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IN THE SUPREME COURT OF THE STATE OF NEVADA

YOAV EGOSI Appellant, vs. PATRICIA EGOSI, N/K/A PATRICIA LEE WOODS, Respondent.	**No.: 83454** District Court Case No.: D-16-540174-D

JOINT APPENDIX

VOLUME 9 OF 19

INDEX TO JOINT APPENDIX

Filing date	Document	Volume	Page
9/26/2016	Complaint for Divorce	1	1-8
10/19/2016	Answer and Counterclaim to Complaint for Divorce	1-2	9-28
10/19/2016	Prenuptial Agreement (exhibit to Answer and Counterclaim to Complaint for Divorce)	2	15-28
10/28/2016	Reply to Counterclaim for Divorce	3	31
1/18/2017	Stipulation and Order for Referral Order for Outsourced Evaluation Services	3	35
7/14/2017	Transcript of June 13, 2017 Evidentiary Hearing re Prenuptial Agreement	3	38
7/14/2017	Transcript of June 14, 2017 Evidentiary Hearing re Prenuptial Agreement	4-5	217-428
9/20/2017	Order re Child Custody	6	429-430
11/3/2017	Clarifying Order re Prenuptial Agreement	6	431-432
11/22/2017	Motion to Clarify or Correct Order of 11/3/2017	6	433-439
12/18/2017	Opposition to Motion to Clarify of Correct Order of 11/3/2017	6	440-454
1/5/2018	Order re Motion to Clarify or Correct Order of 11/3/2017	6	455-456
9/4/2018	Findings of Fact, Conclusions of Law and Orders following June 13-14 Evidentiary Hearing re Prenuptial Agreement	6-7	457-467
9/10/2018	Notice of Appeal to Nevada Supreme Court	7	468-471
3/26/2018	Motion to Reconsider June 14, 2017 decision re Prenuptial Agreement	7-11	474-508
9/18/2018	Motion to Certify Order as Final and Stay Proceedings Pending Appeal	12	520-535
10/5/2018	Opposition to Motion to Certify Order as Final and Stay Proceedings Pending Appeal	13-14	536-545
10/15/2018	Order re Motion to Certify Order as Final and Stay Proceedings Pending Appeal	14	546-548
7/29/2020	Nevada Supreme Court Judgment and Order	14	549-554

5/14/2021	List of Witnesses	14	555-57
7/22/2021	Closing Brief of Patricia Egosi	14	558-562
7/23/2021	Closing Brief of Yoav Egosi	14	563-572
7/26/2021	Findings of Fact, Conclusions of Law and Decree of Divorce	14-15	573-649
8/24/2021	Notice of Appeal	15	650

INDEX TO JOINT APPENDIX REQUESTED SEALED

Filing date	**Document**	**Volume**	**Page**
5/9/2017	John Paglini Report	16	651-715
12/1/2021	Transcript of Evidentiary Hearing April 13, 2021	17	716-875
12/1/2021	Transcript of Evidentiary Hearing April 14, 2021	17-18	876-1013
12/1/2021	Transcript of Evidentiary Hearing May 20, 2021	19	1014-1251

was there any significant gap in information between Plaintiff and Joe that distorted Plaintiff's decision to enter into the agreement. Nor was there any wrongful gain or loss as Plaintiff came into the marriage with substantial assets.[40] Thus, this Court's application of any "fairness (i.e., equitable) defense" was unwarranted and made in error.

c. Under Georgia Law, This Court May Invoke And Apply Its Equitable Powers To Reform A Prenuptial Agreement

In determining whether to enforce an antenuptial agreement, the trial court sits in equity and has discretion to "approve the agreement in whole or in part, or refuse to approve it as a whole."[41] Under Georgia law, a "superior court judge presiding over a divorce case exercises all of the traditional powers of chancellor in equity, except as otherwise provided by law."[42] The Georgia Supreme Court previously held that:

> we have not only adopted the whole system of English jurisprudence, Common Law, and Chancery, suited to our condition and circumstances, but that we have framed the necessary judicial machinery to give to that system a practical and beneficial effect, and that such is the office and duty of a Court of Equity, and such was the object of the Legislature of 1799, in conferring Equity powers upon the Superior Courts.

Jones v. Dougherty, 10 Ga. 273, 281 (1851).

In its decision, this Court exercised its discretion and made rulings based in equity, resulting in the acceptance of the agreement only in part. However, this Court failed to identify what equitable grounds it based its decision on, resulting in what appears on its face to be an arbitrary decision and an abuse of this Court's discretion. A careful analysis of the equitable grounds for relief available to this Court and the facts of the case would necessarily have led this Court to a different result, as discussed below.

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[40] The home Plaintiff purchased prior to the marriage is, according to her own testimony, now valued at approximately $800,000.00. See AE 506, line 18.

[41] *Alexander v. Alexander*, 279 Ga. 116, 118 (Ga., 2005); quoting *Allen v. Allen*, 260 Ga. 777, 778(2)(b), 400 S.E.2d 15 (1991).

[42] *Allen v. Allen*, 400 S.E.2d 15, 16, 260 Ga. 777 (Ga., 1991).

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i. Grounds for Equitable Relief, In General – Reformation and Cancellation

Equity will reform a written contract where, through mutual mistake, or the mistake of one of the parties, induced or accompanied by the fraud of the other, it does not, as written, truly express the agreement of the parties. ***This is commonly referred to as the equitable jurisdiction of reformation.***

Equity, which always regards the intention of the parties, rather than the form in which they have expressed it, did not hesitate, from the earliest times, to rectify written contracts and other instruments to make them correspond with the real meaning and intention of the parties. That being said, ***the exercise of this jurisdiction must be grounded in mistake or fraud – the purpose being to compel the parties to abide by the terms of an instrument which, through mistake or fraud, does not express their real intention such that enforcing an agreement in whole would carry into operation the mistake or fraud.***

Equity will not reform a written instrument, unless: a) The mistake is one made by both parties to the agreement, so that the intentions of neither are expressed in it; or b) There is a mistake of one party, by which his intentions have failed of correct expression, and there is fraud the other party in taking advantage of that mistake, and obtaining a contract with knowledge that the one dealing with him is in error in regard to what are its terms.[43] To justify a reformation of a written instrument on the ground of mistake, unmixed with fraud, the mistake must be mutual or common to both the parties and the mistake must be in regard to a matter which is material to the contract. The phrase "mutual mistake," as used in equity, means a mistake common to all the parties to a

[43] *Bryce v. Insurance Co.*, 55 N.Y. 240, 243, 14 Am.Rep. 249, per Folger, J.

written contract or instrument, and it usually relates to a mistake concerning the contents or the legal effect of the contract or instrument. A written instrument will not be reformed for mistake or fraud unless clear, positive, and convincing evidence be produced showing the existence of such mistake or fraud.

ii. Grounds For Equitable Relief, Georgia and Nevada In Accord – Reformation and Cancellation

Under Georgia law, mutual mistake of fact is required to invoke the equitable remedy of contract reformation. "A mutual mistake in an action for reformation means one in which both parties agree to the terms of the contract, but by mistake of the scrivener the true terms of the agreement are not set forth."[44] In that case Cox showed no evidence of a mutual mistake or that the scrivener made a mistake. Under those circumstances, the Georgia Appellate Court held that once the agreement was reduced to writing, all negotiations antecedent thereto merge in the writing and the written agreement is thereafter binding on the parties even if the writing did not express the contract actually made. The Court further noted that a party cannot simply ignore the language of the contract and instead rely on pre-contract representations to claim a mutual mistake.

Nevada is in accord. In *NOLM, LLC v. County of Clark*, 120 Nev. 736, 100 P.3d 658 (Nev., 2004), the Nevada Supreme Court held that reformation of a contract requires mutual mistake. Where there is a unilateral mistake, the other party must be aware of it and bring it to the innocent party's attention. The Nevada Supreme Court noted that "[m]ost of the western states are in accord with these rules and allow for reformation of an instrument where one party makes a unilateral mistake and the other party knew about

[44] *Cox v. U.S. Markets, Inc.*, 628 S.E.2d 701, 278 Ga. App. 287 (Ga. App., 2006).

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it but failed to bring it to the mistaken party's attention." The Nevada Supreme Court relied on the Restatement (Second) of Contracts to base its decision.

Section 166 of the *Restatement* provides that:

> If a party's manifestation of assent is induced by the other party's fraudulent misrepresentation as to the contents or effect of a writing evidencing or embodying in whole or in part an agreement, the court at the request of the recipient may reform the writing to express the terms of the agreement as asserted,
> (a) if the recipient was justified in relying on the misrepresentation, and
> (b) except to the extent that rights of third parties such as good faith purchasers for value will be unfairly affected.

As the Nevada Supreme Court noted, "[t]he commentary to *Restatement* section 166 clarifies that the rule also applies when one party is mistaken and the other party, aware of the mistake, remains silent, because his silence "is equivalent to an assertion that the writing is as the other understands it to be."

Furthermore, section 161 of the *Restatement* provides that a party's silence regarding a fact is tantamount to a declaration that the fact does not exist:

> (b) where he knows that disclosure of the fact would correct a mistake of the other party as to a basic assumption on which that party is making the contract and if non-disclosure of the fact amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing.
> (c) where he knows that disclosure of the fact would correct a mistake of the other party as to the contents or effect of a writing, evidencing or embodying an agreement in whole or in part.

Here, this Court made a specific finding that there was no mistake of fact or fraud in the formation of the premarital agreement, nor is the agreement itself unconscionable. Despite that, this Court reformed the premarital agreement, striking any terms or provisions that would render property or assets acquired after marriage outside the reach

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of the community estate. This is clear legal error and an abuse of discretion. As such, this Court should reconsider its decision considering the rules outlined above.

iii. Equitable Maxims to Keep In Mind – 1) he who seeks equity must do equity, 2) he who comes into equity must com with clean hands, 3) and equity aids the vigilant

He who seeks equity must do equity. A court of equity giving the Plaintiff the relief to which he is entitled will do so only upon terms of his submitting to give the Defendant such corresponding rights, if any, as he may also be entitled to in respect to the same subject-matter. This maxim and the maxims, "he comes into equity must come with clean hands," and "equity aids the vigilant," illustrate the distinctive and governing principle of equity that nothing can call forth a court of equity into activity but conscience, good faith, and personal diligence. The "clean hands" doctrine is most applicable here. See *Smith v. Smith*, 68 Nev. 10, 226 P.2d 279 (Nev., 1951) (he who seeks equity must do equity and must come into court with clean hands). The maxim must be understood to refer to willful misconduct in regard to the matter in litigation, and not to any misconduct, however gross, which is unconnected with the matter in litigation, and with which the opposite party in the cause has no concern.

This maxim refuses the Plaintiff the relief he seeks when it appears that he has been guilty of conduct towards the Defendant in respect to the subject-matter of the controversy, which, measured by the principles of equity, is unconscionable and unrighteous. "It says that whenever a party, who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine. The court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." The maxim means that a court of equity will not lend

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