STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-25-196

ROBERT J. HUTCHINSON,

Appellee

v.

ROSANNA PAOLA CORDOBA GOMEZ,

Appellant

APPEAL FROM THE DISTRICT COURT (CUMBERLAND)

REPLY BRIEF OF APPELLANT ROSANNA PAOLA CORDOBA GOMEZ

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STATEMENT OF FACTS

Rosanna provides the following facts to correct and/or respond to the facts asserted in Appellee's Brief.

At the time the parties signed the Premarital Agreement, Rosanna and Roby were living together in the Chandler's Wharf Condominium. (App. 42, 112).

Roby received over $7,000,000 in cash after refinancing the mortgage on Lexington Gardens, LLC, some of which he invested in other businesses, including Wolf Spit, LLC. (App. 44). He also made business loans to Quick Spark Financial, LLC and to Coastal Roots, LLC. (App. 43-44). Roby moved the money between various accounts, including transferring over $4.7 million to his personal bank account at Bank of America (xxxx2225). (App. 43). The Court determined that this personal account was marital. (App. 46). The parties disagreed on the characterization of the businesses and investments created by Roby during the marriage with the $7,000,000. The Court determined they were Roby's sole and separate property under the terms of the Premarital Agreement. (App. 44).

ARGUMENT

I. The Agreement Required Roby to Purchase the Condominium.

Despite Roby's suggestion to the contrary, Rosanna did not "initially challenge[]" the District Court's interpretation of the Agreement by arguing that

the Agreement is ambiguous. (Red Br. at 13). Rosanna has argued since the beginning of the case that the Agreement unambiguously required Roby to purchase the Chandler's Wharf Condominium.

The cardinal rule in the interpretation of a contract is to ascertain the intention of the parties. Morgan v. Townsend, 2023 ME 62, ¶ 17, 302 A.3d 30. The Court should give effect to the plain meaning of the words used and avoid an interpretation that would render any part meaningless. Dow v. Billing, 2020 ME 10, ¶ 14, 224 A.3d 244.

The Marital Residence provision states that "Roby intends to purchase a condominium located at 403 Chandler's Wharf, Portland, Maine 04101 outright from his mother or her representative within the next several years (the purchase is expected in 2016). The parties currently live in this condominium." (App. 112). Roby identified the condominium as one of his assets in his Financial Disclosure attached to the Agreement (acknowledging that he will purchase the condominium outright in 2016). (App. 121). The plain and ordinary meaning of these words and Roby's identification of the condominium as an asset demonstrate Roby's clear intention to purchase the condominium. Roby said what he intended to do. Keegan v. Est. of Bradbury, 2025 ME 13, ¶ 7, 331 A.3d 394 (clear contract provision is interpreted as a matter of law, and given its plain, ordinary, and generally accepted meaning).

The interpretation of Roby's intent to purchase the condominium, as a binding obligation, is confirmed by other language in the Agreement. The Marital Residence provision states that "Roby will purchase the condominium with his own funds," and that the condominium "shall be titled ….in the parties' joint names as joint tenants." (App. 112) (emphasis added). Roby attempts to downplay the significance of the words "will" and "shall" as "merely address[ing] the execution of the goal." (Red Br. at 20). But these words are mandatory, and like the word "intend" do not suggest that the purchase of the condominium was only contemplated or a goal.

The second paragraph of the Marital Residence provision further demonstrates Roby's obligation to purchase the condominium by detailing Rosanna's entitlement to an equal share of its value if the marriage is terminated. (App. 112). Looking at the provision as a whole, the use of the words "will purchase" and "shall…title," as well as details concerning the disposition of the condominium if the marriage is terminated, bolster the interpretation that Roby's intention to purchase the condominium was a binding promise to do so. Townsend, 2023 ME 62, ¶ 17, 302 A.3d 30.

Relying on Black's Law Dictionary (11th ed. 2019), the District Court determined that "intend" means "to have in mind a fixed purpose to reach a desired

objective; to have as one's purpose."[1] Because "intend" does not mean "must," the Court determined that there was no enforceable present or future obligation. (App. 28). Roby essentially hides behind the trial court's thin analysis and fails to state how one's "purpose" or to "have in mind a fixed purpose to reach a desired objective" is insufficient to create a binding contractual obligation.

Both Roby and the District Court appear to confuse Roby's intention at the time of the Agreement with the time of performance. Roby's promise was not merely "contemplated" or a statement of "future intention." The Agreement does not say that Roby "might" or "would like" to purchase the condominium; rather it states that he intends to buy the condominium (and "will purchase the condominium"). There is an expressed intention to undertake a specific act; that is, the purchase of the condominium from his mother, within an anticipated time frame, and to title the property in joint names; all within a formal premarital agreement. Compare with Keegan, 2025 ME 13, 331 A.3d 394 (statement in a contract providing that buyer "would like" a right of first refusal is a precatory phrase that does not create a binding contract); and McClare v. Rocha, 2014 ME 4, ¶ 20, 86 A.3d 22 (preliminary negotiations concerning a future agreement do not constitute a contract).

[1] Additional definitions of "intend" include: "to signify or mean." Black's Law Dictionary (12th ed. 2024).

It may well be that Roby had until 2016 to purchase the condominium, but his intention at the time he entered into the contract is set forth in plain and ordinary language. It is only the time of performance that will occur in the future. Roby's argument that "intentions can change," (Red Br. at ¶ 21), while undoubtedly true, does not relieve him from the obligations he created in entering into the Agreement.[2]

II. Roby Fails to Show a Viable Equitable Estoppel Claim and Failed to Request Findings of Fact.

The parties to a premarital agreement may raise the equitable defense of estoppel to limit the time for enforcement. 19-A M.R.S.A. § 610. The party seeking to raise equitable estoppel to avoid a contract has the burden of demonstrating that he or she reasonably relied on a misrepresentation, whether it be "misleading statements, conduct, or silence or a combination thereof—by the party seeking to enforce the contract." InfoBridge, LLC v. Chimani, Inc., 2020 ME 41, ¶ 7, 228 A.3d 721 (citations and quotation marks omitted).

Roby claims that estoppel applies because Rosanna failed to raise a claim with respect to the condominium "since 2016," and that, standing alone, "permits

[2] Roby's argument that there was no "clear way" to determine the condominium's value and the amount of any mortgage, is irrelevant, given the Court determined that it had no jurisdiction over Rosanna's breach of contract claim. An appraisal of the condominium would readily reveal its value, and Rosanna was prepared to offer that evidence had the Court exercised jurisdiction over her claim. As far as a mortgage is concerned, it is worth noting that Roby promised to purchase the condominium "outright" and "with his own funds," indicating that there would be no mortgage. Moreover, the Agreement requires "express written consent" before either party is permitted to place an encumbrance on the property.

the application of the doctrine of estoppel against her." (Red Br. at 21). Roby makes no argument that Rosanna made a misrepresentation of any kind, or that he relied upon the misrepresentation and changed his position for the worse. Without proof of these essential elements, Roby has no estoppel claim.

Critically, if Roby wanted the Court to find facts to support an equitable estoppel claim, he should have filed a motion for additional findings of fact, pursuant to M.R. Civ. P. 52. Without a motion for additional findings, the Law Court will presume that the trial court found all the facts necessary to support the judgment. Harper v. Harper, 2017 ME 171, ¶ 12, 169 A.3d 385.

III. There is no Waiver of Rosanna's Marital Property Rights to All Business Entities.

Roby incorrectly claims that Rosanna waived her marital property rights to all of Roby's businesses in Section 7 of the Agreement ("Roby's Future Business Expectations"). (Red Br. at 24). Although Section 7 contains a waiver of Rosanna's marital property rights to certain future business interests, Roby ignores the clear limitations of the waiver.

The first two paragraphs of Section 7 relate to certain business interests owned by Roby, including, but not limited to, Robyko, LLC, Melby Oil & Gas, and Roby's anticipated interest in Lexington Gardens. Neither paragraph contains a waiver of any marital property rights.

The third paragraph turns to a different type of business and provides that "Roby and his family intend to become involved in several other business ventures and interests in the future as partners, shareholders, and officers" (emphasis added). (App. 108). Unlike the first two paragraphs, this third paragraph continues by stating "[s]uch business interests" (referring to the "other business ventures and interests" described in this paragraph), will remain Roby's sole and separate property, including the increase in value, regardless of the marital effort or financial contributions of either party. "Well-established principles of contract interpretation support reading the third paragraph to waive marital rights only in [these future family businesses]." Dow, 2020 ME 10, ¶ 21, 224 A.3d 244 (Specific terms and exact terms are given greater weight than general language.). The waiver of marital property rights to "such business interests" cannot reasonably be read to apply to "all business entities." Roby's reliance on the "including, but not limited to" language contained in the first paragraph does nothing to expand the limited waiver contained in the third paragraph.

Roby makes a number of helter-skelter arguments, citing irrelevant provisions from the Agreement in an effort to stretch the limited waiver in Section 7 beyond its clear terms. Each, discussed below, is without merit.

First, Roby relies on introductory language in the Agreement that provides that the parties' assets should not be liquidated or disturbed. (Red Br. at 25; App.

104). But the language of the clause cannot reasonably be construed as a waiver of marital property rights, Dow, 2020 ME 10, ¶ 17, 224 A.3d 244, and even if it could, broad language in an introductory paragraph does not expand the actual provisions of an agreement. In re Est. of Barrows, 2006 ME 143, ¶ 13, 913 A.2d 608.

Roby also seeks to expand the limited waiver in Section 7 by relying on Section 18 (Acquisitions), but nothing in Section 18 can even remotely be construed as a waiver of marital property rights, and does nothing to expand the waiver contained in Section 7. (App. 113).

Roby then looks to Section 5 ("Property to Remain Roby's"), which 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." **(**Red Br. at 26; App. 107). This section goes on to say that Rosanna agrees that Roby's property and estate "shall remain and be his separate property, subject to his individual control, use and disposition." (App. 107). Statements relating to the retention of title, management and control of property during the marriage have "little bearing on the rights protected by Maine's marital property statute." Dow, 2020 ME 10, ¶ 18, 224 A.3d 244. Even if Section 5 could be construed to be a waiver of some sort, it states nothing that applies to property acquired subsequent to the marriage.

IV. Businesses and Investments Created with the Proceeds of the Lexington Gardens' Refinance are not Protected from Marital Property Rights.

To protect the new businesses and investments Roby created with the $7,000,000 from the Lexington Gardens refinance from the marital property presumption, Roby relies essentially on Section 7 of the Agreement. Roby claims that there is "no basis" for limiting the waiver in Section 7 to "family businesses," and that such an interpretation renders the reference to "other businesses" meaningless. (Red Br. at 27). Rosanna has addressed this argument in Section III above, and will not repeat it here.

Roby also argues that the Agreement contains "reciprocal provisions in Sections 6 and 7 regarding both parties' "*Future Business Expectations*." (Red Br. at 28). Suffice it to say that the provisions pertaining to each party are different, and the waivers applying to one are not the same as the waivers applying to the other.

V. The Waiver of Equitable Division Provision Does Not Apply to Property Acquired Subsequent to the Marriage.

Roby also relies on the language contained in the equitable division provision which states "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 then later "there shall be no equitable distribution of any assets held by Roby as his separate property and no equitable distribution of any businesses or business

interests held by Roby." In each case, there is no reference to property or businesses acquired after the marriage, and nothing to make clear that Rosanna waived her marital property rights to property acquired during the marriage.

Roby misconstrues the first sentence is this section by claiming that Rosanna's waiver of the rights she may acquire to share in "the assets of Roby as a result of their marriage" means that she waived her rights to "property acquired after the marriage." (Red Br. at 30). But "assets" are not a "result" of marriage; rather, the phrase "as a result of the marriage" refers to the rights Rosanna may acquire. The phrase should be interpreted to mean that Rosanna relinquishes whatever rights she may acquire as a result of the marriage to share in the assets of Roby. The waiver, however, does not extend to assets acquired subsequent to the marriage.

Maine's marital property presumption provides that, with limited exceptions, all property acquired subsequent to the marriage is marital property. By interpreting the equitable division provision as a waiver of marital property rights to property acquired subsequent to the marriage, the trial court improperly expanded the scope of the waiver, and ignored the requirements of Dow, 2020 ME 10, ¶ 17, 224 A.3d 244 (waivers must be clear and unmistakable).

Roby's reliance on Blanchard v. Blanchard, 2016 ME 140, 148 A.3d 277, is misplaced. In Blanchard, the language of the premarital agreement, unlike the

Agreement in the present matter, contained a clear and unmistakable waiver of marital property that husband "now has or may hereafter acquire." Id. ¶ 7. No such waiver is present here.

VI. The District Court Erred in Declining Jurisdiction Over Rosanna's Breach of Contract Claim.

Roby incorrectly asserts that the District Court determined that the Chandler's Wharf condominium was not marital property because it was excluded by a valid agreement of the parties. Rather, the Court determined that it could not set apart or divide the condominium as required by 19-A M.R.S. § 953, because neither party owned it.

Roby acknowledges, as he must, that the divorce court has jurisdiction to resolve all legal and equitable claims to property between spouses, even when the property was acquired outside the marriage. (Red Br. at 36-37); Miliano v. Miliano, 2012 ME 100, ¶ 19, 50 A.3d 534. Roby nonetheless argues that "no property interest has been 'acquired' inside or outside the marriage" because neither party owned the condominium. Similarly, he argues there is no equitable claim because neither party has an interest in the condominium. (Red Br. at 37). Rosanna's property interest, however, is not an interest in the condominium, but rather, her contractual right under the Premarital Agreement to her share of the condominium's value. Stockwell v. Stockwell, 2006 ME 114, ¶ 14, 908 A.2d 94 (contract right to receive lease payments is an asset of the parties**).** The trial court

erred in declining jurisdiction over Rosanna's breach of contract claim as a claim to property between spouses. Miliano, 2012 ME 100, ¶ 19, 50 A.3d 534.

VII. Roby Failed to Preserve His Argument that Rosanna Waived her Right to Seek Attorney's Fees.

In his Brief, Roby "renews" his argument that the Agreement precludes an award of attorney's fees. (Red Br. at 38). At various points during the litigation, Roby claimed that Rosanna waived any right she had to seek attorney's fees. However, to preserve this issue for appellate review, Roby should have filed a cross-appeal. According to M.R. App. 2C(a)(1), "If the appellee seeks any change in the final judgment that is on appeal, the appellee must file a cross-appeal to preserve the issue." See also the Advisory Committee Note -- July 2022; Argereow v. Weisberg, 2018 ME 140 ¶ 11 n.4; 195 A.3d 1210. Roby's argument, if successful, would eliminate Rosanna's fee award entirely and would result in a change in the Divorce Judgment. Without a cross-appeal, however, the issue has not been preserved for appellate review.

VIII. Nothing in the Agreement Causes a Waiver of Rosanna's Right to Seek Attorney's Fees.

Short work can be made of Roby's arguments here, even if the Court considers them. Roby contends that Section 1 of the Agreement, titled "Effect of Agreement," does not expressly provide for the payment of attorney or expert witness fees and consequently the Court is precluded from "inferring" that such a

right exists. (Red Br. at 38-40). But nothing in Section 1 of the Agreement is a clear and unmistakable waiver of either party's right to seek attorney's fees. Dow, 2020 ME 10, ¶ 17, 224 A.3d 244.

Roby also argues that the Agreement "does contain an express reference to waiver of rights under Section 951-A, including the provision for attorney's fees," (Red Br. at 38) (emphasis added), but fails to cite the provision in which the waiver can be found. Roby's hard-to-follow argument suggests that the waiver can be found in Section 4 of the Agreement, titled "Rosanna's Waiver of Support." But more than just attorney's fees, Roby argues that Rosanna "expressly waived all rights she may have had under Title 19-A." (Red Br. at 39). Despite his inaccurate claims, the Agreement contains no waiver of Rosanna's right to seek attorney's fees and no waiver of "all rights… under Title 19-A."

In the last paragraph of this section, Roby steps back from his "expressly waived" argument and suggests that a waiver can be found from a "fair reading" of the Agreement. Even a generous reading of the provisions cited by Roby fails to demonstrate a waiver of Rosanna's right to seek attorney's fees.

IX. The Court Erred in its Decision Concerning Fees.

Rosanna challenges the Court's determination that she contributed substantially to the duration of the litigation. (App. 48). In her opening brief, Rosanna detailed the procedural history of the case and Roby's delays and

discovery violations in particular. Other than calling Rosanna's effort to highlight his conduct as a "meaningless artifact without consequence," Roby does not deny that his conduct, and his discovery violations in particular, caused a two-year delay in this case. (Red Br. at 12).

Roby attempts to support the Court's finding that Rosanna spent considerable time challenging the enforceability of the Agreement. He suggests that Rosanna's position with respect to the interpretation of the Agreement was tantamount to an opposition to the Agreement (or a challenge to its enforceability) and that her efforts to distinguish between the two (interpretation vs. enforcement) is "circular wordsmithing." (Red Br. at 41-42). There is a clear distinction between a dispute over the enforceability of a premarital agreement and a dispute over the interpretation of an enforceable agreement. 19-A M.R.S.A. § 608 (setting forth the requirements to determine that a premarital agreement is not enforceable).

Here, the record is clear that Rosanna did not spend a considerable amount of time challenging the enforceability of the Agreement, and the Court's finding in this regard is clearly erroneous. To the contrary, at the center of this case is Rosanna's efforts to <u>enforce</u> Roby's promise to purchase the Chandler's Wharf condominium and allow her to pursue her breach of contract claim in the divorce proceeding.

The record is clear that this dispute centers on the interpretation of the Agreement, including whether the Agreement required Roby to purchase the condominium, whether Rosanna waived her right to seek attorney's fees and whether Rosanna waived her marital property rights to property acquired subsequent to the marriage. After the lengthy delays caused by Roby's discovery violations, and apologies from the Court on "how we got here" and for any "confusion the court has added to the ultimate determination of these issues" (Transcript 12/19/23, p. 33, 36), the trial court issued its Order On Application of Premarital Agreement, ruling that there was no waiver of Rosanna's right to seek attorney's fees, that Roby had no obligation to purchase the Chandler's Wharf condominium, and that Rosanna had waived her right to the increase in value of Roby's separate property. (App. 27). The Court, sua sponte, ruled that it had no jurisdiction over Rosanna's breach of contract claim. (App. 27). The case proceeded to trial on the issues of attorney's fees and the division of property not subject to the Agreement, that is, property acquired subsequent to the marriage. (App. 18).

With $7,000,000 in cash from the Lexington Gardens refinance, Roby created new businesses and investments, leaving a significant dispute on whether these new businesses and investments would be characterized as marital or nonmarital property. It was not until after the trial that the Court expanded its

interpretation of the Agreement, ruling that all of Roby's business interests and investments, including those derived from the refinance, were protected by the Agreement. The record shows that the dispute between the parties did not focus on the enforceability of the Agreement, but rather on its interpretation and application to the facts of the case. These are the same issues involved in this appeal. Moreover, the record shows that the delays in bringing the case to resolution were not caused by Rosanna.

As part of his effort to shore up the Court's ruling on fees, Roby cites to his Post Trial Brief, where he offered the trial court a repackaged, and in Rosanna's view, an inaccurate characterization of Rosanna's fee request. (Red Br. at 43). He also argues that Rosanna's financial discovery requests were unnecessary. (Id.). The Court did not adopt Roby's characterization of Rosanna's fee request or his views on discovery in its findings and rulings, and Roby failed to file a motion for additional or amended findings of fact. Because Rosanna filed a Rule 52(b) motion, the Law Court's review "is limited to the facts expressly found by the [trial] court," and the Law Court will not "infer findings" from the record. Bolduc v. Getchius, 2025 ME 41, ¶ 10, 334 A.3d 773. Moreover, in objecting to Rosanna's Rule 52(b) motion, Roby acknowledged that the Court "had fulfilled" its obligation "to make findings sufficient to inform the parties of the reasoning underlying its conclusions and to provide for effective appellate review," citing

Bayley v. Bayley, 602 A.2d 1152, 1153-1154 (Me. 1992). (App. 93). Roby cannot now claim that these same findings are insufficient.

CONCLUSION

For these reasons and those set forth in her opening brief, Appellant respectfully requests that the Court vacate the trial court's rulings with respect to the Chandler's Wharf condominium, its ruling concerning jurisdiction over Rosanna's breach of contract claim, its ruling concerning the scope of Rosanna's marital property waiver, and its findings and ruling with respect to the award of attorney's fees. Appellant requests that the Court determine, as a matter of law, that the Premarital Agreement unambiguously required Roby to purchase the Chandler's Wharf condominium and that his failure to do so is a breach of the Agreement, and further, rule that nothing in the Agreement can be construed as a waiver of Rosanna's marital property rights to property acquired subsequent to the marriage (except for the increase in the value of Roby's separate property identified in the Agreement). Rosanna requests that the matter be remanded to the trial court for the determination of damages on Rosanna's breach of contract claim, the division of marital property and a redetermination of attorney's fees and the fees she incurred on appeal.

Dated at Portland, Maine this 29th day of October, 2025.

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Reply Brief of Appellant Rosanna Paola Cordoba Gomez complies with the page and word limits set forth in Rule 7A(f)(1).

Dated: October 29, 2025

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