

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

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LAW COURT DOCKET NO. CUM-25-196

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ROBERT J. HUTCHINSON,

Appellee

v.

ROSANNA PAOLA CORDOBA GOMEZ,

Appellant

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APPEAL FROM THE DISTRICT COURT (CUMBERLAND)

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BRIEF OF APPELLANT ROSANNA PAOLA CORDOBA GOMEZ

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Michael J. Donlan, Esq.  
Bar No. 6824

Jonathan M. Dunitz, Esq.  
Bar No. 7752

Verrill Dana, LLP  
One Portland Square  
Portland, ME 04101-4054  
(207) 774-4000  
mdonlan@verrill-law.com  
jdunitz@verrill-law.com

Attorneys for Appellant Rosanna Paola Cordoba Gomez

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## **INTRODUCTION**

This is an appeal involving the interpretation of a Premarital Agreement (or the “Agreement”) in a divorce action, and the Court’s determination that it had no jurisdiction over Appellant’s claim for breach of the Agreement. Appellant also challenges the District Court’s findings and rulings on attorney’s fees.

## **STATEMENT OF THE FACTS AND PROCEDURAL HISTORY**

### **Background and History**

Robert Hutchinson (“Roby”) was raised in Maine. (Appendix p. 41, hereinafter “App.”). He has an undergraduate degree in supply chain management from Arizona State University. (App. 41). Roby moved back to the east coast around 2009 to assist his mother with the management of Lexington Gardens, LLC, a company that owns and operates a 108-unit apartment complex in New Jersey. (App. 41) Roby acquired Lexington Gardens, LLC from his mother, Patricia Hutchinson, who passed away in February, 2021. (App. 41).

Rosanna Gomez (“Rosanna”) was born and raised in Columbia, and is now a U.S. citizen. (App. 46). She has an undergraduate degree in law and a postgraduate degree in taxation. Rosanna briefly practiced law in Columbia, but moved to the United States to be with Roby shortly after completing her postgraduate degree. She is not licensed to practice law in the United States. (App. 46).

Roby and Rosanna met in 2012, and started dating shortly thereafter. (App. 39). They became engaged in April, 2014 and were married on March 10, 2015 in Phoenix, Arizona. (App. 39). Prior to the marriage, on March 2, 2015, the parties entered into the Premarital Agreement. The Premarital Agreement includes the Financial Disclosure of Rosanna (Exhibit A to the Premarital Agreement) and the Financial Disclosure of Roby (Exhibit B). (App. 104).<sup>1</sup>

During the marriage, the parties lived for a period of time in Brunswick, Maine, at a home owned by Roby's mother (Patricia Hutchinson). The parties also resided in a condominium located at 403 Chandlers Wharf in Portland, Maine, which is currently owned by the late Mrs. Hutchinson's estate. (App. 41-42).

### **The Divorce**

Roby filed for divorce on August 4, 2021. (App. 4). There are no children from the marriage. (App. 39).

After the initial conference was continued at Roby's request, a Case Management Conference was held on December 2, 2021 and a Case Management Conference Order was entered. (App. 5-6). The Case Management Conference Order required the parties to file Financial Statements by January 17, 2022 and serve discovery by February 1, 2022. (App. 6).

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<sup>1</sup> The relevant provisions of the Premarital Agreement are set forth, as applicable, in the Argument section.

Rosanna filed a Motion for an Order Pending Divorce on February 2, 2022, requesting the payment of spousal support in accordance with the terms of the Premarital Agreement, and seeking attorney's and expert witness fees from Roby. (App. 6).

On February 16, 2022, Roby filed a Motion to Enforce Premarital Agreement and Stay Discovery, which Rosanna opposed, noting that she had filed her Financial Statement and discovery requests, as required by the Case Management Order, and stated that there were significant disputes between the parties involving support and property warranting discovery, including a dispute over a condominium. (App. 6-7).

On May 18, 2022, Rosanna filed a Rule 26(g) letter with the District Court requesting a discovery conference. (App. 8). A Pretrial/Status Conference was scheduled for May 27, 2022, but not held due to a Court scheduling conflict. (App. 7). A Pretrial/Status and Rule 26(g) Conference was set for July 19, 2022, but rescheduled for August 12, 2022. (App. 7-8).

After the August 12, 2022 Conference, the Court issued an "Order on Discovery Dispute and Plaintiff's Motion to Stay Discovery and Motion Practice" dated August 23, 2022. (App. 174). The Court denied Roby's Motion to Stay and ordered Roby to comply with all of Rosanna's discovery requests within 30 days. The Court noted that Roby had filed his Financial Statement well after the deadline

and questioned its “completeness.” (App. 174). The Court set a hearing on Rosanna’s Motion for an Order Pending Divorce for October 4, 2022.<sup>2</sup> The Court authorized the parties to present testimony and evidence on the validity of the Premarital Agreement, and to file briefs on the issues to be decided. (App. 174).

On August 19, 2022, shortly before the Court’s August 23, 2022 Order, Roby filed a Restated Motion to Bifurcate, Enforce Premarital Agreement, and Stay Discovery. (App. 8). In her opposition to Roby’s motion and his efforts to forestall discovery, Rosanna argued that she was entitled to discovery and that the Premarital Agreement was limited in scope and did not apply to property acquired or created during the marriage. (App. 9).

On October 4, 2022, Rosanna filed a Motion for Sanctions regarding Roby’s failure to comply with the Court’s August 23, 2022 Discovery Order. (App. 10). In response to Rosanna’s Motion, on December 7, 2022, the Court ordered: “that any documents not yet provided by Plaintiff as part of discovery be provided within 7 calendar days of this order . . .” (App. 10). The Court ordered that the case be set for a one-day hearing on interim spousal support, the validity of the parties’ Premarital Agreement, Defendant’s Motion for Discovery Sanctions, and Plaintiff’s Motion to Strike. (App. 10). The Court scheduled the hearing for January 24, 2023. (App. 10).

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<sup>2</sup> Roby filed a Motion to Continue the October 4, 2022 hearing, which was granted. (App. 9).

Roby moved to continue the hearing and the Court granted Roby's request. (App. 11). Responding to Roby's third Motion to Continue, Rosanna noted that her Motion for an Order Pending Divorce had been filed 11 months earlier and had been scheduled for October 4, 2022, but continued at Roby's request, and that without an Order on her motion she was unable to absorb the costs of the litigation, which had been needlessly exacerbated by Roby's refusal to comply with the Court's Orders. (App. 11; Defendant's Response to Plaintiff's Motion to Continue dated January 3, 2023).

On January 30, 2023, Rosanna filed a Pre-hearing Motion *in Limine* in connection with the twice-continued interim hearing. The Motion focused on four aspects of the Premarital Agreement that, Rosanna argued, could be resolved by the plain language of the Agreement.<sup>3</sup> (App. 11).

On March 29, 2023, the Court denied Rosanna's Pre-hearing Motion *in Limine*, and reset the one-day hearing for June 6, 2023 on the issues of interim spousal support, the validity of the parties' Premarital Agreement, Rosanna's Motion for Discovery Sanctions, and Roby's Motion to Strike. (App. 11). The

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<sup>3</sup> The Court had previously authorized briefs on the issues. The issues Rosanna raised were Roby's obligation to pay \$3,000 per month in support for two years; that there was no waiver of Rosanna's right to seek attorney's fees and expert witness fees from Roby; that the Agreement required Roby to purchase the condominium located at 403 Chandler's Wharf, Portland, Maine and that his failure to do so was a breach of the Agreement; and that there was no waiver of Rosanna's marital property rights to property acquired by Roby subsequent to the marriage.

hearing included issues that had been scheduled by the Court for October 4, 2022, but continued multiple times at Roby's request. (App. 9-11; 174).

On June 2, 2023, shortly before the scheduled hearing, the parties filed Interim and Final Stipulations, in which they stipulated to a number of issues, including the validity and enforceability of the Premarital Agreement, but expressly stated that they did not agree on the scope and interpretation of the Agreement. (App. 176).

The June 6, 2023 hearing focused on Rosanna's Motion for Discovery Sanctions and the Court found that Roby had failed to comply with the Court's discovery orders dated August 23, 2022 and December 7, 2022, and that he had still not provided the discovery Rosanna requested. As a sanction, the Court ordered Roby to pay Rosanna's attorney's fees in the amount of \$10,500. (App. 178-179). The Court bifurcated the issue of whether the Premarital Agreement was ambiguous and whether it applies to property acquired or created during the marriage. (App. 179).

After a trial management conference on August 9, 2023, the Court set a one-day evidentiary hearing regarding the application, and scope and interpretation of the Premarital Agreement, "specifically whether the agreement applies to attorney and expert witness fees, the purchase of the property located at 403 Chandler's Wharf, and property acquired or created during the marriage." (App. 13; Order

dated August 29, 2023). The Court ordered the parties to file prehearing briefs no later than 28 days prior to the hearing. (App. 13). Both parties filed briefs.<sup>4</sup> (App. 14). The Court later clarified, at Rosanna’s request, that the hearing would include Rosanna’s request for interim attorney’s fees and expert witness fees. (App. 14).

The hearing was set for December 5, 2023, but continued on Roby’s Motion to Continue to December 19, 2023. (App. 13-14).

Prior to the hearing, Rosanna filed a Motion to Quash a Subpoena directed to Rosanna’s attorney at the time she entered into the Premarital Agreement, based primarily on attorney-client privilege issues, and later a Motion to Preclude Plaintiff from offering witnesses or exhibits due to Plaintiff’s failure to provide witness and exhibit lists as required by the Court’s Order. (App. 15).

At the December 19, 2023 hearing, the Court granted Rosanna’s Motion to Quash (App. 15), and although it had been scheduled as an evidentiary hearing, determined that no testimony was needed until the Court made preliminary findings on whether the Premarital Agreement was ambiguous. (Transcript 12/19/23, pp. 12-13). The Court apologized for “how we got here,” and later for any “confusion that the court has added to the ultimate determination of these issues before the Court.” (Transcript 12/19/23, p. 33, 36).

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<sup>4</sup> Rosanna’s brief set forth her position on whether the agreement applies to 1) attorney’s fees and expert witness fees; 2) the purchase of the Chandler’s Wharf condominium; and 3) property acquired and created during the marriage.

The Court heard argument on the issues surrounding the interpretation of the Premarital Agreement, which had been briefed by the parties. (Transcript 12/19/23). Roby's attorney initially argued that the provisions relating to the Chandler's Wharf condominium were ambiguous. (Transcript 12/19/23, p. 21).

After the hearing, the Court entered an Order on Application of Premarital Agreement dated January 5, 2024. (App. 27). The Court determined that the Premarital Agreement contains no waiver of Rosanna's rights to seek attorney's fees in the divorce action, and that Rosanna unambiguously waived her marital property rights to the increase in value of Roby's separate property. (App. 27). The Court did not find a waiver of all marital property rights to property acquired or created during the marriage. (App. 27). The Court also determined that the Premarital Agreement did not obligate Roby to purchase the Chandler's Wharf condominium, and ruled, *sua sponte*, that it had no jurisdiction over Rosanna's claim for the breach of the Premarital Agreement. (App. 27-28).<sup>5</sup>

Rosanna filed a Motion to Alter or Amend and/or for Reconsideration of the Order on Application of Premarital Agreement, and for Amended Findings of Fact on January 26, 2024. (App. 59). The Court denied Rosanna's motion. (App. 30).

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<sup>5</sup> The relevant portion of the Premarital Agreement and the trial court's ruling are set forth in the Argument section.

A Pretrial/Status Conference was set for March 11, 2024, but continued at Rosanna's request and rescheduled for April 26, 2024. (App. 16-17). Neither Roby nor his counsel appeared for the rescheduled Pretrial Conference on April 26, 2024 forcing the Court to reschedule it to June 3, 2024. (App. 18).

At the Pretrial Conference on June 3, 2024, the Court ordered a final hearing on the issues of attorney's fees and "property not subject to the Premarital Agreement, acquired after [the] marriage". (App. 18). The hearing was set for October 2, 2024. Roby filed another Motion to Continue. (App. 18-19). The Court denied the motion finding that:

This matter has been pending since August 2021. Prior hearings and conferences have previously been continued on a number of occasions because of the unavailability of Attorney Libby. (App. 19). Prior to the hearing, Rosanna filed a Motion to Strike, seeking to strike one of the stipulations made in the Interim and Final Hearing Stipulations filed on June 2, 2023, prior to the Court's *sua sponte* ruling that it had no jurisdiction over Rosanna's breach of contract claim. (App. 19).

Because sufficient time was not available to finish the trial on October 2, 2024, a second day of trial was set for December 5, 2024. (App. 20-21).

### **Divorce Judgment, Findings and Conclusions**

On February 4, 2025, the Court entered a Divorce Judgment and Findings of Fact and Conclusions of Law. (App. 32-49).

In its Judgment and Findings, the Court expanded its interpretation of the Premarital Agreement, ruling that in addition to protecting the increase in value of the parties' separate property, as the Court found in its Order on Application of the Premarital Agreement dated January 5, 2024, the Agreement also sets aside to each party their individual business interests, including business interests created subsequent to the marriage, and the increase in value of those interests. (App. 33, 35, see also App. 53).

A significant part of the trial focused on the business interests and assets Roby acquired after the marriage. (App. 42-45). In January 2021 Roby refinanced the mortgage on the Lexington Gardens apartment complex for over \$12,000,000 and received a cash distribution of over \$7,000,000. (App. 42). Roby refinanced the mortgage because of the favorable interest rates at the time. (App. 42). The Court traced Roby's use of the funds into different investments, loans and businesses, including his deposit, at one point, of \$4,775,721.50 into his personal Bank of America account, which the Court later determined was a marital account. (App 42, 44, 46). The Court determined that Roby used the loan proceeds to make business investments, including an investment in Wolf Spit, LLC, and loans to TL 12, LLC (d/b/a Coastal Roots), and to Quick Spark, LLC. (App. 42-44). The Court ruled that all of the business investments funded by the proceeds of the refinanced mortgage on Lexington Gardens were nonmarital property "pursuant to

the terms of the parties' Premarital Agreement." (App. 44-45). Any uninvested proceeds were also deemed nonmarital funds related to Roby's business interests. (App. 44).

The Court set aside to Roby his business interests in Lexington Gardens, LLC; On Da Click, LLC; Robyko, LLC; Robyko Management, LLC; Wolfspit, LLC; and El Bambino, LLC. (App. 35). The Court also set aside to Roby, as his sole and separate property, the \$1,000,000 loan he made to Quick Spark, LLC and the \$1,000,000 loan he made to TL 12, LLC (d/b/a Coastal Roots, LLC), noting that the loan proceeds came from the mortgage on Lexington Gardens. (App. 35) The Court set aside Rosanna's business, Laboa, LLC, to Rosanna as her sole and separate property. (App. 35)

The Court allocated the real property interests, automobiles/vehicles, personal property, bank, investment and insurance accounts, debts, and tax liability between the parties. (App. 34-36, 38). The Court ordered Roby to pay \$125,000 to Rosanna to effectuate a just and equitable distribution of the marital property and debt, and ordered Roby to pay \$25,000 to Rosanna towards her attorney's fees in recognition of Roby's significant nonmarital assets and his ability to absorb the costs of the litigation. (App. 36-37). Pursuant to the Stipulations filed by the parties, the Court determined that Roby was entitled to a credit of \$130,000 for certain prior payments. Accounting for Rosanna's \$25,000 fee award and the

\$125,000 equitable payment, and deducting Roby's \$130,000 credit (per the Stipulations), the Court ordered Roby to pay Rosanna \$20,000 within 60 days. (App. 37). All other motions or pending requests for relief were denied. (App. 38).

On the issue of attorney's fees, the Court determined that Roby's annual income is \$126,898 and that he has access to significant financial assets. (App. 46). Lexington Gardens, LLC, alone, is worth \$10,000, 000. (App. 42). In addition, all of Roby's personal expenses are paid by Lexington Gardens. (App. 46). The Court found that Roby has a higher income potential than Rosanna and a greater capacity to bear the costs of the litigation. (App. 48). The Court found that both parties had contributed substantially to the duration of the litigation, and noted Roby's earlier sanction for his discovery violations. (App. 48). The Court found that Rosanna's request for fees and costs of \$100,486.10, not including the costs of transcripts, was "excessive and unjust" because the same firm that represented her when she signed the Premarital Agreement "spent considerable time challenging the enforceability of that same Agreement" in the divorce action. (App. 48).

Rosanna filed a Motion to Alter or Amend and/or for Reconsideration of the Judgment of Divorce and a Motion for Amended and Additional Findings of Fact with proposed amended and additional findings. (App. 72-89). In the Motion to Alter or Amend and/or For Reconsideration, Rosanna requested that the Court

reconsider its decision on attorney's fees and its determination that all of Roby's "businesses interests," even those created during the marriage, were nonmarital property pursuant to the terms of the Premarital Agreement. (App. 82).

In her Motion for Amended and Additional Findings of Fact, Rosanna requested that the Court find that the Premarital Agreement provides no blanket protection for all of Roby's business interests, and that the Court amend its findings on the use of the Lexington Gardens' mortgage proceeds and determine that Roby used the funds to create new businesses and assets, and that the new businesses and assets were marital property. (App. 72). Rosanna also requested amended findings on Roby's income and on attorney's fees. (App. 72). Rosanna also requested that the Court find additional facts on the Lexington Garden, LLC refinance, the incomes of the parties, Roby's conduct during the litigation and attorney's fees. (App. 72-81).

Rosanna's Motion for Amended and Additional Findings of Fact was granted in part and denied in part. (App. 50). The Court found that Rosanna earns \$65,000 per year. (App. 51). The Court also amended its Findings to add that "Roby met his burden of establishing that the business interests he acquired subsequent to marriage were nonmarital property pursuant to the terms of the Premarital Agreement." (App. 52).

In its denial of Rosanna’s Motion to Alter or Amend and/or for Reconsideration with respect to attorney’s fees, the Court stated that both parties had engaged in contentious motion practice and contributed substantially to the duration of the litigation. (App. 52). The Court also stated that it “tempered” its fee award “out of recognition of the motion-heavy and contentious approach to litigation exhibited by both parties, including Rosanna’s repeated challenges of the Premarital Agreement.” (App. 52-53). The Court stated that both parties prolonged the litigation and that its fee award was fair and just under the circumstances. (App. 53). In addition, the Court determined that Rosanna waived any marital property rights to Roby’s business interests, including those interests acquired subsequent to the marriage in a provision involving the waiver of equitable distribution, as well as a provision involving Roby’s future business expectations. (App. 53).

Rosanna filed a timely Notice of Appeal. (App. 24).

After receiving permission from the Law Court, Rosanna filed Defendant’s Motion for an Order for Attorney’s Fees Pending Appeal with the District Court. By Order dated July 7, 2025, the District Court ordered Roby to pay \$7,000 towards Defendant’s attorney’s fees on appeal. (App. 25).

## **STATEMENT OF THE ISSUES**

I. Whether or not the trial court erred in ruling that Roby was not required to purchase the Chandler's Wharf Condominium and that his failure to do so was not a breach of the Premarital Agreement.

II. Whether or not the trial court erred in ruling that certain new businesses and assets created by Roby during the marriage were nonmarital property pursuant to the terms of the Premarital Agreement.

III. Whether or not the trial court erred in ruling that it had no jurisdiction to award damages or otherwise provide a remedy for Roby's breach of the Premarital Agreement.

IV. Whether or not the trial court's factual findings on attorney's fees are clearly erroneous and whether the trial court abused its discretion in its award of fees.

## **ARGUMENT**

### **I. The District Court Erred in its Interpretation of the Premarital Agreement.**

#### **A. Standard of Review**

The Law Court reviews the interpretation of a premarital agreement, and whether its provisions are ambiguous, *de novo*. Dow v. Billing, 2020 ME 10, ¶ 13, 224 A.3d 244. The trial court's rulings on a motion for reconsideration of an order, and a motion to alter or amend a judgment, are reviewed for an abuse of discretion. U.S. Bank Nat'l Ass'n as Tr. for RASC 2005KS9 v. Manning, 2020 ME 42, ¶ 32, 228 A.3d 726.

#### **B. Construction of Premarital Agreement**

The parties to a premarital agreement may enter into a contract concerning a

wide variety of matters, as long as the agreement does not violate public policy or Maine's criminal code. 19 M.R.S.A. § 604. To the extent the parties' agreement impacts statutorily protected marital rights, this Court has made clear that waivers of those rights must be "clear and unmistakable." Dow, 2020 ME 10, ¶ 17, 224 A.3d 244 (citations omitted).

"Premarital agreements are contracts" that are construed "in accordance with standard rules of contract construction." Id. ¶ 13 (quoting Est. of Barrows, 2008 ME 62, ¶ 3, 945 A.2d 1217). The interpretation of a contract, and the determination of whether its terms are ambiguous, are questions of law. Id. Contracts are construed in accordance with the intention of the parties, which is ascertained from an examination of the whole document. Id. ¶ 14. The interpretation of an unambiguous document must be determined by the Court from the plain meaning of the language used in the four corners of the instrument without consideration of extrinsic evidence. Eastwick v. Cate Street Capital, Inc., 2017 ME 2006, ¶ 17, 171 A.3d 1152; Portland Valve, Inc. v. Rockwood Systems Corp., 460 A.2d 1383, 1387 (Me. 1983). "It is a well established principle that a contract is to be interpreted to give effect to the intention of the parties as reflected in the written instrument, construed in respect to the subject matter, motive and purpose of making the agreement, and the object to be accomplished." In re Est. of

Barrows, 2006 ME 143, ¶ 13, 913 A.2d 608 (quoting Foster v. Foster, 609 A.2d 1171, 1172 (Me. 1992)).

When a contract contains an ambiguity that cannot be resolved from the four corners of the document, the interpretation of the ambiguous language becomes a question for the fact finder to resolve based on the extrinsic evidence. Dow, 2020 ME 10, ¶ 13, 224 A.3d 244.

**C. The Trial Court Erred in its Determination that Roby was not Required to Purchase the Chandler's Wharf Condominium.**

The Premarital Agreement is to be construed in accordance with the intention of the parties as reflected in the written document. Id. Here, the Agreement explicitly states that Roby “intends to purchase” the condominium. The first paragraph of the Marital Residence provision in the parties’ Premarital Agreement provides:

14. Marital Residence: The parties currently do not own a Marital Residence at this time. 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. Roby will purchase the condominium with his own funds sometime around 2016. It is the intention of the parties to reside in this condominium after they are married as their marital residence. With respect to such marital residence, it shall be titled from the date of purchase in the parties’ joint names as joint tenants.

(App. 112). Although the parties did not own a home at the time of the marriage, the Agreement provides 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 Agreement acknowledges that the parties were living in the condominium, and that "Roby will purchase the condominium with his own funds sometime around 2016." (App. 112 (emphasis added)). The Agreement provides that the condominium "shall" be titled in the parties' names as joint tenants.

Roby lists the condominium on his Financial Disclosure attached to the Premarital Agreement as Exhibit B, which reiterates that Roby anticipates buying the condominium from his mother "outright in 2016" and that the condominium "will be purchased in both Roby and Rosanna's name as joint tenants." (App. 121). The second paragraph of the Marital Residence provision states that upon termination of the marriage, the net value of the marital residence "shall be divided equally between the parties, and Roby shall pay to Rosanna her one-half share thereof within sixty days." (App. 112).

There is hardly a better expression of the intention of the parties than these clear terms. And, when considered in light of its subject matter, motive, purpose and the object to be accomplished, Est. of Barrows, 2006 ME 143, ¶ 13, 913 A.2d 608, the intentions of the parties is undeniable. In entering into the Premarital Agreement, the parties were altering certain aspects of their marital rights and responsibilities in the event of divorce or other termination of the marriage. The

references to Roby's "family businesses" and the Financial Disclosures attached to the Premarital Agreement make clear that Roby was expecting to acquire the Lexington Gardens apartment complex, worth an estimated \$10,000,000. (App. 108, 122). Conversely, Rosanna's Financial Disclosures show a modest financial position. (App. 118-120). While Rosanna was waiving any interest in Lexington Gardens, Roby was promising to purchase the condominium and title it in joint names. The Marital Residence provision ensures that if the marriage is unsuccessful, and the parties divorce, Rosanna would be entitled to her equal share of the marital residence. Roby stated what he intended to do and listed the condominium on his Financial Disclosure as consideration for Rosanna entering into the Agreement. No other interpretation is reasonable.

In spite of the clear language, the trial court found that the Premarital Agreement did not obligate Roby to purchase the Chandler's Wharf condominium, ruling:

At the outset, the court finds that the provisions of this paragraph are unambiguous. The court finds that "Intend" or to have the intent means "1. To have in mind a fixed purpose to reach a desired objective; to have as one's purpose." *Black's Law Dictionary* (11<sup>th</sup> ed. 2019) and does not mean "must," which would require and contain a present or future obligation. The use of the word "will" in the third sentence of the paragraph refers back to his obligation in the event he purchases the property, that he *will* use his own funds.

(App. 28). The Court focused on the definition of the word "intend" and determined that Roby's intentions were insufficient to create a legally binding

obligation. The Court’s analysis is simply incorrect. The “cardinal rule” in the interpretation of any contract is to determine the intention of the parties. Morgan v. Townsend, 2023 ME 62, ¶ 17, 302 A.3d 30 (internal quotation marks omitted). The law does not require the court to determine what each party “must” do, as the trial court ruled, but rather what each party intends to do in entering into the contract. By stating that he “intends” to purchase the condominium outright from his mother and title the property in joint names, Roby was clearly making a legally binding promise to Rosanna.

The trial court erred as a matter of law when it ruled that Roby was not required to purchase the condominium, and abused its discretion when it denied Defendant’s Motion to Alter or Amend and/or for Reconsideration of the Order on Application of the Premarital Agreement.<sup>6</sup>

**D. The Court Erred in Ruling that Certain Businesses and Assets Acquired During the Marriage were Nonmarital Property Under the Terms of the Premarital Agreement.**

There was no dispute that Roby acquired several new businesses and assets subsequent to the marriage that were not specifically identified in the Premarital Agreement, including Wolf Spit, LLC, and the loans to Quick Spark, LLC and TL 12, LLC. (App. 43-44).

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<sup>6</sup> At worst for Rosanna, the language is reasonably susceptible to different interpretations and therefore ambiguous. When the ambiguity cannot be resolved from the document itself, the interpretation becomes a question of fact to be resolved by extrinsic evidence. Dow, 2020 ME 10 ¶ 14, 224 A.3d 244.

After the trial, the Court incorrectly ruled that these new businesses and assets and any increase in value during the marriage were Roby's nonmarital assets under the terms of the Premarital Agreement, (App. 33, 35), and any business investments funded by the proceeds of the Lexington Gardens refinance are nonmarital property pursuant to the Premarital Agreement. (App. 44-45). In ruling on Rosanna's post judgment motions, the Court added that all of Roby's business interests are protected as nonmarital property by the Waiver of Equitable Distribution Provision. (App. 53). Each is discussed below.

**i. The Court Erred in Ruling that Rosanna Waived Her Marital Property Rights to All of Roby's Business Interests.**

In the Divorce Judgment and in its Findings and Conclusions, the Court expanded the scope of Rosanna's marital property waiver to include Roby's business interests and the increase in value of those business interests, relying on Section 7 of the Premarital Agreement.<sup>7</sup> But a closer look at the provision demonstrates that the scope of the waiver is specifically limited to certain businesses. Section 7 provides:

7. Roby's Future Business Expectations: At the present time, Roby owns or has an interest in several businesses including, but not limited to, Robyko LLC and Melby Oil & Gas. It is expected that Roby shall acquire other assets after the marriage, in furtherance of

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<sup>7</sup> In the earlier Order on Application of the Premarital Agreement, the trial court limited Rosanna's marital property waiver to the increase in value of Roby's separate property.

his business interests, of his mother's estate planning and in furtherance of other family interests and expectations. Roby, therefore, believes that his net worth and income shall increase by virtue of these expectations.

Roby expects that in furtherance of his business and family interests, he will manage and further develop real estate belonging to Lexington Gardens, LLC, and perhaps other real estate during the marriage. Roby expects that this will increase his net worth as well as his income.

Roby and his family intend to be involved in several other business ventures and interests in the future as partners, shareholders, and officers. It is Roby's expectation that he may be actively involved in these ventures and that these may become valuable assets and increase his net worth and his income. 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 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. 108-109). The first paragraph of Section 7 identifies Roby's interest in several businesses, including Robyko, LLC and Melby Oil & Gas, and states that Roby expects to acquire other assets after the marriage in furtherance of his business interests and other family interests and expectations. The second paragraph states that in furtherance of his business and family interests, Roby will manage and develop real estate belonging to Lexington Gardens, LLC and perhaps other real estate. Both paragraphs provide that Roby expects or believes that his income and net worth will increase. Nothing in these two paragraphs can fairly be

called a waiver of Rosanna’s marital property rights. Dow, 2020 ME 10, ¶ 17, 224 A.3d 244 (waivers must be clear and unmistakable).

The third paragraph 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,” and that Roby expects to become “actively involved in these ventures.” Although the first paragraph of Section 7 involves Roby’s businesses, including Robyko, LLC and Melby Gas & Oil, and the second paragraph involves Lexington Gardens, LLC, the third paragraph clearly refers to “other” businesses and ventures, where Roby’s family members are involved as partners, shareholders, and officers. Only these “other” family businesses and any increase in value during the marriage, are specifically designated as Roby’s sole and separate property under Section 7. The references to specific existing businesses, “other businesses” and “family businesses” would be unnecessary if the intent was to protect all of Roby’s businesses.

The Court erred as a matter of law in concluding that this provision is tantamount to a marital property waiver applicable to all of Roby’s businesses, and overlooked the specific limitations contained in the provision. See Dow, 2020 ME 10, ¶ 21, 224 A.3d 244 (specific and exact terms are given greater weight than general language). By its clear terms, only business other than Robyko, LLC, Melby Gas & Oil, and Lexington Gardens, LLC, where Roby and family members

are involved as partners, shareholders and officers, are to be designated as Roby's sole and separate property under this provision, including any increase in value during the marriage.

The Court also abused its discretion when it denied Plaintiff's Motion to Alter or Amend and/or for Reconsideration of the Judgment of Divorce on this issue.

**ii. The Court Erred in Determining that Business Investments Funded and Created with the Proceeds of the Lexington Gardens Refinance are Roby's Sole and Separate Nonmarital Property.**

As a corollary to its ruling that Section 7 of the Agreement waives Rosanna's marital property rights to all of Roby's businesses, the trial court also ruled that Section 7 caused a waiver of Rosanna's marital property rights to any business or investment funded by the proceeds of the Lexington Gardens refinance. In January 2021, during the marriage, Roby refinanced the mortgage on Lexington Gardens and received a cash distribution of over \$7,000,000. The Court traced the proceeds and determined that all of the new businesses and assets funded by the Lexington Gardens refinance remained nonmarital pursuant to the terms of the Agreement.

But the Premarital Agreement does not waive Rosanna's marital property rights to all new businesses and assets or those derived from Roby's existing businesses. As discussed in the preceding section, the waiver contained in Section

7 of the Agreement applies only to family businesses other than Robyko, LLC, Melby Gas & Oil, and Lexington Gardens, LLC.

The trial court erred as a matter of law when it ruled that Rosanna waived her marital property rights to Roby's new businesses and assets created with the proceeds of the Lexington Gardens refinance under the terms of the Premarital Agreement, and abused its discretion when it denied Plaintiff's Motion to Alter or Amend and/or for Reconsideration of the Judgment of Divorce on this issue.

**iii. The Waiver of Equitable Distribution Provision Does Not Apply to New Property and Assets Created by Roby During the Marriage.**

In its Order on Defendant's Motion For Amended Findings of Fact and Defendant's Motion to Alter or Amend the Judgment, the Court again expanded the scope of Rosanna's marital property waiver to include new businesses acquired during the marriage by relying on the Waiver of Equitable Distribution provision. The subject provision provides:

**9. Waiver of Equitable Distribution.** It is agreed and understood between the parties 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 Roby does hereby waive and relinquish whatever rights he may acquire to share in the assets of Rosanna as a result of their marriage. Roby and Rosanna specifically waive and relinquish all of their respective rights to equitable distribution of such property under 19-A M.R.S.A. § 953. It is specifically agreed between the parties that in the event of a divorce or annulment 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. Furthermore, it is specifically agreed between the parties that in the event of a divorce or annulment there shall be no equitable distribution of any assets held by Rosanna as her separate property and no equitable distribution of any businesses or business interests held by Rosanna, including, but not limited to, any increase in the value of those business interests acquired by Rosanna after the marriage 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. 109-110). In the first and second sentences, the parties generally agreed to waive their right to “share in the assets” of the other “as a result of their marriage,” and each waived their rights to the equitable distribution of “such property under 19-A M.R.S.A. § 953” (emphasis added). However, there is no mention of, and no waiver of, property acquired after the marriage.

In the third sentence, the parties specifically agreed that “in the event of a divorce or annulment” 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. Like the first two sentences, there is no specific mention of property or businesses acquired after the marriage, except in the case of Lexington Gardens, LLC, where Roby identified his “anticipated inheritance” in Lexington Gardens in his Financial Disclosures. The references to “separate property” and businesses “held by Roby” necessarily refer to property Roby owned

at the time of the marriage, and identified in the Premarital Agreement because all property acquired thereafter is presumed to be marital.<sup>8</sup>

Nothing in this provision indicates that it applies to new property or businesses acquired after the marriage. Although Maine law permits parties to “exclude by valid agreement” property acquired after the marriage from the marital property presumption, nothing in this section does so. Waivers must be clear and unmistakable. Dow, 2020 ME 10, ¶ 17, 224 A.3d 244.

The trial court erred as a matter of law when it ruled the Waiver of Equitable Distribution provision of the parties’ Premarital Agreement caused a waiver of Rosanna’s marital property rights to the new businesses and assets Roby created during the marriage, and abused its discretion when it denied Plaintiff’s Motion to Alter or Amend and/or for Reconsideration of the Judgment of Divorce on this issue.

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<sup>8</sup> The fourth sentence refers to Roby’s waiver with respect to Rosanna’s assets. The fourth sentence also provides that “in the event of a divorce or annulment,” there shall be no equitable distribution of any assets held by Rosanna as her separate property, including her businesses and business interests, but the provision goes on to say, in part, “including, but not limited to, any increase in the value of those business interests acquired by Rosanna after the marriage 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” (emphasis added). This provision makes clear that Roby waived his right to the equitable distribution of the business interests held by Rosanna, including the increase in value of those assets subsequent to the marriage. Even if this provision applied with equal force to Rosanna, it would only waive her rights to the increased value of the businesses owned by Roby at the time of the Agreement.

## **II. The Court Erred in Ruling that It Had No Jurisdiction Over Rosanna's Breach of Contract Claim.**

The scope of the trial court's jurisdiction is a matter of law that the Law Court reviews *de novo*. Littell v. Bridges, 2023 ME 29, ¶ 10, 293 A.3d 445; Hurricane Island Found. v. Town of Vinalhaven, 2023 ME 33, ¶ 10, 295 A.3d 147. “[T]he jurisdiction of the divorce court is purely statutory, and its authority to act on matters of divorce must arise out of the statutory law or not at all.” Dobbins v. Dobbins, 2020 ME 73, ¶ 12, 234 A.3d 223 (quoting Merrill v. Merrill, 449 A.2d 1120, 1124 (Me. 1982)). The District Court has original jurisdiction over actions for “divorce, annulment of marriage or judicial separation and proceedings under Title 19-A, except as otherwise specifically provided.” 4 M.R.S.A. § 152(11).

In a divorce action, the court must “set apart to each spouse the spouse's property and shall divide the marital property in proportions the court considers just after considering all relevant factors....” 19-A M.R.S.A. § 953(1). It is presumed that “[a]ll property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation” is marital property. Id. § 953(3). Section 953 “establishes a system of equitable distribution for the disposition of all issues related to the parties' property upon the entry of a divorce decree.” Jon Levy, Maine Family Law, § 7.1 (8th ed. 2013); see also Zeolla v. Zeolla, 2006 ME 118, ¶ 8, 908 A.2d 629 (court has broad discretion to dispose of

all issues relating to the property of the parties wherever that property is located). A contractual right is property. Stockwell v. Stockwell, 2006 ME 114, ¶ 14, 908 A.2d 94 (contract right to receive payments under a lease is an asset to be allocated in a divorce judgment). “Property” includes everything that has “an exchangeable value or which goes to make up wealth or estate.” Lord v. Lord, 454 A.2d 830, 833 (Me. 1983) (citations omitted). All property, tangible and intangible, in which a spouse has an interest, may be divided by the divorce court. Stotler v. Wood, 687 A.2d 636, 638 (Me. 1996). “Choses in action, rights and other interests, the benefits of which may be receivable now and in the future are classifiable as intangible personal property.” Id. (quoting Moulton v. Moulton, 485 A.2d 976, 978 (Me. 1984) (accounts receivable subject to equitable distribution)). The District Court in a divorce action has subject matter jurisdiction to determine the ownership interests of the parties in dividing their marital property. Howard v. Howard, 2010 ME 83, ¶ 11, 2 A.3d 318. Property not owned by either party, however, is not subject to distribution in a divorce action. Littell, 2023 ME 29, ¶ 16, 293 A.3d 445; compare with Blanchard v. Blanchard, 2016 ME 40, ¶ 22, 148 A.3d 277 (Where premarital agreement unambiguously released all marital rights, including statutory rights, loan agreement between spouses entered into after the premarital agreement, could be enforced in a separate action).

In declining jurisdiction, the District Court stated:

Notwithstanding the same, Defendant has provided no support for her position that the divorce court has the authority to award damages or other specific performance for a party's breach of a premarital agreement. In the pending matter, this court has the responsibility and authority to identify all of the parties' property, to set apart nonmarital property and to divide marital property. Marital property is defined by law and subsection 953(2)(D) provides that an exception includes "property excluded by valid agreement of the parties." There is no dispute that the Chandler's Wharf property is not owned at this time by either party, and therefore, cannot be set apart or divided by the court. Therefore, the court denies Defendant's claim for damages, without prejudice, allowing for Defendant to maintain a separate action, should she choose to do so.

(App. 28-29). The Court correctly ruled that it could not set apart or divide the Chandler's Wharf condominium, since neither party owned it. But it erred as a matter of law in ruling that it had no jurisdiction to resolve Rosanna's claim for breach of the Premarital Agreement.

The District Court has broad authority to resolve all legal and equitable claims between spouses in a divorce action. Miliano v. Miliano, 2012 ME 100, ¶ 19, 50 A.3d 534 ("Section 953 thus conveys to the District Court jurisdiction to determine and rule on all legal and equitable claims to property between spouses, even when the property was acquired outside of the marriage"). Rosanna's claim for breach of the Premarital Agreement is a contractual right and properly recognized as property. Stockwell v. Stockwell, 2006 ME 114, ¶ 14, 908 A.2d 94. The obvious remedy for breach of contract, even a premarital agreement, is a claim for breach of contract. Est. of Martin, 2008 ME 7, ¶ 21, 938 A.2d 812. As a legal claim to property, the District Court has jurisdiction under Section 953 to resolve

it, even if it was acquired outside the marriage. See Milano, 2012 ME 100, ¶ 19, 50 A.3d 534.

In divorce actions, the District Courts routinely consider the validity and enforceability of premarital agreements in Maine, as well as interpret their provisions. The law recognizing the validity of premarital agreements in Maine, the Uniform Premarital Agreement Act, is codified at 19-A M.R.S.A. §§ 601 et seq. The Act permits the parties to contract on a wide range of property and other matters, limited only by public policy and Maine’s criminal code. 19-A M.R.S.A. § 604.

With the full authority to enforce and interpret a premarital agreement in a divorce action, it follows that the District Court has jurisdiction to provide a remedy when the agreement is breached. The task of the divorce court in “severing the marital relationship and effectuating an equitable division of the marital estate requires adjudication of such agreements, as they help define the marital estate, may evidence the spouses’ contributions thereto, and can indicate how dissolution of the marriage will affect the parties’ economic circumstances. These are all factors [the court] . . . must consider.” Jones v. Porter, 438 F. Supp. 3d 101, 104 (D. Me. 2020).

The District Court erred as a matter of law in declining jurisdiction over Rosanna’s breach of contract claim. The District Court in a divorce action has the

full authority to resolve any claims under a premarital agreement pursuant to its authority to resolve all legal and equitable claims between spouses to property under Section 953, and as an action under Title 19-A. Milano, 2012 ME 100, ¶ 19, 50 A.3d 534; 4 M.R.S.A. § 152(11).

### **III. The Trial Court Abused Its Discretion in Its Award of Attorney's Fees and Its Findings of Fact are Clearly Erroneous.**

The award of attorney's fees is reviewed for an abuse of discretion. Weinle v. Est. of Tower, 2025 ME 62, ¶ 47, 2025 WL 1901873. The Court's factual findings concerning a fee award will be upheld unless clearly erroneous. Bolduc v. Getchius, 2025 ME 41, ¶ 27, 334 A.3d 773. When the party challenging a fee award has filed a Rule 52(b) motion, as Rosanna did here, the Law Court's review is limited to the facts expressly found by the trial court and must be based on evidence in the record, which are sufficient to support the result. Id. ¶ 10; Douglas v. Douglas, 2012 ME 67, ¶ 26, 43 A.3d 965. No findings will be inferred. Getchius, 2025 ME 41, ¶ 10, 334 A.3d 773; Douglas, 2012 ME 67, ¶ 27, 43 A.3d 965.

The Court noted Rosanna's request for fees and costs of \$100,486.10, not including the costs of transcripts, and ordered Roby to pay \$25,000. (App. 37, 48). The Court found that Roby has a higher income potential than Rosanna, a greater capacity to bear the costs of the litigation, and access to significant financial assets. (App. 48). However, the Court found Rosanna's fee request was

“excessive and unjust,” because the same firm representing her at the time she signed the Premarital Agreement spent “considerable time challenging [its] enforceability” in the divorce action. (App. 48).

In ruling on Rosanna’s Post-Judgment Motions, the Court stated that both parties had engaged in contentious motion practice and contributed substantially to the duration of the litigation. (App. 52). The Court also stated that it “tempered” its fee award “out of recognition of the motion-heavy and contentious approach to litigation exhibited by both parties, including Rosanna’s repeated challenges of the Premarital Agreement.” (App. 52-53).

**A. Rosanna did not spend considerable time challenging the enforceability of the Agreement.**

A premarital agreement will not be enforceable when, inter alia, it is not signed voluntarily or is unconscionable. 19-A M.R.S.A. § 608. Enforceability of the Premarital Agreement was never the focus of the dispute; rather, the dispute centered on the scope and interpretation of the Agreement and its application to the facts of this case.

Early on in the litigation, in opposing Roby’s Motion to Enforce Premarital Agreement and Stay Discovery, Rosanna stated that she had not conceded that the Premarital Agreement complies with the Uniform Premarital Agreement Act, 19-A M.R.S.A. §§ 601 et seq., and there were significant disputes between the parties warranting discovery, including disputes over property, support and a dispute over

the Chandler's Wharf condominium. (App. 6-7). The Court agreed with Rosanna and denied Roby's Motion to Stay Discovery. (App. 174).

The litigation was delayed by almost two years because of Roby's refusal to comply with Rosanna's discovery requests. Roby defied Discovery Orders dated August 23, 2022 and December 7, 2022, and the Court sanctioned him on June 23, 2023 for his misconduct. (App. 178). During this time, little, if any time was devoted to the issue of enforceability. A review of the papers filed by Rosanna during this timeframe show little mention or attention to the issue of enforceability. Rather, the dispute involved Roby's failure to comply with discovery, and the scope and interpretation of the Agreement. For instance, in Rosanna's September 6, 2022 Opposition to Roby's Restated Motion to Bifurcate, Enforce Premarital Agreement, and Stay Discovery, there is only a passing reference to the issue of enforceability and the focus of the opposition is on discovery and Rosanna's argument that the Agreement did not apply to property acquired or created during the marriage. (App. 9). Similarly, Rosanna's Prehearing Motion *in Limine* dated January 20, 2023, makes clear that the primary issues in dispute involved the interpretation of the Agreement, including Roby's obligation to pay support, whether Rosanna waived her right to seek attorney's fees, Roby's obligation to purchase the Chandler's Wharf condominium, and

whether Rosanna waived her marital property rights to property acquired after the marriage. (App. 11).

The record shows that from the commencement of the case until the June 23, 2023 Order, the focus of the case was on discovery and Roby's failure to comply with the Court's Orders. (App 178). In the Stipulations submitted by the parties and signed by the Court on June 23, 2023, any question on the issue of enforceability was clearly resolved. The parties stipulated that the Agreement was valid and enforceable, noting, however, the parties' disagreement on the scope and interpretation of the Agreement. (App. 176).

The Court's finding that Rosanna spent considerable time challenging the enforceability of the Agreement is clearly erroneous.

**B. Rosanna Did not Engage in Motion Heavy Litigation or Make Repeated Challenges to the Premarital Agreement.**

None of the motions that Rosanna filed appeared to have caused any unjustifiable delay, or can be viewed as challenging the enforceability of the Premarital Agreement. Early on in the litigation, Rosanna filed a Motion Pending Divorce, but the Court never ruled on the motion until the final Divorce Judgment, when it denied all pending motions. (App. 6, 23). The Motion for Discovery Sanctions, based on Roby's failure to comply with the Court's Orders was granted, as was her Motion to Quash the Subpoena. (App. 13, 15, 178). Rosanna filed a Pre-hearing Motion *in Limine*, which was designed to focus the Court's attention

on the parties' disagreement over the interpretation of the Agreement, which needed to be, and which was at least, in part, addressed by the Court in its Order on Application of Premarital Agreement. (App. 11, 27).

Rosanna's January 26, 2024 Motion to Alter or Amend and/or for Reconsideration of the Order on Application of Premarital Agreement and for Amended Findings of Fact was not a challenge to the Premarital Agreement, but rather, focused on the Court's interpretation of the Agreement concerning the Chandler's Wharf condominium, which is an issue in this appeal. (App. 59). Similarly, Rosanna's motions following the entry of the Divorce Judgment cannot be said to be a challenge to the Premarital Agreement. (App. 72-89). In its Divorce Judgment, the Court for the first time ruled that all of Roby's business interests were protected by the Premarital Agreement. Rosanna's Post-Judgment motions challenge the Court's interpretation of the Premarital Agreement and should not be viewed as a challenge to the Agreement, or a dilatory tactic. Moreover, these same issues are on appeal.

Rosanna's other two motions (Motion to Preclude Plaintiff from Offering Witnesses or Exhibits, and her Motion to Strike (one of the parties' Stipulations)) cannot fairly be said to have substantially increased the costs of the litigation or be fairly characterized as "motion-heavy." (App. 15, 19). The trial court's findings to the contrary are clearly erroneous.

### **C. Rosanna is not Responsible for any Delays.**

As previously discussed, the first two years of this case (from August 2021 to June 2023) centered on Roby's discovery violations. In its June 23, 2023 Order sanctioning Roby for failing to comply with the Court's Discovery Orders, the Court acknowledged that the parties did not agree as to the scope and interpretation of the Agreement and agreed to bifurcate the issue of ambiguity "and specifically whether the Agreement applies to property acquired or created during the marriage." (App. 178).

After a trial management conference in August 2023, the Court scheduled an evidentiary hearing for December 2023 and ordered the parties to submit prehearing briefs. (App. 13). In their briefs, the parties raised a number of issues involving the Agreement, including the issue of Roby's obligation to purchase the Chandler's Wharf condominium and whether Rosanna had waived her marital property rights to property acquired after the marriage. (App. 14).

Six months later, at the hearing on December 19, 2023, the Court declined to take testimony, and stated:

If I didn't already take responsibility and apologize for how we got here, I do want to do that again. This has kind of been a - - this action has evolved or devolved as we've gone forward. The attorneys, I think, said it to me in the very beginning. You just have to tell us whether it's ambiguous or unambiguous. And again, I had assumed there would be oral argument, and there were some changes to that and agreement regarding validity.

(Transcript 12/19/23 p. 33). And later in the hearing stated:

It's already been pending for a very long time. I understand that's -- everyone's trying to move forward in a positive way, and I appreciate that. I also, again, apologize for any confusion that the court has added to the ultimate determination of these issues before the Court.

(Transcript 12/19/23, p. 36). After the hearing, the Court issued its Order on Application of Premarital Agreement, and determined, inter alia, that Rosanna had waived her marital property rights to the increase in value of Roby's separate property. (App. 27). The case proceeded to trial on the issues of attorney's fees and the division of any property acquired during the marriage, not protected by the Premarital Agreement. (App. 180). No delay was caused by Rosanna.

It was not until after the divorce trial, a year later, and as part of its Divorce Judgment and Findings, that the Court provided a more expansive interpretation of the Premarital Agreement, determining that all of Roby's business interests, even those created after the marriage, were protected by the terms of the Premarital Agreement. These were not new issues, but had been briefed by the parties in 2023.

The Court's January 5, 2024 Order on Application of the Premarital Agreement made clear that there was no blanket waiver of Rosanna's marital property rights, leaving the parties to litigate the issue of attorney's fees and the division of property not subject to the Premarital Agreement. With the \$7,000,000 received from the Lexington Gardens refinance, Roby had acquired several new

businesses and assets, leaving a legitimate issue concerning the characterization of these businesses and assets. There was no delay caused by Rosanna.

After the Court sanctioned Roby for his discovery violations in June 2023 the balance of the case, and even the issues now on appeal, involve the scope and interpretation of the parties' Premarital Agreement and its application to the facts of the case. Because Rosanna did not spend considerable time challenging the enforceability of the Agreement or engage in motion-heavy practice that caused delays, and in light of the Court's acknowledgment of its role in some of the delay, the numerous motions to continue filed by Roby and one failure to appear, the Court's findings on attorney's fees are clearly erroneous and the Court abused its discretion in "tempering" Rosanna's fee award based on those findings. Moreover, when considered in light of the vast disparity between the financial circumstances of the parties, the award cannot be said to be fair or just. Sears v. Sears, 2023 ME 45, ¶ 24, 299 A.3d 15, 22.

## **CONCLUSION**

Appellant respectfully requests that the Court vacate the trial court rulings with respect to the Chandler's Wharf condominium, its ruling on jurisdiction over Rosanna's breach of contract claim, its ruling with respect to the scope of Rosanna's marital property waiver and its ruling with respect to its award of attorney's fees. Appellant requests that the Court rule as a matter of law, that the

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 to assess damages for Rosanna's breach of contract claim, the division of the marital property and a redetermination of attorney's fees and the fees Appellant incurred on appeal.

Dated at Portland, Maine this 15th day of August, 2025.

/s/ Michael J. Donlan

Michael J. Donlan, Bar No. 6824  
Jonathan R. Dunitz, Bar No. 7752  
Attorneys for Appellant

VERRILL DANA, LLP  
One Portland Square  
Portland, ME 04101-4054  
(207) 774-4000  
[mdonlan@verrill-law.com](mailto:mdonlan@verrill-law.com)  
[jdunitz@verrill-law.com](mailto:jdunitz@verrill-law.com)

**CERTIFICATE OF COMPLIANCE**

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

Dated: August 15, 2025

/s/ Michael J. Donlan

Michael J. Donlan, Bar No. 6824  
Jonathan R. Dunitz, Bar No. 7752  
Attorneys for Appellant