and Rosanna concerning her assistance with the renovations. (App. at 42). The Brunswick property was sold in 2019 at a point when it was still owned by Ms. Hutchinson. (App. at 41). At the time of the sale, the couple was living in

New York. (App. at 42). As part of an agreement between Roby and his mother, the proceeds went into one of his accounts to finance Ms. Hutchinson's long-term care needs. (App. at 41-42; 10/2/24 Trans. at 30). The Brunswick property was never part of the marital estate. (App. at 42). (To the extent that Rosanna's claim here was construed as a request for reimbursement support, it was subject to the support provisions of the Agreement. (App. 42)).

B. The Premarital Agreement

Plaintiff and Defendant were married on March 10, 2015 and had no children during the marriage. (App. at 39). The couple had an early discussion of the concept of a prenuptial agreement after the engagement. (12/5/24 Trans. at 10). Roby advised Rosanna that he wished a prenuptial agreement to protect his businesses. (*Id*. at 11).

The parties entered into a Premarital Agreement ("Agreement") dated March 2, 2015. (App. at 40). Both parties were represented and advised by separate counsel during the negotiation of the Agreement. (App. at 40). As part of the Agreement, both parties submitted comprehensive financial disclosure statements detailing assets and liabilities. (App. at 118-120 - Exhibit A, Rosanna; and App. at 121-123 - Exhibit B, Roby). Both parties acknowledged that they consulted independent legal counsel of their own choosing. (App. at 116 & 117). Both acknowledged that they were "fully informed of all rights and liabilities pertaining to the [Agreement]." (*Id*.) Both acknowledged that they had read the Agreement "line by line after consultation

with [personal counsel]." (*Id*.) Finally, both acknowledged that their execution of the Agreement was done "freely and voluntarily" and "free from any coercion whatsoever." (*Id*.).

The Agreement contained the following significant provisions governing financial significant issues in divorce:

- Both parties' "property and estate shall remain that party's separate property during the marriage, subject to that party's individual control, use and disposition as if that party were unmarried." (App. at 40).

- It "sets aside to each party their individual business interests, including business interests subsequent to marriage, to each as sole and separate property, 'including but not limited to any increase in value of those business interests notwithstanding that the increase in the value may be due, in whole or in part, to the efforts or financial contributions of either party during the marriage.'" (App. at 40).

- It set aside to Roby "his interest in Robyco, LLC, [Melby Oil & Gas] and his, at the time the [Agreement] was signed, future interest in Lexington Gardens, LLC." (App. at 40).

- It "details specific spousal support provisions and a waiver of spousal support beyond the payment detailed" in the Agreement. (*Id*.) The Agreement was valid and enforceable and not in violation of any well-established rule of law, nor was it harmful to the interests of society. (App. at 40, n. 4).

The couple separated in May 2020 (12/5/24 Trans. at 47) at a point in time when they had been living in New York. The couple's finances were separated from Roby's business interests and limited accounts that were shared. Rosanna had her own checking account, she received a $1,000 monthly allowance, and she had access

to credit cards under Roby's name. (App. at 47). The accounts accessible to Rosanna were not related to Roby's business ventures. (*Id*.).

Roby's business ventures were the subject of separate accounts. Roby became the owner of Lexington Gardens, LLC, through an inheritance from his mother. (App. at 42). In January 2021, Roby refinanced LG to take advantage of favorable interest rates at the time. (*Id*.). Part of the cash distribution of the LG refinance was reinvested in other business ventures. (App. at 42-43). Several of those business ventures involved loans to various entities, including Quick Spark Financial, LLC, Coastal Roots, and Wolfespit, LLC. (*Id*. at 43-44). Any revenue derived from the LG refinance was found to be nonmarital because it was made using the nonmarital asset, LG. (*Id*. at 43).

The LG refinance funds were transferred into LG accounts and other business accounts of Roby, including, Robyko, LLC, a entity expressly referenced in the Agreement as nonmarital, Roby's personal account (Bank of America), and his investment account (Ameritrade), all used to further Roby's business interests. (App. at 42-44). Rosanna had no access to these accounts, and they were nonmarital. (*Id*. at 44 & 47).

The couple had attempted to settle their divorce out of court on one occasion, with an agreement that Roby would provide Rosanna with an initial payment of $130,000, with another payment to come if the divorce was completed without the

use of lawyers. (App. at 40, n.3). Roby paid Rosanna $105,000 and then paid her another $25,000, the latter amount which she used to purchase an apartment in the beach resort town of Tulum, Mexico. (*Id*.; 12/5/24 Trans. at 51-52). These payments were the subject of a Stipulation which provided Roby was entitled to a $130,000 credit as part of any final order (App. at 40 n. 3 and 41), and the credit was ordered as stipulated. (App. at 41, n. 5).

The Agreement required Roby to pay Rosanna spousal support at $3,000 a month for two (2) years following the filing of the divorce. Roby initially paid a lump sum payment of $36,500 and thereafter paid Rosanna $3,000 a month from January to December 2023. (App. at 41 & 176-177). Roby has satisfied his spousal support obligations. (*Id.).*

II. PROCEDURAL HISTORY

The Appellee, in accordance with Rule 7A (b), Me. R. App. P. will set forth his own procedural postures in the Argument sections of this Brief. Appellant's predominant focus on the discovery aspects of the case is of no relevance to the Appellant's challenges to the Premarital Agreement and serves as a meaningless artifact without consequence to her attorneys' fees application, where the District Court already awarded the Appellant a monetary sanction that was properly excluded in the Court's consideration of her fee application and award. (App.at 48 & 52-53).

III. STATEMENT OF ISSUES

A. Whether the District Court Erred in Concluding that the Premarital Agreement Did Not Require Roby to Purchase the Chandler's Wharf Condominium.

B. Whether the District Court Erred in Concluding that the Premarital Agreement Excludes Property Acquired by Either Party Subsequent to Marriage.

C. Whether the District Court Erred in Concluding that the Premarital Agreement Reaches all Business Entities, Not Merely the Three Named in Section 7.

D. Whether the District Court Erred in Concluding that the Businesses Using LG Refinancing Monies Are Nonmarital Under the Terms of the Agreement.

E. Whether the District Court Erred in Concluding that the Waiver of Equitable Distribution Limited the Appellant's Rights.

F. Whether the District Court Erred in Declining Jurisdiction Over Defendant's Chandler's Wharf Breach of Contract Claim.

G. Whether the District Court Abused its Discretion in Reducing the Attorneys' Fee Request.

IV. ARGUMENT

A. The District Court's Interpretation of the Premarital Agreement Was Correct as a Matter of Law

The Defendant/Appellant initially challenges the District Court's interpretation of the Premarital Agreement arguing that the provisions were ambiguous and the District Court erred as a matter of law in its initial written opinion on January 5, 2024, (App. at 27), and abused its discretion in its Order dated March 7, 2024 (App. at 30-31), denying the Defendant's Motion to Alter / Amend / Reconsider the Judgment of Divorce ("2024 M. A/A/R") dated January 26, 2024 (App. at 59). (Blue Brief at 20-22 ("Bl. Br., __"). Plaintiff/Appellee contends that

the District Court's thoughtful review of both the Agreement and the 2024 M. A/A/R belie the claims here on appeal.

Below, both parties agreed on the issues presented to the District Court for consideration in its December 19, 2023 Hearing. (App. at 27-29; 12/19/23 Trans. at 2, 12, 23, & 26). Plaintiff contends that the District Court's understanding and application of the principles of contract law were correct, and the Court's conclusion that the Agreement did not require the purchase of the Chandler's Wharf condominium. Both will be addressed in turn below.

1. The Court Did Not Err in Its Understanding of the Principles of Contract Law as Applied to the Premarital Agreement.

Although the Defendant presents the blackletter law of contract interpretation (Bl. Br., 20-22), there is little discussion of how the District Court failed in its ruling and committed legal error in its analysis of the Premarital Agreement. Indeed, the District Court's summary of contract law principles, (App. at 27), relying on *Dow v. Billing*, 2020 ME 10, 224 A.3d 244, as does the Defendant now, accurately summarizes much of the applicable law. Indeed, the Court's succinct summary, albeit without citations, may be a model of both accuracy and brevity. (*Id*. at 27).

While the Defendant observes correctly that contracts are evaluated "in accordance with the standard rules of construction" (Bl. Br., 21, citing *Estate of Barrows,* 2008 ME 62, ¶ 3, 945 A.2d 1217), the presentation of the standard rules is

incomplete. Certainly, "[t]he touchstone of contract interpretation is the intent of the parties." *Pine Ridge Realty, Inc. v. Mass. Bay Ins. Co.*, 2000 ME 100, ¶ 21, 752 A.2d 595. "In determining the intent of the parties…[the Law Court] look[s] at the instrument as a whole." *Windham Land Tr. v. Jeffords*, 2009 ME 29, 967 A.2d 690. When a written agreement is ambiguous, the court may determine the intent of the parties in entering the contract, and that determination is a question of fact…." *Hilltop Cmty. Sports Ctr., Inc. v. Hoffman*, 2000 ME 130,¶ 21, 755 A.2d 1058.

As a corollary to considering the whole instrument, a court should construe the contract to "give force and effect to all of its provisions and not in a way that renders any of its provisions meaningless." *Am. Prot. Ins. Co. v. Acadia Ins. Co.*, 2003 ME 6, ¶ 12, 814 A.2d 989 (internal quotation omitted). All parts and clauses must be considered together that it may be seen how one clause is explained, modified, limited or controlled by the others. *Id*., 2003 ME 6, ¶ 12. The construction of a contract requires giving effect to the plain meaning of the words. *Scott v. Fall Line Condo. Assoc.*, 2019 ME 50 ¶ 6, 206 A.3d 307; *Windham Land Tr.*, 2009 ME 29, ¶ 27 (using Webster's New Collegiate Dictionary (1979)).

If a document is unambiguous, then its interpretation is a question of law and "must be determined from the plain language used and from the four corners of the instrument. *Portland Valve, Inc. v. Rockwood Sys. Corp.*, 460 A.2d 1383, 1387 (Me. 1983). Although document language that is reasonably susceptible to different

interpretations can be ambiguous, "[t]he fact that parties have different views of what an agreement means does not render it ambiguous." *Champagne v. Victory Homes, Inc.*, 2006 ME 58, ¶¶ 8, 10, 897 A.2d 803. "A contract need not negate every possible construction of its terms in order to be unambiguous." *Waxler v. Waxler*, 458. A.2d 1215, 1224 (Me. 1983), cert. denied, 485 U.S. 935 (1998). Indeed, "a contract is not ambiguous merely because a party to it, *often with a rearward glance colored by self-interest,* disputes an interpretation that is logically compelled. *Blackie v. Maine*, 75 F.3d 716, 721 (1st Cir. 1996) (emphasis added).

2. The Premarital Agreement Did Not Require that Roby Purchase the Condominium at 403 Chandler's Wharf.

The Defendant's initial challenge on appeal concerns the District Court's legal conclusion in its Order on Application of Premarital Agreement ("Order on Agreement") (App. 27-29), that the Agreement did not require Roby to purchase the Chandler's Wharf Condominium. (Bl. Br., 22-25). The Defendant, with a selective analysis of the pertinent provisions, hyperbolizes, variously, that "the intentions of the parties is undeniable," (*Id*. at 23), that "[n]o other interpretation is reasonable," (*Id*. at 24), and the "Court's analysis is simply incorrect," (*Id*. at 25). Defendant further contends, in a bald misstatement of the principles of contract interpretation, that the existence of her different interpretations renders the Agreement ambiguous as a matter of law. (*Id*. at 25, n. 6). And finally, for good

measure, but without analysis, the Defendant contends that the Court's denial of her 2024 M. A/A/R was an abuse of discretion. (*Id*. at 25).

The Plaintiff a fair review of the District Court's Order establishes the propriety of the Court's interpretation of the language and its legal conclusions. Moreover, it is the Defendant's positions and interpretations that twist the general principles of contract law beyond reason to reach her conclusions.

The District Court's Order on Agreement (App. 27-29) set out its conclusions concerning the Chandler's Wharf property. The Court determined that Paragraph 14 of the Agreement was unambiguous. (App. at 28). This finding was consistent with the position of both parties. (12/19/23 Trans. at 2, 12, and 23, 26). Plaintiff conceded that Section 14 could be unambiguous but argued that extrinsic evidence may be necessary if the Court found the language required purchase to establish the Plaintiff's defense on why the purchase was not made. (*Id*. at 25).

The Court used a common dictionary definition of the term "intend" to determine that the phrase "Roby intends to purchase" did not create a requirement to do so, as that language contrasts with a clear requirement to do so had the term "must" been used in the Agreement. (App. at 27-28).

The Court next considered the Defendant's position that it had authority to award damages on an alleged breach of contract theory. (Bl. Br., 28-29). The Court found that the Defendant had not presented any support for her position that damages

could be awarded or that specific performance could be ordered on a property that was then and still not owed by either party. (*Id*.). (*See also* 12/19/23 Trans. at 14-15). The Court "denied the Defendant's claim for damages, without prejudice, allowing for the Defendant to maintain a separate action, should she choose to do so." (App. at 29). The Defendant has challenged the District Court's assessment of the lack of jurisdiction of her Chandler's Wharf claim (Bl. Br., 33-37) and the Plaintiff will address this issue fully in Part IV(B) of the Brief, *infra,* at pages 33-37.

Following the Court's January 5, 2024, Order, the Defendant filed her 2024 M. A/A/R (App. at 59-62). The Defendant requested the Court remove findings or conclusions concerning the Plaintiff's obligation (or not) to purchase the condominium. (App. at 60). The Defendant also challenged the Court's interpretation of the word "intend" because she claimed secondary definitions in Black's Dictionary supported an interpretation that the language in the Agreement was a "binding promise to purchase." (*Id*.). Finally, the Defendant argued language to purchase Chandler's Wharf was no longer unambiguous, claiming her different interpretation transformed the language to "ambiguous" requiring extrinsic evidence. (App. at 60-61).

The District Court denied the 2024 M. A/A/R. (App. at 30-31). The Court found that the request to reconsider failed to bring to the Court's attention "an error, omission or new material" required by Rule 7(b)(5), M.R. Civ. P., and "instead [the

Motion] merely reiterates the same arguments that the Court considered but rejected after the December 19, 2023 hearing." (App. at 30). The Court also found the same fault with the Defendant's belated argument alleging an ambiguity argued by the Defendant based on the Black's Law Dictionary definition utilized in the Order. (App. at 31).

Final hearings with testimonial and documentary evidence were held on October 2 and December 5, 2024. In its Judgment of Divorce (App. at 32-38) and its Findings of Fact and Conclusions of Law (App. at 39-49), the District Court made no specific findings or conclusions concerning the Chandler's Wharf Condominium. Likewise, Defendant made no specific requests to alter, amend or reconsider the District Court's Chandler's Wharf orders following the final hearings in the case.

On appeal, Defendant has not pursued her challenge to the Court's use of the primary definitions of "intend" in Black's Law Dictionary. (Bl. Br., 22-25). Rather, without authority, she conflates the term "intends" to be a mandatory "must [purchase]" because that was a goal. Nothing in her citation to *Morgan v. Townsend*, 2023 ME 62, ¶ 18, 302 A.3d 30, (Bl. Br., 25), supports that leap of language. Indeed, *Morgan* follows the opposite rubric, that words are first given their "plain and ordinary meaning" to ascertain ambiguity or not. (*Id.*). *See also Dow v. Billing,* 2020 ME 10, ¶ 14, citing *Scott v. Fall Line Condo. Assoc.*, 2019 ME 50, ¶ 6. And the source of the plain and ordinary meaning is the dictionary definition. (*Id.*). Although

the District Court used Black's, *American Heritage* is in accord, as it defines "intend" "to have in mind; plan" or "to design for a specific purpose." (*Id*., 2nd Coll. Ed., 1982). A plan or goal does not create an enforceable contract.

The Defendant takes nothing from the "will" and "shall" language later in the provision, which merely addresses the execution of the goal. (Bl. Br., 22-23). Although the Agreement states that "Roby will purchase the condominium with his own funds sometime around 2016" (App. at 112), the word "will" follows sentences providing that Roby either "intends" or "anticipates" purchasing the condominium and the parties "intend" to reside at the condominium as their marital residence. (*Id*.). The Court correctly rejected the Defendant's bootstrapping construction here which ignores the fundamental interpretative precept: to read the entire document. *Windham Land Tr.,* 2009 ME 29, ¶ 24.

The Agreement's use of the words "intends" and "anticipates" support the District Court's interpretation that the purchase was merely contemplated. The "will" language established only the conditions of the purchase, (i.e., "Roby will use his own funds"), if the goal were to be realized. Simply put, a statement of future intentions is not a binding contract. Had the parties intended to make the purchase mandatory, the Agreement would have provided Plaintiff "shall" purchase the condominium. It did not. Without such language, in a contract where both parties were represented by experienced counsel, the claim that the "[intent] of the parties"

required the purchase Chandler's Wharf" (Bl. Br., 23), is hollow. Neither good nor bad intentions are binding contractual obligations.

The practical reality reflected in the Agreement is that "intentions" can change with time. 2016 came and went, and as of the December 19, 2023 Hearing (and the Final Hearings in 2024), the property was never purchased and was still owned by the estate of Roby's late mother. At the point of filing the Complaint for Divorce in 2021, the couple had been living in New York since Rosanna's enrollment at FIT in 2019 to pursue a career goal in the fashion industry. (12/5/24 H. Trans. at 12 and 24). As of the filing of the Divorce Complaint, the Plaintiff was living in Portland. (*Id*.; App. at 55).

Further, Rosanna's claim is barred by estoppel and the Agreement provision which defines the duration of the marriage as ending upon "[t]he filing of a Complaint For Divorce or Annulment or Separation." (App. at 109). Rosanna took no action to pursue or enforce the "intention" to establish a marital home until Roby filed for divorce. The evolving and ever-changing "intent" of the parties constitutes a waiver of this provision, if it was even enforceable. Further, the Uniform Premarital Agreement Act preserves defenses of laches and estoppel. 19-A M.R.S.A. § 610. Rosanna's failure to make a claim since 2016 permits the application of the doctrine of estoppel against her. *InfoBridge, LLC v. Chimani, Inc.*, 2020 ME 41, ¶¶ 7 and 17, 964 A.2d 630.

Moreover, Defendant never presented a clear way to determine the value of her alleged 50% interest. According to the Agreement, Rosanna is entitled to "[t]he net value of the marital residence (defined as the fair market value, less any first mortgage and other liens or encumbrances thereon) shall be divided equally between the parties." (App. at 112). Since the property was not purchased, there was no reasonable basis for the Court to determine the amount of the first mortgage since it was never obtained. Any calculation of Defendant's interest would impermissibly require speculation or "mere guess or conjecture." *Leighton v. Lowenberg*, 2023 ME LEXIS 14, ¶ 33, 290 A.3d 68, 78, citing *Dairy Farm Leasing Co. v. Hartley*, 395 A.2d 1135, 1141 (Me. 1978). Here, the parties contemplated a mortgage as evidenced by the description of the Defendant's interest as "[t]he net value of the marital residence (defined as the fair market value, less any first mortgage and other liens or encumbrances thereon) shall be divided equally between the parties." (App. at 112). The Court was not presented with a way to determine significant variables here: the amount of the mortgage, and its financial terms (interest, points, term) at the time of the mortgage.

Finally, the review of a lower court's abuse of discretion "involves three questions: (1) whether the court's factual findings are supported by the record according to the clear error standard, (2) whether the court understood the law *applicable* to the exercise of its discretion, and whether the court's weighing of the

applicable facts and choices was within the bounds of reasonableness." *Green Tree Servicing, LLC v. Cope*, 2017 ME 68, ¶ 12, 158 A.3d 931. Defendant's failure to present any argument here constitutes a waiver of her abuse of discretion claim on appeal. *See, e.g., United States v. Zannino*, 895 F.2d 1, ¶ 7 (1st Cir. 1990) ("It is not enough to mention a possible argument in the most skeletal way, create the ossature for the argument, and put flesh on its bones.").

3. The Premarital Agreement Excludes Property Acquired by Either Party Subsequent to Marriage.

The Defendant continues her challenge to the District Court Order on the Agreement with a piecemeal look at various provisions arguing that the Court erred in excluding certain property representing Plaintiff's business interests. (Bl. Br., 26-29, Part I(D)(i)). She initially focuses on Section 7, *Roby's Future Business Expectations*, to conclude that all business ventures "other than Robyco, LLC, Melby Gas & Oil, and Lexington Gardens, LLC ("LG")" must be deemed marital property. (*Id*. at 28- 29). Plaintiff contends the Defendant is misreading the Section 7 provision by ignoring critical text. Next, Defendant claims, without authority, that new businesses funded with LG refinancing funds are martial property because they were not expressly named in Section 7 (Bl. Br., 29-30, Part I(D)(ii)), although the section has an "including but not limited to" provision. Finally, Defendant takes aim at all remaining "property acquired after the marriage" relying solely on Section 9, *Waiver of Equitable Distribution.* (*Id*. at 30-31, Part I(D)(iii)). And again, for good

measure and without analysis, she challenges the Court's denial of her 2025 post-judgment Motion to Alter/Amend/Reconsideration ("2025 M. A/A/R/") as an abuse of discretion. (*Id*. at 29, 30, and 32). Each point will be examined below in turn.

a. The Agreement Reaches all Business Entities, Not Merely the Three Named in Section 7.

In Defendant's initial review of the issue of subsequently acquired business property, she reproduces Section 7 in its entirety (Bl. Br., 26-27), claiming a "closer look" severely limited businesses to only those named in Section 7. (*Id*. at 26). To make this argument, Defendant must ignore critical, inclusive language. The first two paragraphs expressly reference certain businesses, "including but not limited to" Robyco, LLC, Melby Gas & Oil, [and Lexington Gardens, LLC]. (App. at 108). How the Defendant can ignore this inclusive language runs counter to contract construction rubric that a court should not ignore plain language or disregard terms purposefully inserted into an agreement. *Crowe v. Bolduc*, 365 F.3d 86, 97 (1st Cir. 2004). Section 7 continues to expressly provide that "[s]uch business interests subsequent to the date of the marriage are specifically designated as Roby's sole and separate property, including but not limited to any increase in value . . . [regardless of] the efforts or financial contributions of either party during the marriage." (App.108-109).

Relying again on *Dow v. Billing*, 2020 ME 10, ¶ 17, which requires waivers of marital property rights to be "clear and unmistakable," Defendant's "backward

glance colored by self-interest," *Blackie v. Maine*, 75 F.3d at 721, fails to specify what is ambiguous about the waiver of subsequent business interests and subsequent increase in value here. The fundamental problems with Defendant's argument are the piecemeal reading of a single section of the Agreement, ignoring other critical parts of the document, and misreading *Dow v. Billing,* by using the summary dicta encapsulates because it encapsulates her theory.

At the outset, the Agreement specifies that "[b]oth parties acknowledge that it is their intention . . . that the personal investment, partnerships, corporations and other business entities which each party may have an interest in now *or may obtain in the future should not be liquidated or in any way disturbed*." (App. at 104-105 (emphasis added)).

The Defendant's waiver of Roby's future business interests is further reinforced by Section 18, *Acquisitions*, that provides "property" includes what a "party now owns, possesses or is entitled to or which he or she may own, possess or become entitled to *hereafter*." (App. At 113-114)(emphasis added)). When the Agreement refers to a party's "estate" or to a party's "property," it is not only a reference to the property owned before the marriage, but also property acquired after the marriage, that is, property that would otherwise be marital. Through this language, with counsel, both parties clearly knew and understood that property acquired after the marriage would remain their separate property. They even

anticipated the question of whether an increase in value may be due to marital labor and specifically waived this right. The Agreement contains an express waiver "Rosanna shall not, by reason of the parties' marriage and continued marriage, acquire any interest, right or claim in or to the separate property and estate of Roby." (App. at 107 and 121-123, ¶ 5 and Exhibit B). Exhibit B sets forth Roby's disclosure of his "separate property" that "Rosanna shall not, by reason of the parties' marriage and *continued* marriage, acquire any interest, right or claim in as to the separate property and estate of Roby." (App. at 107) (emphasis added).

Whether Lexington Gardens was presently in Roby's possession, the inclusion of his "anticipated" acquisition acted as an express waiver by Rosanna "[b]y reason of the parties' marriage and continued marriage . . ." to all property presently owned or to be acquired in the future. There is simply no other reasonable interpretation when reading the Agreement as a whole and construing the Agreement to "give force and effect to all its provisions and not in a way that renders any of its provisions meaningless." *Am. Prot. Ins. Co.,* 2003 ME 6, ¶ 12.

The Defendant's interpretation of the terms "other businesses" and "family businesses," (Bl. Br., 28-29), is at once ironic and contradictory. There are both "other" businesses and "family" businesses, besides the three businesses specifically mentioned, that Defendant sought to have declared as marital property. Yet, she quibbles with the uses of the terms: why not reference "all businesses?" (Bl. Br., 28).

A good but belated question for the Defendant's consulting attorney at Verrill, whose testimony trial counsel moved successfully to quash. (App. at 27). This belated claim that the terms "other businesses" and "family businesses" should be deemed "unnecessary," (Bl. Br., 28), violates a canon of contract construction and mocks the rules of contract interpretation. *Fall Line Condo. Assoc.*, 2019 ME 50, ¶ 6. How the Court committed an error of law is easily rejected; how it was an abuse of discretion is unargued and thus waived.

b. Businesses Using LG Refinancing Monies Are Nonmarital Under the Terms of the Agreement.

Defendant argues that the new businesses started with the monies from the refinance of Lexington Gardens are marital. (Bl. Br., 29, Part I(D)(ii)), misses the point of the language of Section 7. The Defendant concedes that the Court traced funds used for other business from the LG refinance and determined that the LG refinance funds remained nonmarital. (Bl. Br., 29). There is no basis for the Defendant's claim that Section 7 applies only to "family businesses" other than Robyco, LLC, Melby Gas & Oil, and LG. (Bl. Br., 29-30). Such an interpretation would render the "other businesses" term meaningless, an interpretation sought to be avoided. *Am. Prot. Ins. Co.,* 2003 ME 6, ¶ 12.

Applying these definitions, Sections 5, 7, and 9 effectively eliminate Rosanna's right to what would otherwise be marital property. Section 5, *Property to Remain Roby's*, provides that, "Rosanna shall not, by reason of the parties' marriage

and continued marriage, acquire any interest, right or claim in or to the separate property and estate of Roby." (App.at 107). As noted, "property or estate" includes property "[w]hich he or she may own, possess or become entitled to hereafter." (App. at 113-114). Further, Section 5 states that Rosanna acknowledges and agrees that "Roby's property and estate is and shall remain and be his separate property." (App. at 107).

Section 7, *Roby's Future Business Expectations*, states that certain subsequent business interests "subsequent to the date of the marriage are specifically designated as Roby's sole and separate property," to include increases in value of business interests notwithstanding the efforts or contributions during the marriage. (App.108-109).

The Agreement contains reciprocal provisions in Sections 6 and 7 regarding both parties' *Future Business Expectations.* (App. at 107-1). Section 6 states "[Rosanna] shall acquire other assets after the marriage[,] and that 'such business interests subsequent to the date of the marriage are specifically designated as Rosanna's sole and separate property including, but not limited to, any increase in the value of those business interests notwithstanding that the increase in the value may be due, in whole or in part, to the efforts, or financial contributions of either party during the marriage.'" (App. at 107-108). The identical language is used in Section 7 to describe Plaintiff's future business expectations. (*Id*. at 108-109). Note

that the Agreement specifies each party "shall acquire other assets *after the marriage"* and further describe these future interests as each party's "sole and separate property." (App. at 107-108).

In the *Financial Disclosure of Rosanna,* the term "separate property" is used repeatedly in the Agreement. Each party's "separate property" is described in Section 2 that incorporates Exhibit A (*Financial Disclosure of Rosanna*). (App. at 118-120). Similarly, Section 5 of the Agreement describes Roby's "separate property" referenced as Exhibit B (*Financial Disclosure of Roby)*. (App. at 121-123).

Defendant's claim that she has not waived her interest in any future business interests runs counter to express language in Section 7. It states with particularity that "such business interests subsequent to the date of the marriage are specifically designated as Roby's sole and separate *property*, including, but not limited to, any increase in value of those business interests notwithstanding that the increase in the value may be due, in whole or in part, to the efforts or financial contributions of either party during the marriage." (App. at 108-109). The language is unambiguous.

In the *Financial Disclosure of Rosanna*, the term "separate property" is used repeatedly in the Agreement. Each party's "separate property" is described in Section 2 that incorporates Exhibit A (*Financial Disclosure of Rosanna*). (App. at 118-120). Similarly, Section 5 of the Agreement describes Roby's "separate

property" referenced as Exhibit B (*Financial Disclosure of Roby)*. (App. at 121-123).

The District Court traced the funds for new businesses, which went to other businesses from LLCs started with LG funds. Again, how this was an error of law is easily rejected; how it was an abuse of discretion is unargued and thus waived.

c. The Waiver of Equitable Distribution in the Agreement Means What it Says.

Defendant's interpretation of Section 9 ("Waiver of Equitable Distribution") (Bl. Br., 30-32, Part I(D)(iii)), strains credulity by avoiding a construction of the whole. *Windham Land Tr*., 2009 ME 29, ¶ 24. Section 9 states that Rosanna "does hereby waive and relinquish whatever rights she may acquire to share in the assets of Roby as a result of their marriage" and that there "shall be no equitable distribution of assets held by Roby as his separate property and no equitable distribution of any businesses or business interests held by Roby." (App. at 109). Defendant claims there is no express reference to "property acquired after the marriage." (Bl. Br., 31). Yet the first and second sentences of Section 9 reference Defendant's express waiver of "assets of Roby as a result of the marriage." (App. at 109-110). And the third sentence is a mutual waiver of equitable distribution. (*Id*.).

Contrary to the popular use of the phrase, Defendant's "closer look" (Bl. Br., 26), at *Dow v. Billing*, 2020 ME 10, ¶ 18, does not separate fact or law from fiction. Indeed, *Dow* supports the conclusions of the District Court. By employing legal

terms of art such as "equitable distribution" and "rights she may acquire . . . as a result of their marriage," the Agreement reinforces that Section 9 precludes distribution of what might otherwise be considered marital property. *Dow v. Billing*, 2020 ME 10, ¶ 18. ("Far from being 'clear and unmistakable,' the first paragraph uses no terms of art—such as marital property, nonmarital property, *or property division*—that suggest it applies to property acquired or created after marriage in the event of the parties' divorce." (emphasis added)). The Defendant argued "clear and unmistakable" terms were required for waiver. (Bl. Br., 21). *Dow v. Billing* advises that using "terms of art" provide the necessary clarity, for the parties, and their consulting attorneys.

Defendant's outsized reliance on *Dow* to assert ambiguity of the Agreement fails because the specific contents here make it simply factually distinguishable. *Blanchard v. Blanchard*, 2016 ME 140, 148 A.3d 277, more accurately mirrors the facts of the present case, yet it receives only an oblique reference. (Bl. Br., 34). In *Blanchard*, wife (Sharon) consulted with independent counsel and suggested additional terms that now added to the Agreement. *Id*., ¶ 5. Defendant had independent counsel, but her trial counsel successfully blocked any efforts to show what terms she added to the Agreement, then contending the Agreement was unambiguous. (12/19/23 Trans. at 2-10, 12-13, and 28; App. at 27).

The *Blanchard* court observed that husband (Ronald) desired to make provisions for Sharon "in release of and in full satisfaction of all rights" which Sharon might have "by reason of the marriage, in property which [Ronald] now has or may hereafter acquire." *Blanchard*, 2016 ME 140, ¶ 7. The Agreement here contains language of similar content and meaning. (App. at 107-108, 110, and 113-114.)

The Defendant, having read the Agreement ". . . [l]ine by line, after consultation with my personal attorney," and further stating "[I] have been fully informed of all rights and liabilities pertaining to said Premarital Agreement," (App. at 117), is foreclosed from arguing that she failed to understand the Agreement's applicability to property acquired after the marriage. Defendant's effort here contains the look and feel of a claim of ambiguity conjured up after a losing effort, rather than an interpretation that is logically compelled by the plain meaning of the document.

Blanchard stated Sharon desires to accept the provisions of the Agreement "[i]n lieu of all rights which she would otherwise acquire, by reason of the marriage in the property . . . of [Ronald]." *Blanchard*, 2016 ME 140, ¶ 7. Likewise, Defendant "does hereby waive and relinquish whatever rights she may acquire to share in the assets of Roby as a result of their marriage" and there "shall be no equitable distribution of assets held by Roby as his separate property and no equitable

distribution of any businesses or business interest held by Roby." (App. at 109.) Defendant's nuanced arguments relying on *Dow* are simply inapplicable to this Agreement.

B. The District Court Did Not Err as a Matter of Law in Declining Jurisdiction Over Defendant's Breach of Contract Claim.

The Defendant sought the District Court to act on her claim that she had a contractual right to the Chandler's Wharf Condominium by virtue of Section 14 of the Agreement. (App. at 112). The Court heard argument on December 19, 2023, as part of addressing the jointly agreed, unambiguous Premarital Agreement. The Court's summary of the three major issues at the hearing did not include a challenge to jurisdiction. (12/19/23 Trans. at 7). The jurisdiction issue appeared as an afterthought. (*Id.* at 14 and 24). Defense Counsel advised the Court that if the contract was valid, the Defendant was seeking damages and Plaintiff noted problems with such an approach. (*Id*. at 14 and 24-25).

The Court ruled that the Agreement did not require the purchase of the Chandler's Wharf property (App. at 28) and that the "Defendant has provided no support for her position that the divorce court has the authority to award damages or order specific performance for a party's breach of a premarital Agreement." (App. at 28-29). The Court concluded that the property was not marital property as it was excluded by a valid Agreement pursuant to 19-A M.R.S. § 953(2)(D), and because

the property was "not owned at this time by either party . . . it cannot be set aside by the court." (App. at 29).

The Defendant filed the 2024 M. A/A/R the Order on Agreement. (App. at 59-62). The Defendant requested the Court remove findings or conclusions concerning the Plaintiff's obligation (or not) to purchase the condominium. (App. at 60). The Defendant sought to forum-shop the interpretation of her alleged contractual rights in the Agreement, expressly seeking the Court's assistance "so as to avoid any inadvertent preclusive effect (such as collateral estoppel)" (*Id*. at 60), for a separate civil action for breach of contract. As previously observed in Part IV(A)(2) above, the District Court denied the 2024 M. A/A/R. (App. at 30-31).

On appeal, Defendant concedes that the Court "correctly ruled that it could not set apart or divide the Chandler's Wharf condominium, since neither party owned it." (Bl. Br., 35). Yet, she contends that the District Court erred in ruling that it had no jurisdiction to resolve the claim for breach of contract. (*Id*.). As the Court found, the Defendant continues to provide "no support for its position." (App. at 28).

At the outset, there is no dispute that the District Court's jurisdiction is a matter of law properly reviewed *de novo* by the Law Court. (Bl. Br., 33, citing *Littell v. Bridges*, 2023 ME 29, ¶ 10, 293 A.3d 445). Beyond the standard of review, *Littell* runs counter to the Defendant's position on jurisdiction. There, the Law Court reversed the trial court order dissolving a LLC because it was not a party to the action

and the trial court could not properly exercise jurisdiction over a non-party. *Id*., 2023 ME 29, ¶¶ 11-12.

Other cases cited by the Defendant support the District Court's conclusion. In *Howard v. Howard*, 2010 ME 83, 2 A.3d 318, the Law Court held that the trial court had authority to determine the relative ownership interests of spouses but remanded the case for further proceedings because the trial court did not have jurisdiction over the LLC and an individual owner. *Id.*, 2010 ME 83, ¶¶ 11-12. Defendant's citation to *Zeolla v. Zeolla*, 2006 ME 118, 908 A.2d 629 (Bl. Br., 33) illustrates a factually proper reach of jurisdiction but is inapplicable here. The Law Court upheld the District Court's division of property located in Massachusetts because the trial court did have jurisdiction over both the owners of the property, the parties in the divorce. *Id*., 2006 ME 118, ¶ 8.

Moreover, the general rubric of *Merrill v. Merrill*, 449 A.2d 1120, 1124 (Me. 1982) and *Dobbins v. Dobbins*, 2020 ME 73, ¶ 12, 234 A.3d 223, (Bl. Br., 33), fails to assist the Defendant. The District Court here did not dispute that it had jurisdiction under Title 4 M.R.S. § 152(11) over divorce proceedings under Title 19-A. (Bl. Br., 33). Again, Defendant's caselaw citations point to limitations pertinent here. In *Dobbins*, the Law Court ruled that the lower court had authority to divide one spouse's federal pension but it had no authority to force him to retire. *Id*., 2020 ME 73, ¶ 14. Similarly, in *Merrill,* the Law Court upheld a Superior Court reversal of a

District Court post-judgment order modifying the provisions of the original judgment dividing marital property, notwithstanding sleights of hand by one of the parties to circumvent the proscription against modifying marital property divisions. *Merrill*, 449 A.2d at 1124-25.

Defendant's extended discussion about certain contract rights being "property" that may be divided in a divorce action (Bl. Br., 34-35), begs the question here. The District Court did not rule that Section 7 created an enforceable contract of any kind. (App. at 28-29). None of the cases relied on by the Defendant (Bl. Br., 34), support her argument. *Stockwell v. Stockwell*, 2006 ME 114, 908 A.2d 94, addressed a lease that was in existence at the time of the divorce. *Id*., at ¶ 14, n. 4. *Stotler v. Wood*, 687 A.2d 636 (Me. 1996) involved a pension albeit not yet vested. *Id*., at 368. *Moulton v. Moulton*, 485 A.2d 976 (Me. 1984), concerned a husband's right to be compensated for electrical work already done for a relative. *Id*. at 978. And *Lord v. Lord*, 454 A.2d 830 (Me. 1983), found that goodwill in an insurance agency was a property asset in a divorce. *Id*., at 833.

The Defendant's claim that the District Court had jurisdiction to resolve her claim for an alleged breach rests on dicta in certain cases (Bl. Br., 35), that are inapplicable to her situation. *Milliano v. Milliano*, 2012 ME 100, 50 A.3d 534, can serve as authority for a court to resolve all legal and equitable claims *between spouses*, even when the property was *acquired outside of the marriage,*" *Id*. at ¶19

(emphasis added). But Defendant is at least two steps away from an application of this principle. First, there is no property that has been "acquired" inside or outside the marriage. In *Milliano*, there were six real estate properties, all of which were owned by either spouse with the potential of the investment of significant marital funds and marital labor triggering the potential for an increase in value during the marriage. *Id*., at ¶24. Here, no ownership interest in Chandler's Wharf existed by either spouse. Second, any "equitable claim" must include parties who have an interest in the Chandler's Wharf condominium. Unlike *Milliano* where the equitable claim was between the two spouses, *Id*., all parties with claims were not before the Court. The Defendant has nothing more than a potential cause of action, not a right to property as in *Milliano.* (Bl. Br., 33-34).

C. The District Court Did Not Abuse its Discretion in Limiting Attorneys' Fees.

The Plaintiff contends that the District Court's action on the Defendant's application for attorney fees can be supported in one of two ways. First, the Plaintiff argued, unsuccessfully, that the Agreement did not support attorneys' fees by virtue of an express waiver of all claims under 19-A M.R.S.A. § 951-A, which authorizes attorney's fees in Family Matter actions. Second, the District Court was well within its discretion to severely limit fees here where the fee application demonstrated several factors warranting a reduction in fees, including duplicative and

unreasonable billing, and the lack of results in challenging a valid premarital agreement that the Defendant's law firm had a hand in drafting and advising their client. This section of the Argument will review the Agreement concerning a waiver of attorneys' fees, and thereafter, discuss the discretionary factors available to the District Court in its actual reduction of fees.

1. The Agreement Expressly Waived All Claims Under Section 951-A, which included Attorneys' Fees.

The Plaintiff renews his claim, rejected by the District Court, that the Agreement precludes an award for attorney fees. (App. at 27-28). Plaintiff contended below that the fact that the Agreement does not contain a provision for the payment of attorney fees or expert witness fees and that Section 1 of the Agreement, *Effect of Agreement*, precludes the Court from "inferring" such a right exists. (App. at 105). The Agreement does contain an express reference to waiver of rights under Section 951-A, including the provision for attorneys' fees.

The Agreement did anticipate the consequence of a divorce by including an express waiver of support as follows: "Rosanna hereby waives any right or claim to any such money or property, including without limitation any interest, claim or right arising under 19-A M.R.S.A. § 951-A. (App. at 106-107). Section 951-A establishes the statutory guidelines for spousal support. Rosanna asserts a claim for attorney fees under 19-A M.R.S.A. § 105(1). The beginning of subsection 1 provides "[i]n an action under this Title the court may . . . order a party, including a party-in-interest,

to pay another party or another party's attorney reasonable attorney fees, including costs, for participation in the proceedings." (*Id.*). However, it is not a right expressly provided and, since it is a contract, it cannot be inferred when "Rosanna hereby waives any right or claim to any such money or property, including without limitation, any interest, claim or right under 19-A M.R.S.A. § 951-A." (App. at 107).

The court's authority to award attorney fees is limited to "[a]n action under this Title." Defendant argues that the substantive right underlying her fee request is based on Section 105 but it can only be brought in an action under Title 19-A. Defendant expressly waived all rights she may have had under Title 19-A and settled for a payment of $3,000 per month for two (2) years. (App. at 106-107). The Agreement forecloses any claim for attorney fees that are not expressly set forth in the Agreement.

The parties' Agreement expressly provides, in Section 8, that the marriage terminated upon the filing of the Divorce Complaint. (App.109). The parties contracted that their rights are fully set forth in the Agreement. Where the award of attorneys' fees is a post-complaint filing adjunct to support, the Agreement would exclude fees by a fair reading of both Sections 4 and 8. With the Defendant represented by competent counsel at the Verrill, there is no legal basis to infer attorney fees when interpreting the Agreement. The Court must look at "the whole instrument" and construe the contract to "give force and effect to all of its provisions

and not in a way that renders any of its provisions meaningless." *Am. Prot. Ins. Co.*, 2003 ME 6, ¶ 12. Looking at the entire Agreement, the parties certified that "[e]ach hereby agrees that his or her right in the property or estate of the other shall be fixed and determined solely and entirely in accordance with the terms of this Agreement." (App. at 105). What the Court can fairly conclude from the Agreement is that Defendant's rights are "fixed and determined" entirely "by the terms of the Agreement." (*Id*.).

2. The District Court Did Not Abuse its Discretion in Reducing the Attorneys' Fee Request Where the Fees were Demonstrably Duplicative, Unreasonable, and Related to Unsuccessful Efforts to Challenge a Valid, Comprehensive Premarital Agreement.

A trial court is afforded wide discretion in determining whether to award fees. *Pine Ridge Realty*, 2000 ME 10, ¶ 29. The Law Court's review is limited to clear error. *Id*. The Defense Attorney Fee Application contained several basic problems which the Court considered and essentially made a part of its initial Findings of Fact and Conclusions of Law dated February 3, 2025. (App. at 48). Specifically, the Court found that she was represented during the Agreement process and by the same law firm now "spending considerable time challenging the enforceability of the same Agreement, the Court finds these fees [$100,486.10] excessive and unjust under the circumstances." (*Id*.).

On February 18, 2025, the Defendant filed two motions, one for Amended and Additional Findings, and the other, the 2025 M. A/A/ R the Findings of Fact.

(App. at 50). After full briefing by the parties, the Court declined to change the result but provided additional findings on the attorneys' fees question. (App. at 52-53).

The District Court was demonstrably mindful of the legal standards required in a request for fees: that the parties relative capacity to absorb fees and all other relevant factors were required to be considered; that the conduct of each party be considered for conduct that contributed to a greater than usual cost of litigation; and that in fixing fees a court must look to the judgment as a whole. (App. at 52-53).

While the Court observed that "both parties engaged in contention motion practice and contributed substantially to the greater than usual cost of litigation" (App. at 52), it found that the Plaintiff had already been sanctioned for his conduct. (*Id*. at 52-53, n.3). The Court acknowledged that the fee "award had to be tempered out of recognition of the motion-heavy practice and contentious approach to litigation . . . including Rosanna's repeated challenges" to the Agreement and that the award was "fair and just under the circumstances." (*Id*. at 52-53).

On appeal, the Defendant seeks to parse her significant challenges to the Agreement by suggesting that she was never challenging the "enforceability" of the Agreement. (Bl. Br., 38-39). Her own presentation belies any such distinction here. At the threshold, Defendant notes her initial response to the Motion to Enforce included that she had *not conceded* that the Agreement complied with the Uniform Premarital Agreement Act, 19-A M.R.S. §§ 601-611. (Bl. Br., 38 (emphasis added)).

The Defendant seems to argue Verrill could not assist in drafting a premarital agreement for a client's signature that would pass muster under a Maine law in effect since 1987. The claim that Defendant's opposition to the Agreement "was not a challenge" because it concerned the Court's interpretation of the Agreement's Chandler's Wharf decision (Bl. Br., 41), is emblematic of the circular wordsmithing which bolsters the Court's assessment of her "motion heavy" and "excessive" practice. (App. at 48 & 52-53).

Moreover, the current defense of the Motion to Strike a stipulation agreeing to providing a credit to Roby for the $130,000 he paid to Rosanna (Bl. Br., 41; App. at 176-177), adds more support for the Court's conclusions. It did require Plaintiff's response, and to the Court's credit, it was not taken seriously. (App. at 41, n.3). To now suggest that it *alone* could not be "fairly characterized as 'motion heavy'" (Bl. Br., 41), simply fails to put this single pleading in the context of the entire Defense effort, or as the District Court has written, "under the totality of the circumstances." (App. at 52, quoting *Riesman v. Toland*, 2022 ME 13, ¶ 42, 269 A.3d 229).

The Court's Order on the 2025 M. A/A/R (App. at 52-53), demonstrates an awareness of the legal standards involved. It can hardly be said the Court was acting outside of blackletter law in considering the fee application. *See e.g., Poussard v. Commercial Credit Plan*, 479 A.2d 881, 884 (Me. 1984). And many of the factors

of *Poussard* are either not applicable or have negative implications for this fee application.

In considering the fee application, the Court had the benefit of the Plaintiff's post-hearing brief. (R. at 22, Plaintiff's Post-Trial Brief, 12/19/2024). The problems it reviewed are summarized below.

(a) *Unsuccessful outcome*: 8.8 hours ($3,388) - Abramson litigation consults; 84.4 hours ($32,648) - non-testimonial hearing resolution against the Verrill position. (*Id.*, at 11-12).

(b) *Unnecessary Work:* three different attorneys as redundant, duplicative, or unnecessary; 4 hours ($1,400) multiple attorneys at two hearing sessions; 10 hours ($3,850) condo appraisal/repair; 11.5 hours ($4,025) in Limine stipulation/motion. (*Id.*, at 12-13).

(c) *Inadequate Documentation*: generic entries such as "legal research", "telephone conference", and "exchange email with clients" 4.5 hours ($1,575) - direct and cross-examination for 12/19 hearing without witnesses; 57.2 hours ($20,020) - two, ½ day hearing sessions; 8.5 hours ($2,975) - pre-hearing brief preparation. (*Id*., at 13).

Finally, the relative lack of the need for significant financial discovery militates against a significant fee award. Plaintiff filed a Motion sought to avoid the extensive financial discovery Defendant insisted upon. None of the extensive discovery undertaken by Defendant was ultimately determinative in the defense of the case. And after all the machinations, the Court's Hearing on the Premarital Agreement was limited to oral argument only because the Court and parties finally agreed that the Premarital Agreement was unambiguous and did not need extensive

financial discovery. (*Id*., at 14). In hindsight, the long and expensive discovery process, including the $10,500 sanction, were all for naught. Thus, multiple factors supported the Court's substantial reduction in Defendant's fee request. (*Id.* At 11-14).

In summary, Defense Counsel sought fees and costs at approximately $100,000, to void provisions in an "unambiguous" contract, that the Verrill Law Firm counseled their client to sign and stipulated was valid and enforceable. Simply put, after Defendant paid Verrill to advise her with respect to the Premarital Agreement, she engaged Verrill to argue that the Agreement they counseled her to sign was legally unenforceable. If the initial drafting or editing of the Agreement was flawed, the end result has been that Verrill managed to litigate itself and their client into a separate Superior Court civil action to address the alleged marital claims she was properly denied from pursuing in the Family Matter.

Dated: October 3, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2025, I caused an electronic copy of this document to be served on the following counsel via email. In addition, upon acceptance of this Brief by the Court, two paper copies of this Brief will be served on counsel for Appellant:

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CERTIFICATE OF COMPLIANCE

I hereby certify that, according to the word count feature in Microsoft Word, the portion of this brief subject to the word count limitations set forth in Rule 7A(f)(1) of the Maine Rules of Appellate Procedure does not exceed 10,000 words.

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