

No. 13-15-00496-CV

**In the
Thirteenth Court of Appeals
Corpus Christi - Edinburg, Texas**

BRENDA W. HUGHES, Appellant

v.

DAN A. HUGHES, Appellee

**Appeal from Final Judgment
In the 36th District Court
Bee County, Texas
No. B-15-1011-CV-A
Hon. Star Bauer**

BRIEF OF APPELLEE DAN A. HUGHES

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Oral Argument Conditionally Requested

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| 3. There is legally sufficient evidence to support the jury’s finding as to the amount of property now owned or held by Brenda that is included in cash or property having a value of \$10 million Brenda is to receive under the amended Premarital Agreement. | |
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ABBREVIATIONS

| | |
|------------------------------------|------------------------------|
| Trial Judge, Hon. Star Bauer | the trial court; Judge Bauer |
| Brenda Wehmeyer Hughes | Brenda |
| Dan A. Hughes | Dan |
| Texas Rules of Appellate Procedure | TRAP |
| Texas Rules of Civil Procedure | TRCP |
| Clerk’s Record | CR [page#] |
| Supplemental Clerk’s Record | Supp. CR [page#] |
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STATEMENT OF THE CASE

This is an appeal from a divorce property division. The case also involves a request for declaratory judgment to interpret a Premarital Agreement and a ratification and amendment of that Agreement. The case was tried to a jury, a directed verdict was granted on some issues, and judgment on the Jury's verdict was granted as to the rest.

STATEMENT ON ORAL ARGUMENT

Because Brenda has not demonstrated reversible error in her Brief, Dan believes that oral argument would not be helpful. If this Honorable Court schedules oral argument, then Dan requests the opportunity to participate.

RESPONSES TO ISSUES PRESENTED

Response to Issue No. 1

The Trial Court did not err in granting Dan's Motion for Summary Judgment. Additionally, the summary judgment ruling did not determine the ownership of any property, so it is not a ground for reversal.

Response to Issue No. 2

The Trial Court did not err in granting Dan's Motion for Directed Verdict regarding the separate property character of certain assets.

Response to Issue No. 3

The trial court did not abuse its discretion in fashioning the jury charge.

Response to Issue No. 4

1. The evidence is legally sufficient to support the Jury's findings of Dan's separate property.

2. While it is not clear that the complaint has been raised on appeal, Brenda did not conclusively prove her claim of gifts.
3. There is legally sufficient evidence to support the jury's finding as to the amount of property now owned or held by Brenda that is included in cash or property having a value of \$10 million Brenda is to receive under the amended Premarital Agreement.
4. The evidence is legally sufficient to support the jury's findings that Brenda committed fraud and breached her fiduciary duty owed to Dan.
5. By failing to file a motion for new trial, Brenda waived any complaint about the excessiveness of damages found by the jury. Additionally, the damage findings were within the range of the evidence.

STATEMENT OF FACTS

This divorce case involves a Premarital Agreement, a subsequent Ratification of and Amendment to the Premarital Agreement, claims of separate property, claims of gifts, a finding of fraud, and a finding of breach of fiduciary duty. The case was tried to a jury. Brenda did not like the result, so she has appealed.

Dan's witnesses at trial were:

Kirkby Townsend (Dan's in-house CPA & CFO), 3RR33-119;
John Bond (employee of Dan A. Hughes Company, L.P.), 3RR119-130;
Forensic CPA Scott Turner, 3RR131-ff.; 4RR4-102;
Forensic CPA William C. Bradley, 4RR107-120;
Joyce Schulenberg (Dan's administrative assistant), 4RR120-128; and
Dan Hughes, 4RR128-210.

Brenda called only herself, 5RR20-88, and her friend, Diane Rupert, (by deposition), to testify. 5RR95-99.

Dan's exhibits are set out in Volumes 7 through 12 of the Reporter's Record.

Brenda offered three exhibits, all in Volume 12.

Background. Dan was 86 years old at the time of trial. 4RR129. Born in Monroe, Louisiana, Dan graduated from Texas A&M University -- College Station in 1951, with a degree in geology. 4RR130. After graduating, Dan served in combat in the U.S. Army Artillery in Korea. 4RR130. After returning from the Korean War, Dan worked as a geologist in the oil business in New Orleans, Louisiana. 4RR130. Because he couldn't afford New Orleans, in 1954 Dan moved to Beeville, Texas, with only his car and his clothes. 4RR131. Dan received training and then began scouting oil and gas for a company later taken over by Pennzoil, 4RR131-132. Eight years later, in 1961, Dan started his own company. Two years later his twin brother Dudley joined him and they formed Hughes & Hughes. 4RR132. They remained in business together until 1980. 4RR133. Since that time Dan has owned his own business, Dan A. Hughes Co. 4RR133. Dudley died in April, 2015, five months before trial. 4RR133. Dan had throat cancer 20 years ago, and received radiation treatment. 4RR140-141. Dan can no longer swallow and eats and drinks through a feeding tube. 4RR141. Dan's condition affected his voice and made it difficult to understand his testimony during the trial. 4RR131, 145-47.

Dan's first wife was Juanita. 4RR134. They were married for 30 years, had three children 4RR134; App. 1, CR134, and were divorced. Dan then married Carolyn Hughes. They were married 11 years, had no children, and then divorced. Dan's third

wife was Brenda. They married in 2003. 4RR135.

Brenda was raised in Dallas in a children's home. 5RR22. She ran away and ended up in San Antonio. 5RR22. Years later she got her GED. 5RR22. She first married at age 27 and ended up marrying three times. 5RR22. Brenda had one child, a daughter named Kelly. 5RR22; App. 1, CR304. Brenda has been diagnosed as bi-polar for 25 years. 5RR22. Brenda described Dan as "very charming, very soft spoken, very positive and strong in his heart....." 5RR23. They dated for a couple of years. 5RR23. Dan asked Brenda what she wanted. She told him: "I want the whole package, you know. I want the house on the hill, the marriage, everything." 5RR23-24.

The Premarital Agreement. Dan and Brenda married in Hawaii in 2003. 4RR135. Dan was 74 years old. 4RR129, 1 35. Brenda was 45. 5RR21. As noted, it was the third marriage for both. 4RR134; 5RR22. Dan was a very wealthy man. CR327-510. Brenda entered the marriage with \$3,000.00. CR511. Before marrying, Dan and Brenda both signed a Premarital Agreement. 4RR135; App. 1, CR298-326. Brenda hand wrote beside her signature: "I am not entering this agreement on indepentent [sic] counsel advice[.] I do not understand all of this agreement but am signing it of my own free will. I do not have Counsel." App.1, CR325. She initialed each page, signed it, and had her signature notarized. CR326. The Premarital Agreement provided that "[t]he parties do not intend by this agreement to make a gift from one party to the other party" CR303 ¶ 6. Under the Premarital Agreement, no

community property will arise during the marriage. CR303 ¶ 8; CR307 ¶ 3.5. Each party will own as separate property all mutations and increases in value of their separate property, and all income from all sources. CR305-307 ¶¶ 3.2 & 3.3. Upon divorce, the parties will each retain his or her separate property, and have no claims against the other party's separate property assets. CR313-14 art. 9; CR321 ¶18.4.

Article 6 of the Premarital Agreement covers “Household and Personal Expenses,” and sets up rules that govern joint bank accounts. The first paragraph of Article 6.1 provides that the parties may agree to establish a Hughes Household Account, and if they do, Dan agrees to contribute \$4,000 per month. CR311, ¶ 6.1. The second paragraph of Article 6.1 provides:

To the extent the parties elect to open and maintain one or more joint *bank* accounts, each party will have an undivided one-half interest in the funds on deposit in the account(s) as his or her separate property. Each party will have an undivided one-half interest in all assets acquired with any funds from a joint *bank* account as his or her separate property. [Italics added.]¹

Id. The third paragraph of Article 6.1 provides that “[i]f either party dies, all funds remaining in any joint bank account(s) will be the sole and separate property of the surviving party.” *Id.*

Paragraph 7.1 of the Premarital Agreement, governed the acquisition of jointly-held assets:

¹ The rule of joint ownership of funds applies only to joint *bank* accounts, not other kinds of financial accounts like brokerage accounts.

7.1 Joint Acquisition of Assets

The parties will have the option, but not the obligation, to acquire assets together in their joint names. If the parties jointly acquire assets following their marriage, they will each own an undivided interest in the jointly acquired assets as their respective sole and separate property in an amount equal to the percentage of their respective contributions toward the purchase of the assets. If the parties jointly acquire assets, and to the extent legal title to any or all of the assets can be perfected in their joint names, such as title to an automobile, boat, or real property, they will obtain title in their joint names. However, even though title to an asset acquired by the parties is held in their joint names, the percentage of ownership of such an asset will be controlled by the provisions of this article, and the taking of title in their joint names may not be interpreted to mean that each party has an undivided 50 percent ownership interest in jointly acquired assets. If legal title cannot be obtained in the parties' joint names with respect to a jointly acquired asset, the parties agree to execute a memorandum stipulating that the asset was jointly acquired by the parties. Jointly acquired property may not be deemed to be community property but instead will constitute each party's separate property in proportion to that party's contribution to the purchase price; provided, however, that if there are no records verifying the amount of each party's contribution toward the purchase of an asset, each party will own an undivided 50 percent interest in that asset. If the evidence of title reflects both parties' names, the parties will own that property as joint tenants with right of survivorship.²

CR311. This agreement is consistent with Texas law. *See Norris v. Vaughn*, 260 S.W.2d 676,679 (Tex. 1953) (separate property maintains its identity through mutations and changes in form); *Broussard v. Tian*, 295 S.W.2d 405, 406 (Tex. 1956) (where the consideration provided is partly separate and partly community property,

² Dan testified that he took properties in joint names in order to create a right of survivorship not effective until death. 4RR158. Brenda's attorney thought it important that survivorship language was missing from some deeds. 4RR112-115. The law does not require that it be in the deed. *See* Tex. Estates Code §111.001. Here the survivorship provision was in the Premarital Agreement.

the two estates have “pro tanto ownership in the property”); *Gleich v. Bongio*, 99 S.W.2d 881,883 (Tex. 1937) (where different marital estates contribute to the purchase price of an asset, the asset is owned in the same proportion as each estate contributed to the purchase price). The Premarital Agreement expressly precludes a spouse from claiming ownership from the fact that title was taken in joint names.

Article 12 of the Premarital Agreement relates to interspousal gifts. CR318. The introductory paragraph says: “The parties recognize that frequently claims of ‘gifts’ are alleged in the context of a dissolution proceeding.” The paragraph goes on to say: “To remove any uncertainty about the issue of interspousal gifts, the parties agree that ... “3. Any property that is held by title, as in a deed, in a certificate, or by account name, may not be effectively transferred to the party claiming it as a gift unless, in fact, the deed, certificate, or account is transferred by name to the party claiming the gift.” CR318.

Article 13 of the Premarital Agreement covers “Independent Conveyances or Bequests.” CR318. Article 13.1 says that if either party conveys to the other party an interest in separate property, by will, survivorship agreement, or instrument of conveyance or by document of title signed by the transferring party, that instrument controls. *Id.* Absent such an instrument, “all properties remain in the ownership of the party owning or designated as owning the property as his or her separate property.” *Id.*

Three years into the marriage, the parties entered into a Ratification and Amendment of Premarital Agreement.³ 4RR136. This Ratification Agreement reaffirmed the Premarital Agreement “except as *specifically amended* by Article III of this agreement.” [Italics added.] App. 2, CR530 ¶ C; CR531, ¶ II “Ratification.” The Ratification Agreement incorporated the Premarital Agreement, unifying them into one document. CR531, ¶ II. Recital B.2 reiterated the rule on mutations of separate property set out in the Premarital Agreement. CR529. Article I.A confirmed that “the property described by the Premarital Agreement as separate property of a party continues to be that party’s separate property and that all such property now owned by them, and to be acquired in the future ... is the separate property of that party.” CR531. The Ratification Agreement did not purport to alter the descriptions of separate property set out in the Premarital Agreement. The Ratification Agreement contained no “specific amendments” to Article 3, “Property of the Parties”; or Article 4, “Liabilities”; or Article 5, “Future Credit Transactions”; or Article 6, “Household and Personal Expenses”; or Article 7, “Joint Acquisition of Assets”; or Article 11, “Retirement Benefits”; or Article 12, “Gifts”; or Article 13, “Independent Conveyances or Bequests”; or Article 15, “Reimbursement”; or Article 16, “Economic Contribution.”

³ Attorney Chris Heinrichs represented Brenda in connection with the Ratification Agreement, and continued to represent Brenda in subsequent legal transactions. 5RR44-45.

The Ratification Agreement did “specifically amend” the property Brenda would receive upon Dan’s death or divorce. The Ratification Agreement says: “[t]he parties wish to amend the Prenuptial Agreement to confirm and agree to the amounts which Dan shall be obligated to provide for Brenda at the time that their marriage is terminated, either by divorce, annulment or by Dan’s death.” CR531 ¶ E. Under the Premarital Agreement, upon divorce Brenda would receive her separate property and debts and nothing else. App. 1, CR109. Spousal support was waived. *Id.*, CR110. Homestead rights were waived. *Id.*, CR110. Attorneys’ fees were waived. *Id.*, CR111. Rights to retirement benefits were waived. *Id.*, CR113. Reimbursement claims were waived. *Id.* CR115. Under the Ratification Agreement, Brenda’s prospects were much improved. She would receive upon Dan’s death or divorce: (1) the homestead at 5156 Business Hwy. 181 N, Beeville;⁴ (2) household furnishings and other “tangible personal property” located at the homestead and other residences, along with personally-owned vehicles and club memberships; (3) the 1,711 acre Charco Ranch in Bee County;⁵ (4) “Cash or property having a value of Ten Million Dollars (\$10,000,000) as of the date of the dissolution of marriage”; and (5) “Such assets and property interests, if any, *which Dan might give to Brenda* by gifts, inter vivos

⁴ Dan owned this land before he married Brenda. He valued the property, including improvements at \$1.5 million at the time of divorce. 4RR136-37.

⁵ The Charco Ranch was purchased for \$ 2,569,651.49. 7RR675.

transfers, testamentary transfers, non-testamentary transfers, survivorship agreements, or other written agreements” (Italics added.) App. 2, CR532-33.

Some years later, Dan, who by then was in his 80’s, wished to do some estate planning for his heirs. He wanted Brenda’s consent so he attempted negotiations with her, and her attorney Chris Heinrichs, 3RR56; 5RR46. Negotiations went on for months, 5RR46-47, but nothing was settled. 4RR138-39. So Dan “filed a suit to interpret the premarital agreement to settle,” 4RR139, meaning he filed a declaratory judgment action in Bee County to interpret the two merged agreements. CR39. In the declaratory judgment action, Dan alleged that Brenda claimed full or partial ownership of property valued in excess of \$30 million that had been acquired 100% with Dan’s separate property funds. CR40-41. Dan also alleged that Brenda had denied him access to the acquisition and ownership records of properties. CR41. In December of 2014, Brenda filed a responsive pleading that sought a change of venue to Bexar County, and a declaratory judgment that property had been given to her, and claimed that the Premarital Agreement and Ratification Agreement were ambiguous. CR48-49. In December of 2014, Dan developed pneumonia and was hospitalized. 4RR140. Either in the hospital, in rehab, or shortly after he returned home, Brenda had Dan served with papers from a divorce she filed in Bexar County on December 29, 2014, separate from the declaratory judgment action pending in Bee County. 4RR126, 141-142; CR17. However, Brenda had not been a resident of Bexar County for the

required 90 days. 4RR142. Dan filed a plea in abatement, which was granted, and Brenda's Bexar County divorce came to a halt. 4RR142; CR21. In the meantime, on January 8, 2015, Dan filed for divorce in Bee County, "down here where I belong." 4RR142; CR8. Dan's declaratory judgment action and divorce were consolidated. CR36.

Dan hired an experienced forensic accountant, Scott Turner,⁶ who gathered documents, interviewed employees, and pulled information together about Dan's finances. 3RR133-35; 4RR143. Dan said that he "discovered that I – I didn't know where all the money went...." 4RR143; see Scott Turner, 4RR100 ("It's believable to me that he thought he was acquiring interest in properties which in fact were being acquired in Brenda's name, yes"). Dan said: "I knew Brenda was taking a lot of money but she – I didn't find out till later." 4RR143. For example, Brenda transferred money from a joint account to her sole account and used it to buy a house in San Antonio, where her daughter began living. 4RR47; 5RR32. It wasn't until the forensic investigation that Dan learned that he had no ownership interest because Brenda had taken title to the house in Kel-Lee Properties, Inc., a company owned exclusively by Brenda and her daughter. 4RR47, 144-45.

Cash Flows. Brenda told the jury that she opened a separate Prosperity Bank

⁶ Scott Turner's qualifications as an expert were stipulated. 3RR132. His tracing on the real estate was corroborated by forensic CPA William Bradley. 4RR107-120.

account because she “wanted her privacy” to give gifts at Christmas, or holidays, or birthdays. 5RR76. She believed that when she moved money from the joint account to her sole account at Prosperity Bank it became 100% hers. 5RR64-66. During marriage a pattern developed, where money flowed from Dan’s personal account, or from the Dan A. Hughes Company, to the First National Bank of Beeville joint account #9557, then to Brenda’s Prosperity Bank account, and then unbeknownst to Dan, into assets that were taken in Brenda’s name alone, or in the name of Brenda and her daughter, or Brenda and her sister. 4RR87-88. Brenda described it this way: “I would have to take money out of the account, put it in my account, personal account, then move it either to the Dog & Bee account or the Kel-Lee Properties’ account depending on what the situation was.” 5RR29. Dan’s administrative assistant, Joyce Schulenberg, explained the mechanics. Joyce had worked for Dan since 1980. 4RR120. She became Dan’s personal assistant 15 years before trial. 4RR121. She handled his checks and paid his personal bills. 4RR121. Dan and Brenda had a joint checking account, First National Bank # 9557. 4RR122. They both also signed on a Charco Ranch account at First National Bank.⁷ 4RR122. Joyce had no dealings with Brenda’s Prosperity Bank account. 4RR122. The money deposited in #9557 and the

⁷ The Charco Ranch account belonged to the entity and not to Dan and Brenda, so the 50-50 ownership provisions of Article 6.1 of the Premarital Agreement do not apply to that account.

Charco Ranch account came from the Dan Hughes Company.⁸ 4RR24, 122-23. Brenda instructed Joyce when to write checks to her out of #9557. 4RR123-24. These checks were signed by Dan. 4RR124. Brenda also kept her own set of checks on #9557, 4RR124, Joyce did not know where Brenda deposited the checks made payable to her. 4RR124-25. Joyce reconciled the Charco and #9557 accounts monthly, but she never provided the reconciliations to Dan, 4RR125, and Dan never asked for them, 4RR127.

Scott Turner examined Brenda's Prosperity Bank account. 4RR20. The deposits in the Prosperity Bank account were from the joint bank account #9557, except for a few transfers from Dan A. Hughes Company. 4RR20, 24.

At least as far back as May of 2008, Brenda began a sustained pattern of transferring money from joint account #9557 to her Prosperity Bank account. 4RR35-42; App. 10, 7RR1130-1251. On May 5, 2008, she transferred \$200,000. On May 7, \$20,000. On May 21, \$15,000. On June 4, \$200,000. On June 12, \$75,000. On June 13, \$5,000. On June 30, \$20,000. On July 7, \$20,000. On July 17, \$60,000. On August 8, \$50,000. On August 25, \$20,000. On August 28, \$100,000. And so on, as evidenced in the tracing schedules. 7RR113-1251; excerpt at App. 10. Turner prepared a

⁸Joyce never saw any money from Brenda's account go into account #9557 or the Charco Ranch account. 4RR123. Scott Turner testified "it was a one-way thing." 3RR183, 1990. Turner never saw money going from either #9557 or the Charco Ranch account to any of Dan's sole accounts. 4RR39.

schedule of checks written by Brenda on account #9557 between 3-6-2012 and 6-18-2014, in amounts of \$50,000 or more. App. 7, 7RR679. Virtually every month from March of 2012 through June of 2014, Brenda made multiple withdrawals of large sums. 7RR680-717. Over a period of eight years, Dan deposited \$19 million of his separate property funds in account #9557. 4RR40. Scott Turner determined that \$9,293,742.80 of that money was spent on joint expenses. 4RR40-41. \$10,106,454.40 of that money was spent for Brenda's benefit. 4RR41. If you assume that the funds in the joint account were owned 50-50,⁹ Scott Turner indicated that Dan had a claim for fraud of half that amount, \$5,081,042.86. 4RR50, 56, 63. The claim was a claim for money that Brenda took and used to buy property in her name. 4RR51.

Kel-Lee Properties. Brenda had her attorney Chris Heinrichs create an entity called Kel-Lee Properties, LLC. 3RR24, 7RR773. Through Brenda's inter-account transfers, money that started out as Dan's separate property wound up purchasing properties in the name of Kel-Lee Properties, LLC. 3RR218; 5RR30. Brenda says she did not attempt to prevent Dan from finding out that she was taking title to land in the name of the company. 5RR30. She says Dan knew about the purchase of the properties. 5RR31. Brenda says that Dan said to her about the money she was investing in real estate: "You know that's half mine." 5RR31. However, in Brenda's

⁹ Article 6.1 of the Premarital Agreement, Household and Personal Expenses, said that funds in a joint *bank* account will be owned 50-50, as will items purchased with funds from a joint *bank* account. CR107.

mind Dan did not own half of the properties in Kel-Lee Properties. 5RR66. He owned half of her half ownership interest. 5RR67. Brenda testified that the money Brenda put into Kel-Lee Properties was set up as a loan, “because my daughter was half owner.”¹⁰ 5RR31. Kel-Lee Properties carried in its tax return “loans from shareholders” amounting to \$1,868,164. 3RR219-20; App. 8, 7RR954. The money that was loaned to the company came from Dan Hughes’s separate property. 3RR220. The assets owned by Kel-Lee Properties at the time of trial are detailed in 7RR836-898.

In another example, Brenda took money transferred from the joint account #9557 to her Prosperity Bank account, and used that money to buy the land where the Dog & Bee Restaurant would be located, but took title to the land in the name of Kel-Lee Properties, 3RR218, 4RR86-87, an entity owned by her and her daughter, but not by Dan. 7RR792, 795.

Charco Ranch. Dan bought the Charco Ranch in Bee County in May of 2005. 7RR467-503. He took title in his and Brenda’s names. 7RR468, 473, 479. Under the Ratification Agreement, Brenda would receive the Charco Ranch upon divorce or upon Dan’s death, App. 2, CR532, so she could expect to benefit from expenditures made on the ranch, which Brenda controlled. 3RR44. The level of expenditures was so high that Dan’s CFO, Kirkby Townsend, became concerned that the IRS, who had

¹⁰ In Appellant’s Brief, pp. 59-60, Brenda is still attempting to acquire Dan’s separate property, by overturning the jury finding that Dan owns half of the \$1,868,164.00 loan, and arguing that Dan made a gift to her of all the real estate in Kel-Lee Properties.

already conducted several audits of Dan, would treat the Charco Ranch as a hobby, disallowing deductions for expenditures while taxing income from the ranch. 3RR40, 44-45. An even bigger fear was that disallowance of the Charco Ranch might spill over to other ranches Dan owned, and get them characterized as hobbies, as well. 3RR45. Townsend decided to protect the other ranches by voluntarily deeming the Charco Ranch a hobby and reporting the income without attempting to deduct any expenses. 3RR45. Townsend described “[t]he contract labor that was running through this ranch, hundreds of thousands of dollars were seemingly not for any intended purpose. It might build something, it might tear it down and rebuild it, it just didn’t seem to make sense that you were trying to do this either to raise cattle or lease it out for hunting or do any of the normal ranching activities that would produce a profit.” 3RR46. The projects were all directed by Brenda. 3RR46; 5RR77. The projects included: air conditioned dog kennels, that could not be expected to turn a profit with hunting dogs, 3RR47; construction of stables for horses in numbers exceeding what was needed for the ranch, 3RR47; construction of the Devil Woman Saloon, that never generated income, 3RR47-48, 5RR77-ff; and seven or eight water wells, 3RR49.

Dog & Bee. In January of 2011, Brenda started a restaurant in Beeville called the Dog & Bee. 4RR147-48; 7RR188-205. Brenda had her attorney Chris Heinrichs

divide ownership of the business into a hierarchy of entities with herself at the top.¹¹ 3RR88; 5RR28, 45. She said she put the restaurant in just her name “for liability reasons.” 5RR29. Brenda had previously purchased the land where the restaurant was located in Kel-Lee Properties, LLC (an entity owned by her and her daughter), and had the Dog & Bee pay rent to Kel-Lee Properties. 3RR88-89, 92, 218. Brenda put the liquor license into The Dog & Bee Beverage Company, LLC, an entity managed by her sister Stephanie Beasey. 3RR89; 5R28. After operating the business for three years, 5RR58, Brenda unexpectedly informed Dan’s in-house CFO, Kirkby Townsend, that henceforth Dan would be responsible for the Dog & Bee. 3RR85, 4RR149, 5RR58. Townsend started investigating the business, and found out that there were four entities, and that the land was owned by Kel-Lee Properties. 3RR88. Townsend was surprised to learn that Dan was not an owner and had no managerial authority. 3RR90, 4RR150. So Townsend hired an attorney to prepare a power of attorney and supporting affidavits to allow Dan to sell or lease the property. 3RR90, 7RR182-87. Despite multiple conversations, Brenda never signed the power of attorney. 3RR90-92; 4RR150.¹² Dan’s employees tried to sell or lease the property,

¹¹ Brenda was the sole owner of The Dog & Bee, LLC. 7RR188-205. The Dog & Bee, LLC, owned The Dog & Bee Holding Company, LLC. 7RR206-225. The Dog & Bee Holding Company, LLC owned The Dog & Bee Beverage Company, LLC. 7RR242-60.

¹² When asked by her lawyer why she didn’t sign the power of attorney, Brenda was evasive, saying: “I have signed so many papers with my husband without asking why when he gives me the word. He tells me to sign something, I sign it. I don’t buck him, I just did what he wanted and I just—“ 5RR30.

and even located a prospect, but the negotiations foundered because Brenda left the state and Dan had no power of attorney and no authority to do anything. 3RR95, 4RR149-50. Brenda claimed that the paperwork given to her to sign had to do with how to allocate the proceeds from combined sale of the business and land. 5RR59. She claimed that she never saw the power of attorney. 5RR60. On cross-examination Brenda revealed that she didn't want to lease the property because the lease price (i.e., rent paid to Kel-Lee Properties) was not high enough and she would rather sell the real estate. 5RR60-61. Brenda eventually listed the property for sale with her realtor and it remained unsold at the time of trial. 3RR94, 4RR150, 5RR62. Brenda told the jury that when the business sells, she will split the proceeds from sale of the equipment with Dan, but she will split the proceeds from sale of the land 50-50 with her daughter, even though it was Dan's money that was used to buy the property. 5RR62-64.¹³

Diversion of Timber Proceeds. In December 2011, Dan bought the Trail Creek Ranch in Montana, paying the purchase price with his separate property funds and taking title jointly with Brenda. 7RR357-68. Dan also owned two other Montana ranches held in his name alone: Smith Trail Creek Ranch and Brandis Trail Creek Ranch. 3RR75.

¹³ Notwithstanding what Brenda told the jury, in Appellant's Brief, pp. 63-64, Brenda asks this Court to overturn the jury's finding that the Dog & Bee is 50% Dan's separate property and rule instead that the restaurant is 100% her separate property.

In August of 2013, Dan's CFO Kirkby Townsend learned that a truck owned by one of Dan's entities had been traded in and a new truck purchased in the name of Trail Creek Headwaters, LLC, a Montana entity unknown to Townsend. 3RR72-73. Townsend investigated and learned that back in 2012 Tanya Smith, Brenda's helper, had incorporated an LLC by that name. The one page certificate of filing did not establish managers, so Townsend hired a Montana lawyer to prepare a management agreement that was signed by Dan and Brenda. 3RR76. Townsend then investigated how the LLC was capitalized, and eventually determined that \$5,000.00 came from account #9557. 3RR76. Further investigation revealed that checks from a company named Timber Resources Management had also gone into the LLC. 3RR77. Upon inquiry, Timber Resources provided Townsend with a timber lease purportedly signed by Dan and Brenda in August of 2013, 3RR77, 7RR813-17, and confirmed that "[a]ll of the timber that has been removed to date has been from Dan A. Hughes' individual properties." 7RR124. Townsend confirmed that the lumber was taken from Smith Trail Creek Ranch, which was owned by Dan alone. 3RR79. In tracking the money, Townsend found that some of the timber payments had gone into a bank account established for Trail Creek Headwaters, LLC, and that some checks were held uncashed. 3RR80; 4RR99. These uncashed checks were eventually turned over by Brenda. 3RR80. Townsend requested statements on the LLC's bank account, but never got them. 3RR81. Instead he received a cashier's check from closing the

account. 3RR81. As of trial, Townsend testified that he was still receiving late tax notices from the state of Montana about Trail Creek Headwaters Hacienda and Trail Creek Headwaters Hideaway, but he didn't know who created those entities. 3RR83.

Brenda told the following story to the jury. She and Dan drove around the Montana ranches with loggers, and after Dan left a new logger came along and gave "us" a better price for "our" logs. 5RR32. Brenda says she called Dan and suggested that she could sign his name to a timber contract. She didn't testify to Dan's response. 5RR32. However, Brenda denied writing in her name on the timber contract as an owner of the timber. 7RR118, 5RR55-56. She did admit signing both Dan's name and her name to the timber contract. 5RR56, 7RR817. She also admitted to writing on the timber contract that checks were to be made to Trail Creek Headwaters, LLC. 5RR56, 7RR813. Brenda testified that she was told that she needed to have a checking account in Montana, and had to create an LLC in Montana. 5RR32. Brenda testified that after about a month "they" refused to allow more deposits in the account, so the money had to be shipped to Beeville. 4RR33. "Then somehow a check got in my hand while I was up there but I took that and gave it to them and the LLC." 5RR33. "They were mad at me because the way it got set up." 5RR33. "But to hear this testimony over logs, I never took a dime. I didn't take one red cent since we have been married." 5RR33, 53.

SUMMARY OF APPELLEE’S ARGUMENT

- Issue 1: The summary judgment properly interpreted two interrelated contracts. Additionally, the summary judgment ruling was not mentioned in the jury charge and did not influence the jury’s verdict. The summary judgment was not a dispositive ruling and it is not an independent ground for reversal.
- Issue 2: Dan moved for directed verdict on thirty-two assets; the trial court granted it on part or all of thirteen assets. Dan conclusively proved that those assets were his separate property and Brenda presented no creditable evidence that Dan made a gift of some or all of those assets to her. The directed verdict was proper.
- Issue 3: The jury charge was mostly taken from the State Bar of Texas’ Pattern Jury Charges where a Pattern Jury Charge existed. When no Pattern Jury Charge existed, the language in the charge came from applicable case law. The trial court properly asked the jury to determine what assets, already in Brenda’s name, were included in the “cash or property having a value of Ten Million Dollars” that Brenda was to receive upon divorce. The jury arrived at a number within the range of the evidence presented. The decision involved issues of fact. The trial court did not abuse its discretion in these or other parts of the jury charge.
- Issue 4: Brenda did not file a motion for new trial, so under TRCP 324 she cannot challenge the damage findings, and her evidentiary challenge to the jury answers is limited to a legal sufficiency challenge. There was more than a scintilla of evidence to support all of the jury’s findings where Dan had the burden of proof. Brenda had the burden to prove her claim of gift by clear and convincing evidence, and because no motion for new trial was filed she can assert only an “as a matter of law” claim, which she did not brief. Regardless, there is more than a scintilla of evidence that Dan did not make a gift, and Brenda did not conclusively prove that the assets in question were given by Dan to her, so the jury’s failure to find gift was sound. On all of the issues submitted to the jury, the jury’s verdict was within the realm that is reserved for the fact-finder, and should not be overturned as a matter of law on appeal.

ARGUMENT

RESPONSE TO ISSUE 1: THE SUMMARY JUDGMENT

The Ruling. Judge Bauer partially granted Dan’s Motion for Summary Judgment asking the court to interpret Article 7.1 of the Premarital Agreement. App. 3, CR1010. Judge Bauer ruled that, under Article 7.1 of the Premarital Agreement, Dan’s separate property interest in jointly-titled real estate is proportional to the percentage of the purchase price he paid with his funds. CR1010.

The Grounds for the Ruling. Recall that Article 7.1 of the Premarital Agreement said, in pertinent part:

If the parties jointly acquire assets following their marriage, they will each own an undivided interest in the jointly acquired assets as their respective sole and separate property in an amount equal to the percentage of their respective contributions toward the purchase of the assets. . . . However, even though title to an asset acquired by the parties is held in their joint names, the percentage of ownership of such an asset will be controlled by the provisions of this article, and the taking of title in their joint names may not be interpreted to mean that each party has an undivided 50 percent ownership interest in jointly acquired assets. . . . Jointly acquired property may not be deemed to be community property but instead will constitute each party’s separate property in proportion to that party’s contribution to the purchase price. . . .

App. 1, CR311.

Neither Dan nor Brenda contend that the interpretation of Article 7.1 is a fact issue, and no one requested a question asking the jury to interpret it. The Supreme Court noted in *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983): “If the written

instrument is so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and the court will construe the contract as a matter of law.” The meaning and effect of Article 7.1 is a question for the Court to resolve.

In interpreting the Premarital Agreement it should be remembered that the Agreement was incorporated into the Ratification Agreement. App. 2, CR531 ¶II. The two documents thus became one document that must be construed together. See *Board of Ins. Com’rs v. Great Southern Life Ins. Co.*, 150 Tex. 258, 239 S.W.2d 803, 809 (Tex. 1951) (“[w]here several instruments, executed contemporaneously or at different times, pertain to the same transaction, they will be read together although they do not expressly refer to each other”).

Article 7.1 of the Premarital Agreement is clear. Pro tanto ownership based on which estate contributed to the purchase price is repeated twice, and the statement that joint title does not reflect ownership is stated twice. This idea is consistent with the statement on page 1 of the Premarital Agreement that “[s]eparate property also normally includes property that was purchased with separate funds [*Hilley v. Hilley*, 161 Tex. 569, 342 S.W.2d 565, 567 (1962)] or that is otherwise traceable to separate property [*see Norris v. Vaughan*, 152 Tex. 491, 260 S.W.2d 676, 679-690 (1953)].” App. 1, CR299. It is also consistent with Article 3.2, that twice says that all mutations and changes in Dan’s separate property will remain separate. App. 1, CR305. It is also

consistent with the Article 3.9.2, which says that the taking of joint title is no evidence of community property. CR308. And it is consistent with Article 13.1, which says that an instrument conveying separate property from one spouse to the other spouse, “if signed by the transferring party,” will override the other ownership-related provisions of the Premarital Agreement, but that absent such an instrument “expressly conveying such property, all properties remain in the ownership of a party owning or designated as owning the property as his or her separate property.” CR318 ¶13.1. Judge Bauer’s summary judgment ruling was consistent with (and was actually dictated by) the plain language of the Premarital Agreement.

Brenda argues that Article III.B.5 of the Ratification Agreement amended Article 7.1 of the Premarital Agreement, to provide that all jointly-held property became one-half her separate property when the Ratification Agreement was signed. Appellee’s Brief, p. 9-ff. This argument should be given no credence. Article III.B.5 does not purport to change the marital property character of assets at all. It merely adds to the list of items Brenda is to receive upon dissolution of marriage “[s]uch assets and property interests, if any, *which Dan might give to Brenda . . .*” [Italics added.] App. 2, CR533. Article III.B.5 applies only to property given by Dan to Brenda, whether by gift, inter vivos transfer, testamentary transfer, non-testamentary transfer, survivorship agreement, or other written agreement. *Id.* Article III.B.5 does not say that property transferred by Dan to Brenda is necessarily her separate property, and

even less does it say that property held in joint names is an inter vivos transfer that makes Brenda a half-owner. Article III.B.5 does nothing more than to say that, upon Dan's death or divorce, Brenda will receive all gifts that Dan had made to her. Article III.B.5 does not purport to say how a gift is made.

Brenda's proposed interpretation, that Article III.B.5 made all past and future inter vivos transfers (and, according to her, all property held in joint names) half her separate property, would bring Article III.B.5 into collision with the mutation and tracing provisions in the Premarital Agreement's: preamble, CR299; introduction to Articles 3.2 and 3.2.2, CR 305; and Article 7.1, CR311. It would also contravene Article 13.1 of the Premarital Agreement, which says that a conveyance between spouses must be evidenced by a will, survivorship agreement, instrument of conveyance or document of title *signed by the transferring party*, failing which properties remain in the ownership of the party owning it. CR318. It would also contradict Article I.A. of the Ratification Agreement, which says that "property described in the Premarital Agreement as separate property of a party continues to be that party's separate property," App. 2, CR531. And it would mean that Article III.B.5 tacitly overruled the repeatedly-stated rule that joint title did not mean joint ownership. Brenda's reading of Article III.B.5 also cannot be squared with many provisions of the Ratification Agreement: Recital B.2, which says that "all mutations . . . of each party's separate property would be retained by that party as his or her

separate property,” App. 2, CR529; and Recital D.3, which says that “the Premarital Agreement applies ... [t]o all other property including the characterization and classification of same as described in the Premarital Agreement ...,” CR530; and Article I.A of the Ratification Agreement that says “[t]he parties hereby confirm that the property described by the Premarital Agreement as separate property of a party continues to be that party’s separate property and that all such property now owned by them and to be acquired in the future ... is the separate property of that party,” CR531. This collision between Brenda’s interpretation and multiple terms of the Premarital Agreement and the Ratification Agreement requires that Brenda’s interpretation be rejected. “This court is bound to read all parts of a contract together to ascertain the agreement of the parties. . . . The contract must be considered as a whole. . . . Moreover, each part of the contract should be given effect.” *Forbau v. Aetna Life Ins. Co.*, 876 S.W.2d 132, 133 (Tex. 1994). “To achieve this object the Court will examine and consider the entire instrument so that none of the provisions will be rendered meaningless.” *R & P Enters. v. LaGuarta, Gavrel & Kirk, Inc.*, 596 S.W.2d 517, 518-19 (Tex. 1980). Brenda’s claim, that Article III.B.5 amended Article 7.1, is to little avail, when there are conflicts with many other provisions of both Agreements that would have to be resolved before Brenda’s claim of amendment could be accepted. “[C]ourts will avoid when possible and proper a construction which is unreasonable, inequitable, and oppressive.” *Reilly v. Rangers Mgmt., Inc.*,

727 S.W.2d 527, 530 (Tex. 1987). For Brenda's interpretation to be true, it would mean that, in signing the Ratification Agreement, Dan intended to tacitly convert eight jointly-titled pieces of real property, six JM Texas Land Fund accounts, and four brokerage accounts, from being 100% his separate property to being half his and half Brenda's separate property, without ever saying that he was doing so. To attribute such an effect to Article III.B.5 would be unreasonable, inequitable, and oppressive. All of these conflicts vanish if Article III.B.5 is read to mean that Brenda will receive on Dan's death or divorce any assets that Dan gave to Brenda. The trial court correctly interpreted the Premarital Agreement.

Brenda's Summary Judgment Evidence. On pages 12-13 of her Brief, Brenda complains that the Trial Court excluded her summary judgment evidence. The evidence was irrelevant to the assessment of the applicability and effect of Article 7.1 of the Premarital Agreement since the interpretation of a contract is a question of law for the court unless the contract is ambiguous. *Coker*, 650 S.W.2d at 393. Neither party claimed that Article 7.1 was ambiguous. The excluded evidence listed on pages 12 and 13 of Brenda's brief was admitted during trial, making its exclusion from the summary judgment determination moot.

The Summary Judgment Was Not a Dispositive Ruling as to Specific Assets. The summary judgment ruling did not declare any particular asset to be the separate property of either spouse. App. 3, CR1010. Only the directed verdict and the jury

verdict determined ownership of property. Brenda's summary judgment exhibits, the contents of her affidavit, and deposition of her friend Diane Rupert were all admitted during trial. The summary judgment ruling was not mentioned in the jury charge or otherwise communicated to the jury. The jury reached its verdict independently of the summary judgment. The summary judgment ruling was not a dispositive ruling and is not a ground for reversal.

RESPONSE TO ISSUE 2: THE DIRECTED VERDICT

Brenda's Challenges. In Issue No. 2, Brenda attacks the trial court's directed verdict holding as a matter of law that certain assets were Dan's separate property. Appellant's Brief, pp. 15-37. Dan moved for a directed verdict on thirty-two assets. Judge Bauer granted directed verdict on part or all of thirteen of these assets and denied it on nineteen assets. 7RR101-120; App. 4, CR1132-33. In most instances, where directed verdict was denied, the marital property character of the asset was submitted to the jury. App. 6, CR 1015-16.

Standard of Review. In reviewing a directed verdict, the appellate court determines whether there is more than a scintilla of probative evidence to raise a fact issue on the material question presented. *Coastal Transp. Co. v. Crown Cent. Petroleum Corp.*, 136 S.W.3d 227, 233 (Tex. 2004) (a non-family law case). If not, the directed verdict will be affirmed. "A directed verdict may not be overturned on the basis of mere surmise, suspicion, or a guess." *Salazar v. Sanders*, 440 S.W.3d 863,

874-75 (Tex. App.--El Paso 2013, no pet.).

The Real Property Interests. Judge Bauer directed a verdict on four pieces of real property: Farish I Ranch; Stringfellow Ranch; 29 Albatross in Rockport; and all minerals in Bee County other than those under the Charco Ranch. CR1132-33.

The evidence showed that Farish I Ranch was acquired with Dan's separate property. The Dan Hughes Company paid \$300,000 earnest money, 7RR380-82, 395, and \$6,552,323.67 from Dan's Morgan Stanley account, 7RR383-84, to make the full purchase price. Thus, Farish I is a mutation of Dan's separate property and remained his separate property under Article 3.2 of the Premarital Agreement. While the deed was taken in Dan and Brenda's names jointly, 7RR371, under Paragraph 7.1 of the Premarital Agreement, jointly-titled property is owned in proportion to the consideration furnished by each spouse, so Dan conclusively proved that he owned 100% of this property. Brenda admitted that all jointly-held real estate was acquired with Dan's money. 5RR51. The only "evidence" Brenda offered on her ownership of Farish 1 was the following:

Q. I mean the land; and tell us what your husband said to you about it being yours, please?

A. This will make your ranch bigger."

5RR36-37. This is exactly the kind of spurious "evidence" of gift that Article 13.1 of the Premarital Agreement prohibits. App.1, CR318. Even ignoring Article 13.1, the

testimony does not prove gift. Although the word “gift” was not mentioned, on appeal Brenda is construing this testimony to be evidence of gift. “[T]hree elements are necessary to establish the existence of a gift. They are: (1) intent to make a gift; (2) delivery of the property, and (3) acceptance of the property One who is claiming the gift has the burden of proof.” *Grimsley v. Grimsley*, 632 S.W.2d 174, 177 (Tex. App.--Corpus Christi 1982, no writ). In *Grimsley*, this Court went on so say:

“Among the indispensable conditions of the valid gift and the intention of the donor to absolutely and irrevocably divest himself of the title, dominion and control of the subject of the gift and the praesenti at the very time he undertakes to make the gift;

The irrevocable transfer of the present title, dominion, and control of the thing given to the donee, so that the donor can exercise no further act of the dominion or control over it.”

Id. at 177-78. The evidence conclusively shows that Dan provided all the consideration for Farish 1, and that Brenda contributed nothing, and that Farish 1 belonged to Dan both under the law of mutation and under Article 7.1 of the Premarital Agreement. Under Article 7.1, Brenda’s name being on the deed was no evidence of ownership. Dan’s name remained on the deed, which under Article 7.1 entitled him to receive it upon divorce, or upon Brenda’s death. App. 1, CR311. Dan did not absolutely and irrevocably divest himself of the title, dominion and control of the house, a necessary element of gift. Dan denied intending to give Brenda a one-half interest in the ranch. 4RR154. The directed verdict was proper.

The evidence showed that Stringfellow Ranch was acquired with Dan's separate property. 7RR403-409. Dan provided the \$25,000 in earnest money, 7RR405, and \$1,273,317.72 at closing. 7RR408. The Stringfellow Ranch is a mutation of Dan's separate property under Article 3.2 of the Premarital Agreement. Although the deed was taken in joint names, 7RR400, under Article 7.1 of the Premarital Agreement, jointly-titled property is owned in proportion to the consideration furnished by each spouse. Brenda admitted that all jointly-held real estate was acquired with Dan's money. 5RR51. Brenda admitted that she never spent the night at Stringfellow Ranch, and had physically been to the property "maybe three times." 5RR58. Brenda's only evidence of ownership was the following exchange:

Q. Did you understand that that was a gift to you as well?

A. Yes.

5 RR 37-38. Under Article 13.1 of the Premarital Agreement, a conveyance between spouses cannot be proved orally, and must be reflected by an instrument of conveyance or document of title signed by the transferring party. App.1, CR318. Brenda's "understanding" does not prove gift anyway. To prove gift one must show donative intent, delivery and acceptance. *Grimsley*, 632 S.W.2d at 177-78. See p. 48 below. Under Article 7.1 of the Premarital Agreement, the taking of title in both names did not create ownership in Brenda. Brenda's conclusory statement that she "understood" that "that was a gift" is no evidence of any element of gift. Dan had the

right, under Article 7.1, to receive the Stringfellow Ranch upon divorce, and upon Brenda's death. App. 1, CR311. Dan did not absolutely and irrevocably divest himself of the title, dominion and control of the ranch, a necessary element of gift. Brenda points to Scott Turner's allocation of 0.97% to Brenda. Mr. Turner did not explain this allocation other than to say that he could not clearly identify where a small portion of the purchase price came from. 3RR150. However, he did not find evidence that Brenda provided any part of the purchase price, and this was nothing more than a presumption on his part, where he couldn't identify the source, that he would allocate half of that portion to Brenda. Turner acknowledged that this allocation was not based on evidence but rather based on a lack of evidence. 3RR150. The documentary evidence showed that Dan paid both the earnest money and the balance at closing from his own accounts. 7RR405, 7RR408. The directed verdict on the Stringfellow Ranch was proper.

The evidence showed that \$786,759.10 of the money used to buy the 29 Albatross house came from the Dan A. Hughes Co., and thus was Dan's separate property. 7RR466. The check for the \$5,000 in earnest money was not found, but Brenda admitted that that all jointly-held real estate was acquired with Dan's money. 5RR51. The Albatross house is a mutation of Dan's separate property, and it is his separate property under Article 3.2 of the Premarital Agreement. Title to the Albatross house was taken in Dan's and Brenda's names. 7RR446. Under Article 7.1 of the Premarital

Agreement, the person who paid for the property owned the property, and the taking of title in joint names did not affect ownership. App. 1, CR311. Brenda's evidence of her ownership was "I told him what the deal was and all of that and he goes, that's going to be your house because you picked it out without me. I was like, not a problem." 5RR36. The word "gift" was not mentioned and Dan had the right under Article 7.1 to receive the Albatross house upon divorce and upon Brenda's death. CR311. Dan did not absolutely and irrevocably divest himself of the title, dominion and control of the ranch, which this Court said is a necessary element of gift. Brenda points to Scott Turner's testimony that he was unable to determine the source of a small portion of the purchase price which prompted him to split that portion of the purchase price 50-50 (0.35% to Brenda). Appellant's Brief, p. 22. However, this allocation was not based on evidence, but rather the lack of evidence. 3RR150. Mr. Turner testified that he found no evidence that Brenda provided any of the purchase price. 3RR151. Independently, Brenda admitted that all jointly-held real estate was acquired with Dan's money. 5RR51. The evidence conclusively established that Dan provided 100% of the purchase price for the Albatross house, and thus it was his separate property. The directed verdict on the Albatross house was proper.

The evidence showed that the surface estate in the 1,711.01 acre Charco Ranch was acquired through two warranty deeds to Dan and Brenda, 7RR467 & 473, and that simultaneously a mineral interest in 3,895.17 acres was acquired by a separate

mineral deed to Dan and Brenda. 4 RR 137; 7RR479. The Dan Hughes Company paid \$50,000 earnest money, 7RR485, 487, and the \$2,519,651.49 balance of the purchase price, 7RR485, 488. Scott Turner confirmed that Dan paid 100% of the purchase price. 3RR151, 7RR485-494. The 3,895.17 acres of mineral acreage included the 1,711.01 acres of the Charco Ranch. 4RR173. The surface and minerals were a mutation of Dan's separate property and were Dan's separate property under Article 3.2 of the Premarital Agreement. The Ratification Agreement provides that Brenda would receive the Charco Ranch upon divorce. App. 2, CR532. The parties disagreed whether Brenda's right to receive the Charco Ranch upon divorce included the mineral interest associated with that acreage. Judge Bauer granted Dan a directed verdict on the portion of the mineral interest that *did not* relate to the Charco Ranch, but denied a directed verdict as to the mineral rights associated with the 1,711.01 acres of the Charco Ranch. CR1133, ¶ 7. As noted above, all of the minerals were purchased with Dan's separate property. Brenda admitted that all jointly-held real estate was acquired with Dan's money. 5CR51. Brenda offered up the testimony of her friend Diane Rupert as evidence of her ownership of the entirety of the mineral interest. Without conceding that Diane Rupert's testimony is competent evidence of gift, her comments clearly do not embrace more minerals than whatever ranch Dan "gave" to Brenda either on her birthday or Christmas. 5RR98-99. Dan believes that the entire 3,895.17 acres of minerals were his separate property, but that is not what Judge Bauer

ruled, and Brenda received the minerals associated with the Charco Ranch in the Decree of Divorce. CR1163, ¶3.A. Dan has not appealed that ruling. The directed verdict as to the mineral interest for acreage outside of the Charco Ranch was proper.

Danville LLC. Brenda challenges the directed verdict on Danville, LLC. Appellant's Brief, p. 26. Danville LLC is a company created by Dan to develop a condominium and apartment complex on vacant land that Dan owned as his separate property. 7RR7. Both Dan and Brenda were members of Danville LLC. 3RR57, 7RR22. The company agreement required Dan to contribute his separate property land as his initial capital contribution, at an agreed value of \$325,000.00. 3RR140, 7RR26-29. Dan conveyed the real estate as required. 3RR61-66, 7RR33, 39, 44. Dan also contributed \$7,169,000.00 cash to Danville, LLC, which came from Dan A. Hughes Company. 3RR68, 141; 4RR81-82, 157; 7RR354. Brenda made no capital contribution to the company. 3RR59, 5RR57, 7RR24. Dan's total capital contribution amounted to \$7,494,277.32. 3RR140. Under the company agreement, Dan is entitled to receive all of his capital back before any distributions are made based on membership. 3RR60-61, 141-42; 5RR57, 7RR112 ¶5.02(a). Kirkby Townsend testified that it would take decades for Danville, LLC to generate enough revenue to pay back Dan's capital contribution. 3RR116. Scott Turner testified that more is owed to Dan than the value of the property, so effectively Dan owns Danville, LLC. 4RR81. Dan provided 100% of the capital and Danville LLC was a mutation of Dan's separate

property, making it his separate property both under Texas law and under Article 3.2 of the Premarital Agreement. See 4RR84-85. Brenda acknowledged this fact. 5RR57. Brenda offered no evidence to support her claim of separate property. On appeal, she rests her claim entirely on the fact that she was listed as a member in the company agreement. Appellant's Brief, pp. 26-27. Under Article 7.1 of the Premarital Agreement, ownership of jointly-held property is determined by which spouse contributed to acquire it. App. 1, CR311. Dan traced his separate property into Danville, LLC. The evidence shows that Brenda contributed nothing. Dan denied that he intended to make a gift of an interest in the company to Brenda. 4RR157. There was no signed instrument of conveyance from Dan to Brenda, necessary to prove an interspousal gift under Article 13.1 of the Premarital Agreement. CR318. The trial court correctly ruled that Danville LLC was 100% Dan's separate property.

Brokerage Accounts. Judge Bauer granted a directed verdict on four brokerage accounts. Scott Turner testified to tracing those accounts. 3RR154-55, 195-98. All deposits into the brokerage accounts from outside sources came from Dan's separate property funds. 3RR155,195. The money in the Herndon Plant Oakley ("HPO") account came from the Goldman Sachs account. 3RR197. The money in the Morgan Stanley account came from the Dan A. Hughes Company. 3RR197. Under the rule of mutation the contents of the account were Dan's separate property. Brenda offered no evidence of gift. The directed verdict was proper.

Royal Gem of Israel. Brenda bought herself a \$160,000 piece of jewelry, a necklace with 52 carats of diamonds in it. 5RR75. \$154,000 was transferred from Brenda's HPO account to Royal Gem of Israel, a diamond exchange in Israel. 4RR27; 7RR957. Brenda was not claiming that it was a gift to her. 5RR75-76. All of the money in Brenda's HPO account came from Dan's separate property funds. 3RR155. The jewelry was a mutation of Dan's separate property.

RESPONSE TO ISSUE 3: THE JURY CHARGE

The Standard of Review. Brenda complains about error in the jury charge. The standard of review is abuse of discretion. *Tex. Dept. Human Services v. E.B.*, 802 S.W.2d 647, 649 (Tex. 1990). Error in the charge is reversible only if it "probably caused the rendition of an improper judgment; or probably prevented the appellant from properly presenting the case to the court of appeals." TRAP 44.1(a). Most of the definitions, instructions and questions in the jury charge were out of the State Bar of Texas Pattern Jury Charges where they applied: the instruction on "Separate and Community Property" came from PJC 202.1; "Inception of Title" came from PJC 202.2; "Gift, Devise and Descent" came from PJC 202.3; "Tracing" came from PJC 202.4; "Property With Mixed Characterization" came from PJC 202.6; "Premarital Agreement" came from PJC 202.7; "Value" came from PJC 203.1; Question 1 came from PJC 202.12;¹⁴ Question 4 was not a pattern jury charge; Question 5 is a simple

¹⁴ Questions 2 and 3 were rejected by the jury and are moot.

monetary amount; the instructions on “Actual Fraud” and Questions 6 and 7 came from PJC 206.2 & 206.3; Question 8 and 9 on fiduciary duty came from PJC 104.2.

Question 1. In connection with Question 1, Brenda complains that the trial court failed to properly instruct the jury on the law. Appellant’s Brief, p. 38. At trial Brenda did not object to Question 1, and did not tender an instruction, and thus waived any error. 5RR129; TRCP 278.

Questions 4 and 5. On Questions 4 and 5, Brenda claims that it was improper to ask the jury whether cash and assets owned by Brenda were part of the \$10 million Brenda is to receive upon divorce. If the contract is ambiguous, the question was proper. If the contract is not ambiguous, and the jury interpreted it correctly, there is no harm. Only if the contract is not ambiguous and the property from Dan already in Brenda’s name is *not* to be considered as part of the \$10 million in property and cash, would the answer be immaterial. Brenda did not move for a directed verdict on this ground, and she did not file a motion to disregard the jury verdict or a motion for judgment n.o.v..

Brenda asserts that this determination is an offset that cannot be awarded because offset was not pled. Brenda did not object to this jury question based on lack of pleading, so error was not preserved, 5RR132; *Aetna Cas. & Sur. Co. v. Clark*, 427 S.W.2d 649, 656 (Tex. Civ. App.--Dallas 1982, no writ). This is not really an offset anyway; it is a question of what Brenda is entitled to receive under the Ratification

Agreement. It is a component of Brenda's contractual claim, not an affirmative defense. Dan testified to certain assets as being transferred as part of the \$10 million figure. 4RR163.

Questions 6 and 7. Brenda complains on pp. 46-47 of her brief that Questions 6 and 7 were erroneously submitted because they are breach of fiduciary duty questions even though they were labeled "Actual Fraud." This was not Brenda's objection at trial, 5RR133, and she cannot advance a different objection on appeal. "Complaints and argument on appeal must correspond with the complaint made at the trial court level." *Isaacs v. Bishop*, 249 S.W.3d 100, 113 (Tex. App.—Texarkana 2008, pet. denied) (involving objection to jury charge). Beyond that, Brenda ignores the difference between actual fraud and breach of fiduciary duty. In the family law context, fraud can be either actual or constructive. This Court examined the difference between actual fraud and constructive fraud in *Nagubadi v. Nagubadi*, 13-02-621-CV, *3 (Tex. App.—Corpus Christi 2005, no pet.) (mem. op.):

Fraud on the community can be committed through actual or constructive fraud. Actual fraud requires the non-managing spouse to show that the other spouse dishonestly and purposely intended to deprive the non-managing spouse of the use and enjoyment of the assets of the joint community property....Constructive fraud does not require a showing of fraudulent intent and may be shown if a managing spouse unfairly deprives the other spouse of the benefit of the community property.

The same distinction applies to fraud regarding the other spouse's separate property.

See PJC 206.3, Comment. Actual fraud involves intent to deprive the other spouse of

an interest in property. Breach of fiduciary duty involves failure to disclose, self-dealing, and the like. Both types of fraud were submitted to the jury, and both types of fraud were found by the jury. CR 1017-18.

Questions 8 and 9. Brenda argues that it was error to submit Questions 8 and 9 on Brenda's breach of fiduciary duty. Appellant's Brief, pp. 43-46. Brenda briefs a no-evidence issue rather than demonstrating a legal error in the instruction or question. Brenda argues that there are only two duties between spouses, one being the duty to pay necessities and the other being a duty in the management of community property. But the fiduciary duties between spouses are not limited to mishandling community property. *Smith v. Deneve*, 285 S.W.3d 904, 911 (Tex. App.--Dallas 2009, no pet.) ("[t]he marital relationship is a fiduciary one"); *Solares v. Solares*, 232 S.W.3d 873, 881 (Tex. App.--Dallas 2007, no pet.) ("[a] fiduciary duty exists between spouses"); *Miller v. Ludeman*, 150 S.W.3d 592, 597 (Tex. App.--Austin 2004, pet. denied) ("[h]usbands and wives generally owe a fiduciary duty to one another"); *Hubbard v. Shankle*, 138 S.W.3d 474, 483 (Tex. App.--Fort Worth 2004, pet. denied) ("the relationship between a husband and wife is ordinarily a fiduciary relationship"); *Toles v. Toles*, 113 S.W.3d 899, 916 (Tex. App.--Dallas 2003, no pet.) ("[a] fiduciary duty exists between spouses"); *Buckner v. Buckner*, 815 S.W.2d 877, 880 (Tex. App.--Tyler 1991, no writ) ("[i]t has long been recognized in Texas that a confidential relationship does exist between a husband and his wife"). In *Daniel v. Daniel*, 779 S.

W.2d 110, 115 (Tex. App.--Houston [1st Dist.] 1989, no writ), the court said: “Because of the confidential relationship between a husband and a wife, courts have imposed the same duties of good faith and fair dealing on spouses as required of partners and other fiduciaries.” In *Bohn v. Bohn*, 455 S.W.2d 401, 406 (Tex. Civ. App.--Houston [1st Dist.] 1970, writ dism’d), the court said “[t]hat a confidential relationship exists between husband and wife has been recognized in Texas.”

The courts have explained what the fiduciary duty between spouses entails. In *Izzo v. Izzo*, No. 3-09-00395-CV, *7 (Tex. App.--Austin 2010, pet. denied), the Court said: “The fiduciary duty between spouses extends to a duty to disclose material information in business transactions”. In *Buckner v. Buckner*, 815 S.W.2d 877, 880 (Tex. App.--Tyler 1991, no writ), the court said: “The husband must disclose the material facts within his knowledge and the legal consequences flowing from them to his wife.” In *Bohn*, 455 S.W.2d at 406, the court said, in connection with an interspousal gift of separate property, that the spouse who received the property had the burden of “affirmatively showing that he acted in good faith, and that the gift was voluntarily and understandingly made.” The jury instruction on fiduciary duties, taken from PJC 104.2, correctly stated the law.

RESPONSE TO ISSUE 4: THE JURY’S VERDICT

Brenda’s Challenges. Brenda did not file a motion for new trial, so she cannot challenge the factual sufficiency or great weight and preponderance of the evidence,

nor can she complain about the excessiveness of damages. TRCP 324(b)(2), (3) & (4). In Issue No. 4, Brenda challenges the legal sufficiency of the evidence to support the jury's findings that the listed assets are Dan's separate property. Appellant's Brief, pp. 50-64. To win her legal sufficiency challenge, Brenda must show: (a) a complete absence of a vital fact; (b) that the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (c) that the evidence offered to prove a vital fact is no more than a mere scintilla; or (d) that the evidence conclusively establishes the opposite of the vital fact. *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005). Evidence of a vital fact amounts to no more than a scintilla when it is "so weak as to do no more than create a mere surmise or suspicion of the existence of a fact in issue." *Seideneck v. Cal Bayreuther Assoc.*, 451 S.W. 2d 752, 755 (Tex. 1970). The test for the no evidence/scintilla rule is that, if reasonable minds cannot differ from the conclusion, then the evidence offered to support a vital fact lacks probative force, and it will be held to be the legal equivalent of no evidence. *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983). In a legal insufficiency review, the appellate court can consider only the evidence and inferences which support the challenged jury finding, and must disregard all contrary evidence and inferences. *Davis v. City of San Antonio*, 752 S.W.2d 518, 522 (Tex. 1988). Appellant's Brief repeatedly violates this standard of review. If the proper standard of appellate review is applied, Brenda's legal sufficiency challenges dissipate.

No Community Property Presumption. Ordinarily, property possessed by either spouse during or on dissolution of marriage is presumed to be community property. Tex.Fam.Code §3.003(a). However, in their Premarital Agreement the parties agreed that no community property would arise. App. 1, CR303, 307, Stipulation 8 & Art. 3.5. So the jury had to determine whether an asset was 100% Dan's separate property, 100% Brenda's separate property, or partly the separate property of each. Jury Charge, App. 6, CR1015-16. There being no default presumption of community property, Dan and Brenda each had the burden to prove his/her claim of separate property on clear and convincing evidence. See Tex.Fam.Code §3.003(b) (“[t]he degree of proof necessary to establish that property is separate property is clear and convincing evidence”).

Mutations of Dan's Separate Property. Dan proved his separate property claims by showing that the assets in question were acquired using his separate property. Under the Premarital Agreement, App. 1, CR305 ¶3.2.2, and under Texas law, a spouse's separate property maintains its separate character despite changes in form. *Norris v. Vaughan*, 260 S.W.2d 676, 679 (1953) (“so long as separate property can be definitely traced and identified it remains separate property regardless of the fact that the separate property may undergo ‘mutations and changes’”). This Pattern Jury Charge instruction was included without objection in the jury charge. App. 6, CR1013.

The Real Estate. The jury found that three pieces of real estate were 100% Dan's separate property: the Trail Creek Ranch; the Avondale, Colorado condominium; and 115 Dickerson Road. CR1015-16. The evidence showed that Dan's separate property funds were used to purchase the Trail Creek Ranch in Montana. 7RR361-68. The evidence also showed that Dan's separate property funds were used to purchase the Avondale, Colorado condominium, 3RR163-68, and the Dickerson Road property, 7RR496-503. Brenda admitted that all the jointly-held real estate was acquired with Dan's money. 5RR51. Article 7.1 of the Premarital Agreement provides that if Dan pays for real property, it is his separate property even if Brenda was named in the deed. App. 1, CR311. Considering the forensic evidence and Brenda's admission that Dan paid for all jointly-held real estate, there is more than a scintilla of evidence that these three properties were 100% Dan's separate property. The jury found Brenda's interest in the house on Marion Drive in Rockport to be 50% the separate property of Dan and Brenda. CR1016 ¶13. Brenda testified that she purchased a house for her sister, Wanda. 5RR71. She claimed she gave a partial interest to her sister. 5RR71-72. Brenda did not testify where the money came from to buy the house. Scott Turner did not trace the funds used for the purchase. Brenda had no source of funds during marriage except from Dan. In the absence of proof as to which funds were used to purchase the property, it was within jury's prerogative to find that each spouse owned the house 50-50.

The Land Funds. Five of the JM Texas Land Funds were found to be 100% Dan's separate property. App. 6, CR1015. The jury found Fund No. 4 to be 70% Dan's separate property and 30% Brenda's separate property.¹⁵ Brenda argues that Funds 1, 2, 3, 4, 6 and 7 are at a minimum 50% Brenda's separate property. Appellant's Brief, pp. 57-59. The Land Funds were partnerships held in joint names. 3RR153. Dan's separate property was used to acquire: all of Fund #1 (3RR182, 185-86; 7RR535-36); all of Fund #2 (3RR182, 186-88; 7RR541-44); all of Fund #3, (3RR182, 188-89; 7RR549); 70% of Fund #4 (3RR182-83, 189ff.; 7RR555); all of Fund #6 (3RR183-84, 191-92; 7RR560); and all of Fund #7 (3RR184, 192; 7RR568). Dan testified that he took ownership in joint names to create a right of survivorship effective upon death. 4RR158. Brenda admitted that she put no money in the Texas Land Funds. 5RR57. Brenda offered no testimony of gift nor is there a document of transfer signed by Dan. Under Article 7.1 of the Premarital Agreement, and under the Texas law of mutations, where Dan paid for the investment with his separate funds, he owned it as his separate property. The jury's verdict is supported by more than a scintilla of evidence. To the extent Brenda claims ownership by gift, she is making an as-a-matter-of-law claim that also fails. See p. 49 below.

Receivable from Kel-Lee Properties, LLC. Brenda challenges the jury finding that

¹⁵ Scott Turner testified that some of the funds invested in Fund #4 came from the joint account, resulting in an allocation of 30% to Brenda. 3RR183. That allocation was adopted by the jury.

the \$1,868,164.00 receivable from Kel-Lee Properties, LLC is 50% Dan's separate property. Appellant's Brief, pp. 59-60. Scott Turner testified to the properties owned by Kel-Lee Properties that were acquired with money originating with Dan. 3RR214-18. Brenda admitted as much. 5RR30. Ultimately Brenda's only source for the money she put into Kel-Lee Properties was Dan's separate property. There is more than a scintilla of evidence that Dan owned half of the receivable as his separate property.

Prosperity Bank Account. On p. 61 of her brief, Brenda attacks the jury's finding that the funds in her Prosperity Bank account are 50% Dan's separate property. The evidence set out above in the Statement of Facts shows that funds flowed into this account from the joint #9557 account, where they were owned 50-50 by the parties. This is more than a scintilla of evidence to support the jury's verdict. Brenda's sole support for her contention on appeal is that Dan judicially admitted that all funds deposited into her Prosperity Bank account were a gift to Brenda. She is referring to Dan's testimony regarding transfers from the joint account to Brenda's Prosperity Bank account, where he says: "Well, it's ok with me as her gift. I didn't give it to her." 4RR207. The two comments are inconsistent, suggesting a garbled communication. Regardless, nothing Dan said was a judicial admission. "A party's testimonial declarations which are contrary to his position are quasi-admissions. They are merely some evidence, and they are not conclusive upon the admitter." *Mendoza v. Fid. & Guar. Ins. Underwriters, Inc.*, 606 S.W.2d 692, 694 (Tex. 1980). In legal

sufficiency review of a jury's finding, a quasi-admission contrary to the verdict must be ignored.

The Note from 3138 North Airport Road. On page 62 of her brief, Brenda attacks the jury finding that the note from the sale of 3138 North Airport Road is 50% Dan's separate property, and claims the note to be 100% her separate property. The evidence shows that the money used to buy land in Kel-Lee Properties was from Dan's separate property. 3RR214-18, 5RR30. When the funds passed through the joint account #9557, they became half the separate property of each spouse. Tracing showed that Dan's funds flowed through the joint account to Brenda's Prosperity Bank account and were then used to buy this land, which mutated into the promissory note when the land was sold. There is more than a scintilla of evidence to support the jury's verdict that Dan owns half of this note. Brenda invokes the same judicial admission argument. Dan's statement was not a judicial admission, *Mendoza*, 606 S.W.2d at 694, and must be ignored in legal sufficiency review.

The Dog & Bee, LLC. On page 63 of her brief, Brenda attacks the jury finding that The Dog & Bee are 50% Dan's separate property. Brenda cites evidence that Dan's separate property money passed through the joint account and was used to fund The Dog & Bee. 4RR85-88. That evidence itself is more than a scintilla sufficient to support the jury's verdict. Brenda's sole basis to attack the finding is Dan's supposed judicial admission: "Well, it's ok with me as her gift. I didn't give it to her." Dan's

statement, which is internally conflicting, was at most a quasi-admission that is not conclusive. *Mendoza*, 606 S.W.2d at 694. It must be ignored in legal sufficiency review.

Brenda's Claim of Gift. It was Brenda's position at trial that she was entitled to everything stated in the Ratification Agreement, plus everything that the jury found was a gift to her. 5RR47. Brenda testified that she didn't realize that gifts might add on to the contractual benefit until she met her divorce lawyers. 5RR48.

Brenda had the court submit her claim that nineteen different assets were gifted by Dan to her. App. 6, CR1016. She admitted that she had no documents signed by Dan saying that he was giving her an interest in anything. 5RR48. She was aware that the Premarital Agreement said that merely taking title in joint names is no indication of gift. 5RR48-51. Dan testified he did not intend a gift when he deposited money in the Charco Ranch, Trail Creek or joint bank accounts. 4RR158. Brenda admitted that Dan was the person who paid for the purchase price of the jointly-held real estate. 5RR51. Brenda admitted that she did not have an instrument of conveyance or document of title expressly conveying any jointly-held assets from Dan to Brenda. 5RR53. All claims of gift were rejected by the Jury except for items 15, 16 and 17. App. 6, CR1015-16. On appeal, Brenda does not challenge the failure of the jury to find gifts to her, a contention for which she had the burden of proof by clear and convincing evidence. App. 6, CR1015; Tex.Fam.Code §3.003(a); *see Grimsley v.*

Grimsley, 632 S.W.2d 174, 177 (Tex. App.–Corpus Christi 1982, no writ) (“[o]ne who is claiming the gift has the burden of proof”). The First Court of Appeals, in *Gomer v. Davis*, 419 S.W.3d 470, 476 (Tex. App.–Houston [1st Dist.] 2013, no pet.) (affirming a directed verdict rejecting a claim of gift) summarized the law of gift in these terms:

A gift is a voluntary transfer of property to another made gratuitously and without consideration. . . . To establish the existence of a valid inter vivos gift, the plaintiff must show (1) that the donor intended to make a gift; (2) delivery of the property; and (3) acceptance of the property by the donee. . . . The plaintiff establishes the requisite donative intent by, among other things, “evidence that the donor intended an immediate and unconditional divestiture of his or her ownership interests and an immediate and unconditional vesting of such interests in the donee.” . . . ; *Troxel v. Bishop*, 201 S.W.3d 290, 297 (Tex. App.--Dallas 2006, no pet.) (“[T]o be a gift in praesenti [at the present time], the donor must, at the time he makes it, intend an immediate divestiture of the rights of ownership out of himself and a consequent immediate vesting of such rights in the donee.”). Until the donor has absolutely and irrevocably divested herself of the title, dominion, and control of the subject of the gift, she has the power to revoke the gift. . . . The donee does not have ownership of the subject of the gift until complete ownership has been transferred from the donor to the donee. . . . [some citations omitted.]

Brenda had the burden to prove gift to her. “When a party attacks the legal sufficiency of an adverse finding on an issue on which she has the burden of proof, she must demonstrate on appeal that the evidence establishes, as a matter of law, all vital facts in support of the issue... In reviewing a matter of law challenge, the reviewing court must first examine the record for evidence that supports the finding, while ignoring all evidence to the contrary... If there is no evidence to support the finding, the

reviewing court will then examine the entire record to determine if the contrary proposition is established as a matter of law... The point of error should be sustained only if the contrary proposition is conclusively established.” *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001). Dan offered evidence that supports the jury’s finding of no gift. Dan denied that he intended to give Brenda one-half of: Trail Creek Ranch, 4RR154; the Village Walk condominium, 4RR154,180; or the Rockport house, 4RR154. Dan testified that his motive in taking title jointly to properties was to create a right of survivorship under Article 7.1 of the Premarital Agreement, not to make a gift in praesenti. 4RR158. Brenda did not offer conclusive proof of gift. Instead, she offered only her conclusory assertions of gift and the vague comments of her friend Diane Rupert. The fact that property was titled in joint names is, by agreement of the parties, no evidence of gift. Premarital Agreement ¶7.1, App. 1; CR311.

Brenda testified that Dan gave her the Trail Creek Ranch in Montana “for my birthday.” 5RR34. Brenda explained:

We were sitting out in the field looking back. It’s a beautiful place and I said – no, he said, What are we going to do with this? I said, Well, I said you could always give it to me for my birthday and he said, Your birthday is not for six months.¹⁶ I said, I can remember that you gave me this for my birthday and you don’t have to buy me anything on my birthday and he said, Happy Birthday.

¹⁶ Brenda’s birthday was June 14, 1958. 5RR54.

5RR34-35. Brenda testified that this supposed conversation occurred *after* the land had been purchased. 5RR54. The alleged gift would therefore constitute a parol gift of land, prohibited by Articles 12.1.3 and 13.1 of the Premarital Agreement, App. 2, CR318. Nor does it meet the legal requirements of a parol gift of land. As stated in *Thompson v. Dart*, 746 S.W.2d 821, 825 (Tex. App.–San Antonio 1988, no writ):

There are three requisites to uphold a parol gift of realty in equity: (1) a gift in praesenti, (2) possession under the gift by the donee with the donor's consent, and (3) permanent and valuable improvements made on the property by the donee with the donor's knowledge or consent or, without improvements, the existence of such facts as would make it a fraud upon the donee not to enforce the gift.

... [T]o be a gift in praesenti, the donor must, at the time he makes it, intend an immediate divestiture of the rights of ownership out of himself and a consequent immediate vesting of such rights in the donee.

Brenda's friend, Diane Rupert, testified by deposition that Dan said "he bought her a ranch in Montana because she had horses also in Montana...." 5RR98. She said it could have been for her birthday or a Christmas gift. 5RR98. Record title to this ranch was in joint names, and under Article 7.1 of the Premarital Agreement joint ownership is no evidence of ownership, which is determined by who pays for the property. Regardless of what Diane Rupert says Dan said, under Article 12.1.3 of the Premarital Agreement, there can be no gift to Brenda of real estate except by deed transferring the property by name to Brenda. App. 1, CR318. None of this is conclusive evidence of gift.

Property to Be Counted in the \$10 Million. Brenda attacks the jury's answer to Questions 4 and 5. Appellant's Brief, pp. 64-66. Question 4 asked whether the value of property in Brenda's name is included in "cash or property having a value of Ten Million Dollars (\$10,000,000) as of the date of the dissolution of the marriage." Ratification Agreement, App. 2, CR532, ¶ III.B.4; 4RR91. The court ruled that the Charco Ranch and the homestead are not part of that \$10 million. 4RR92. However, other properties owned by Brenda at the time of divorce could be considered. 4RR93. Scott Turner calculated that to be \$2,064,583 in real estate, \$952,586.01 in cash and investments, and \$525,042.90 in equipment, as well as the \$1,868,164 loan from Kel-Lee Properties (the jury would need to choose between the Kel-Lee Properties real estate or the loan, to avoid double-counting). 4RR95-97; 7RR820; App. 9, 7RR959; 8RR3. In Question 5 the jury answered \$1,536,053.85. CR1017. There is more than a scintilla of evidence to support the jury's verdict. The jury found that Brenda owned: 30% of JM Texas Land Fund No. 4; 50% of FNB Account no. 9557; 50% of Brenda's interest in Kel-Lee Properties, LLC; 50% of the note receivable from Kel-Lee Properties, LLC; 50% of Marion Drive; 50% of her Prosperity Bank account; 50% of the note receivable from the sale of the house on Airport Road; and 50% of Dog & Bee, LLC. CR1015-16. None of these properties were gifts to Brenda. CR1015-16.

The Jury's Actual Fraud Finding. In Question No. 6, the jury found that Brenda committed actual fraud against Dan's separate property. CR1017. The instructions and

questions were adapted from Pattern Jury Charges PJC 206.1 and 206.3. The instructions recognize a relationship of confidence and trust between spouses, that requires utmost good faith and frankness. Actual fraud occurs when a spouse transfers or expends separate property of the other spouse for the primary purpose of depriving the other spouse of the use and enjoyment of the property. PJC 206.3. The jury had ample basis to find that Brenda committed actual fraud with Dan's separate property. Brenda testified that she believed that, when she moved money from the joint account to her sole account, she became the 100% owner of that money. 5RR64-66. Brenda helped herself to astonishing amounts of Dan's separate property. Her transfers in 2008 were described on p. 13 above. In 2012 through 2014, Brenda wrote herself a \$100,000.00 check on May 6, 2012 and put it in her Prosperity Bank account. 3RR206. She followed this pattern with checks for \$50,000.00, \$150,000.00, \$50,000.00, \$50,000.00, \$50,000.00, \$50,000.00, \$150,000.00, \$50,000.00, \$200,000.00, \$100,000.00, \$50,000.00, \$150,000.00, \$125,000.00, \$150,000.00, \$100,000.00, \$50,000.00, \$50,000.00, \$100,000.00, \$50,000.00, \$75,000.00, \$50,000.00, \$50,000.00, \$100,000.00, \$50,000.00, \$50,000.00, \$75,000.00, \$50,000.00, \$50,000.00, \$80,000.00, \$100,000.00, \$50,000.00, \$150,000.00, \$50,000.00, \$50,000.00, \$50,000.00, \$150,000.00, and \$50,000.00. 3RR206-211. As Scott Turner aptly noted: "Money went out of Dan Hughes' account into the joint account and then it went away." 3RR183. Some of these checks said "Dog & Bee" on

them, but recall that, unknown to Dan, Brenda was the sole owner of the Dog & Bee entity structure, and the land for the Dog & Bee was inside Kel-Lee Properties, owned by Brenda and her daughter. In this appeal, Brenda is asking this Court to rule that she owns 100% of the Dog & Bee as her separate property. Appellant's Brief, p. 63. And to the extent this money flowed into Kel-Lee Properties to purchase real estate, creating a \$1,868,164.00 note payable to Brenda on the company's tax return, Brenda is asking this Court to rule as a matter of law that the \$1,868,164.00 debt is 100% her separate property. In essence Brenda is asking this Court to help her complete the fraud.

It is evident that Brenda transferred Dan's funds from joint account #9557 to her Prosperity Bank account, and from there used it to fund entities or buy properties in her name alone, or in the name of her and her daughter or her and her sister. 4RR68. Considering only the period from May 1, 2008 to August 31, 2015, \$19,014,574.82 of Dan's separate property flowed into account #9557, of which \$9,293,742.80 was expended for Dan and Brenda's joint benefit, and the remaining \$10,162,085.72 were transferred to Brenda's accounts or were spent for her benefit. 4RR40-41. Dan told Scott Turner that he didn't intend for that money to become Brenda's separate property at that time, and that her share of it would be included in the \$10 million in property and cash under the Ratification Agreement. 4RR71-72. The jury could have concluded, on the evidence, that Brenda lied to Dan about using his money to buy

properties in his name or their name, or at the very least that Brenda failed to inform Dan that she was using his money to buy assets in her name, in the name of her and her daughter, and in the name of her and her sister. The Statement of Facts in this Brief details more evidence that the jury could have believed was actual fraud.

Regarding the amount of compensation determined by the jury, even if you give Brenda the benefit of the doubt, and treat half of the money passing through the joint account as her separate property, Scott Turner testified to a fraud claim of \$7,618,081.86. 4RR98, 8RR3. In answer to Question No. 7, the jury awarded compensation for actual fraud at \$2,393,206.90. CR1018. Brenda did not file a motion for new trial, and she is precluded from complaining about the excessiveness of damages. TRCP 324(b)(4). Apart from that, the amount of compensation found by the jury is well within the bounds of the evidence presented. *Gulf States Utilities Co. v. Low*, 79 S.W.3d 561, 566 (Tex. 2002) (“In determining damages, the jury has discretion to award damages within the range of evidence presented at trial”).

The Breach of Fiduciary Duty Finding. In response to Question No. 8, the jury found that Brenda breached her fiduciary duty to Dan. CR1019. The evidence outlined above is more than a scintilla of evidence of breach of fiduciary duty. The jury awarded a recovery to Dan’s separate estate of \$2,393,206.90. CR1019. This is the same compensation the jury set for Brenda’s actual fraud. CR 1018. Dan recovered this amount only once, not twice, in the judgment. Brenda did not file a motion for

new trial, and she is precluded from complaining about the excessiveness of damages. TRCP 324(b)(4). Even so, there is substantial evidence that Brenda's breach of fiduciary duty injured Dan in excess of the amount found by the jury. See the argument under Actual Fraud, and the Statement of Facts generally.

BRENDA'S PRAYER FOR RELIEF

Brenda prayed for reversal and rendition on eight issues. Appellant's Brief, pp. 71-72.

The first request is for rendition of judgment that the property characterized by the jury as gifts in Question 1 are her separate property. The jury rejected Brenda's claim of gift on all but three of the assets listed in Question 1. App. 6, CR1016. These three assets were awarded 100% to Brenda. CR1164-65.

Brenda's second request is for rendition of judgment that the family home in Beeville is her separate property. That issue was not submitted to the jury, see CR1015-16, and the issue is moot because the home in Beeville was awarded to Brenda in the Decree of Divorce, CR1164, subject to a life estate that Brenda stipulated Dan could have. 4RR190-96.

Brenda's third request is for rendition of judgment that the Charco Ranch is Brenda's separate property. That issue was not submitted to the jury, and the issue is moot because the Charco Ranch was awarded to Brenda in the Decree of Divorce. CR1163.

Brenda's fourth request is that the Royal Gem of Israel diamond necklace is Brenda's separate property. But Brenda bought that item herself, and did not contend that it was a gift to her. The evidence conclusively showed that the funds to buy the necklace came from Dan's separate property funds.

Brenda's fifth request is for rendition of judgment that Brenda did not owe or breach a fiduciary duty to Dan. The law is clear that Brenda owed Dan a fiduciary duty in her handling of his separate property. See pp. 40-41 above. Reversal and rendition would be appropriate only if there was not more than a scintilla of evidence that she breached her fiduciary duty to Dan. There was more than a scintilla of evidence that Brenda breached that fiduciary duty. Her request for reversal and rendition should be denied.

Brenda's sixth request is for rendition of judgment that Brenda did not commit actual fraud. Reversal and rendition would be appropriate only if there was not more than a scintilla of evidence that she committed fraud. There was substantial evidence that Brenda committed actual fraud. Her request for reversal and rendition should be denied.

Brenda's seventh request for rendition of judgment is that cash and assets in Brenda's name at the time of divorce as a matter of law cannot be counted as part of the \$10,000,000 in cash and assets she is to receive in the divorce. The jury found that some but not all of the property in Brenda's name was part of the \$10 million in cash

and assets she is to receive upon divorce, and there is more than a scintilla of evidence to support the jury's finding.

Brenda's eighth request is for this Court to render judgment that Paragraph III.B.5 of the Ratification Agreement amends Paragraph 7.1 of the Premarital Agreement. There is no connection drawn between the requested ruling and a disposition of the case on appeal, but the fact remains that the evidence shows that Dan's separate property funds were used to acquire the ranches and other assets in question and Brenda failed to conclusively prove that these assets were gifted by Dan to her. Brenda's request for reversal and rendition should be denied.

PRAYER

Appellee, Dan A. Hughes, prays that the trial court's judgment be affirmed, and that he recover costs and all other relief to which he is entitled. Dan A. Hughes pray for relief generally.

Respectfully submitted,

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ATTORNEYS FOR APPELLEE,
DAN A. HUGHES

CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this document was produced on a computer using Corel WordPerfect X7, and contains 14,986 words, as determined by the computer software's word-count function, excluding the sections of the document listed in Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Richard R. Orsinger
Richard R. Orsinger

CERTIFICATE OF SERVICE

I certify that a true copy of this Appellee's Brief was served in accordance with rule 9.5 of the Texas Rules of Appellate Procedure on Brenda Hughes' lead counsel as follows:

Date of service: September 9, 2016
Method of service: Via efile service and email
Lead attorney: Katie Pearson Klein

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/s/ Richard R. Orsinger
Richard R. Orsinger
Attorneys for Appellee, Dan A. Hughes

APPENDIX

| | |
|---|--------------|
| 1. Premarital Agreement (4-15-2003) | CR 298-328 |
| 2. Ratification and Amendment of Premarital Agreement (7-21-2006) | CR529-536 |
| 3. Summary Judgment (9-14-2015) | CR1010 |
| 4. Directed Verdict (9-17-2015) | CR1132-33 |
| 5. Charge Conference (9-17-2015) | 5RR128-143 |
| 6. Jury Verdict (9-18-2015) | CR1011-1022 |
| 7. Checks written by Brenda to herself of \$50,000 or more | 7RR679 |
| 8. Kel-Lee Properties, LLC 2013 Form 1120, Sch. K, line 19 | 7RR954 |
| 9. Assets Solely in Wife's Name | 7RR959 |
| 10. Excerpt from tracing schedule showing transfers from joint account #9557 to Brenda Hughes' Prosperity Bank account | 7RR1130-1136 |

PREMARITAL AGREEMENT

BETWEEN

DAN A. HUGHES

and

BRENDA WEHMEYER CORTISSOZ

WITH SEVERAL SCHEDULES:

SCHEDULE A - SEPARATE ASSETS OF DAN A. HUGHES

- SCHEDULE A - 1** REAL ESTATE LIST, PLUS 3 WARRANTY DEEDS (8 PAGES ATTACHED), AND WITH COMPANY MINERAL INTERESTS (SEE ATTACHED PROSPECT INVENTORY SUMMARY, 45 PAGES), AND: ADDITIONAL OVERRIDING ROYALTY INTEREST (SEE ATTACHED INVENTORY OF PROPERTY SHEET, 15 PAGES)
- SCHEDULE A - 2** STOCKS & BONDS (2 SHEETS ATTACHED)
- SCHEDULE A - 3** MISC. SEPARATE PERSONAL PROPERTY WITH 7 PAGES ATTACHED
- SCHEDULE A - 4** BALANCE SHEET - DOES NOT INCLUDE REAL ESTATE AND PERSONAL ACCOUNT (5 PAGES ATTACHED)
- SCHEDULE A - 5** VEHICLE INFORMATION WITH ATTACHED TITLES, WITH A SINGLE PAGE CHART AND 20 PAGES ATTACHED
- SCHEDULE A - 6** BANK STATEMENTS RE: DAN A. HUGHES COMPANY AND MISC. BANK STATEMENTS FROM VARIOUS ENTITIES OWNED IN WHOLE OR IN PART BY DAN A. HUGHES, WITH 30 PAGES ATTACHED
- SCHEDULE A - 7** BANK STATEMENTS RE: DAN A. HUGHES RANCHES, WITH 14 PAGES ATTACHED
- SCHEDULE A - 8** BANK STATEMENTS RE: DAN A. HUGHES PERSONAL, WITH 3 PAGES ATTACHED

SCHEDULE B - SEPARATE ASSETS OF BRENDA WEHMEYER CORTISSOZ

SCHEDULE C - SEPARATE LIABILITIES OF DAN A. HUGHES, WITH 14 PAGES ATTACHED

SCHEDULE D - SEPARATE LIABILITIES OF BRENDA WEHMEYER CORTISSOZ

Premarital Agreement


The parties to this Premarital Agreement are Dan A. Hughes, a single man of Beeville, Bee County, Texas, and Brenda Wehmeyer Cortissoz, a single woman residing at 891 Bendel Ranch Road; Canyon Lake, Comal County, Texas.

Statement of the Law Related to Marriages, Property and Agreements.

So that both parties can confirm and verify that they are aware of the legal consequences of their agreement, the parties provide a summary of Texas law related to marriages, property and agreements. The parties have separate counsel and shall not rely on this brief summary. The property rights of spouses domiciled in Texas are governed by the Texas community property system. Under this system, Texas law generally determines whether property acquired either before or during marriage is characterized as community or separate property [see TEXAS FAMILY LAW PRACTICE AND PROCEDURE, Task B5, *Characterizing Property of Parties*]. The rules regarding the characterization of property will govern unless the parties agree, by prenuptial or postnuptial contract, to alter the character of their marital property.

Unless the parties provide otherwise, a spouse's *separate property* consists of property, both real and personal, that (1) the spouse owned or claimed before marriage, (2) the spouse acquired after marriage by gift, devise, or descent [Tex. Const. Art. 16 § 15 ; Fam. C. § 3.001(1)(Fam.C. Annotations), (Fam.C. Annotations)], and (3) anything the spouse recovered for personal injuries that he or she sustained during marriage, except any recovery for loss of earning capacity during marriage [Fam. C. § 3.001(3)]. Separate property also normally includes property that was purchased with separate funds [Hilley v. Hilley, 161 Tex. 569, 342 S.W.2d 565, 567 (1961)] or that is otherwise traceable to separate property [see Norris v. Vaughan, 152 Tex. 491, 260 S.W.2d 676, 679-680 (1953)]. If one spouse makes a gift of property to the other, that gift is presumed to include all the income or property that might arise from that gift of property [Tex. Const. Art. 16 § 15 ; Fam. C. § 3.005]. Community property consists of the property, other than separate property, acquired by either spouse during marriage [Fam. C. § 3.002(b) (Fam.C. Annotations)], including whatever is earned from the labor and effort of either spouse [Lee v. Lee, 112 Tex. 392, 247 S.W. 828, 832 (1923)]. Also included in community property are the rent, revenues, and income from separate property [Arnold v. Leonard, 114 Tex. 535, 273 S.W. 799, 803, 805 (1925)].

Prospective spouses may by agreement achieve a different characterization of their property than that provided by the community property system. One result of a partition or exchange under an antenuptial agreement is that property that would otherwise have been characterized as community property will be characterized as separate property [see Tex. Const. Art. 16 § 15 ; Fam. C. § 4.102[Fam.C. Annotations] ; but see Bradley v. Bradley, 725 S.W.2d 503, 504 (Tex. App.—Corpus Christi 1987, no writ)—*prenuptial agreement did not in itself operate to partition and exchange community property interests in spouses' income from personal efforts, but rather it merely contemplated partition and exchange of community property interests at some future time*]. In addition, whereas income from separate property is generally characterized as community property, by agreement the parties may provide that the income of separate property will retain its separate character and will be the separate property of the spouse owning the underlying separate property [see Tex. Const. Art. 16 § 15 ; Fam. C. § 4.103 (Fam.C. Annotations)]. However, if a prenuptial agreement provides that the income or increases in separate property shall remain the separate property of the owner spouse, the community estate may be entitled to reimbursement if the owner spouse expends effort managing his or her separate property [see Pearce v. Pearce, 824 S.W.2d 195, 197, 200 (Tex. App.—El Paso 1992, den.)—involving postnuptial agreement].


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The spouses may also agree between themselves to rebut the presumption that income from donated property is the separate property of the donee spouse [see Fam. C. § 3.005]. The parties may provide that if one spouse makes a gift of property to the other, the gift does not include all the income or property that might arise from that gift of property [see Tex. Const. Art. 16 § 15]. Such a provision may cause the inclusion in the donor's gross estate of the value of the gift for federal estate tax purposes. Section 2036(a) of the Internal Revenue Code provides that the value of the gross estate includes the value of all property that the decedent has transferred, except in case of a bona fide sale for an adequate and full consideration, under which he or she retains for life the right to the income from the property.

Prospective spouses may further agree in writing that all or part of their community property may become the property of the surviving spouse on the death of the other spouse [see Tex. Const. Art. 16 § 15; Prob. C. § 46(b)]. Previously, if spouses wanted to create a right of survivorship in community property, they would have to partition the community property by written agreement before a joint tenancy with a right of survivorship could be created [see Maples v. Nimitz, 615 S.W.2d 690, 695 (Tex. 1981)].

Both the Texas Constitution and the Family Code now authorize prospective spouses to enter into an antenuptial agreement concerning their property rights, both as to property they currently own and as to property, including earnings, that they may acquire after marriage. An *antenuptial agreement*, or *premarital agreement*, is an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage [Fam. C. § 4.001(1)]. *Property* is an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings [Fam. C. § 4.001(2) (Fam.C. Annotations)]. The prospective spouses are not limited to contracting with regard to already-acquired property, but may also enter into agreements altering the character of their future community property. They are also no longer required to divide property equally or to exchange equal amounts, but are permitted to effect an unequal partition or exchange [see Tex. Const. Art. 16 § 15 —amended Nov. 4, 1980; Fam. C. § 4.003 (Fam.C. Annotations)].

The Texas Constitution now provides that persons who are married or who are about to marry may, by written agreement, do the following: (1) partition between themselves all or part of their property then existing or to be acquired; and (2) exchange between themselves one person's community interest in any property for the other person's community interest in other community property then existing or to be acquired [Tex. Const. Art. 16 § 15; see, e.g., Winger v. Pianka, 831 S.W.2d 853, 858 (Tex. App.—Austin 1992, den.)—*amended constitution permits persons about to marry to partition or exchange between themselves salaries and earnings to be acquired by them during their future marriage as separate property*; Dokmanovic v. Schwarz, 880 S.W.2d 272, 272-276 (Tex. App.—Houston [14th Dist.] 1994, no writ)—*antenuptial agreement was valid exchange of community interests in income from earnings to be acquired in future, and language indicating intent to recharacterize income in future did not render agreement unenforceable*]. When a partition or exchange occurs, the portion or interest set aside to each spouse or future spouse becomes part of his or her separate property and estate [Tex. Const. Art. 16 § 15; Fam. C. § 4.102 (Fam.C. Annotations)].

In addition, the spouses may from time to time agree between themselves that the income or property from all or part of either party's existing or future separate property will be the owner-spouse's separate property [Tex. Const. Art. 16 § 15; Fam. C. § 4.103 (Fam.C. Annotations)]. However, one court of appeals has taken the position that this right to determine the character of income or property arising from separate property applies only to actual spouses. Thus, that court would not enforce any premarital agreement to the extent that it attempts to characterize income or other property acquired during the marriage as separate property. The court argued that the constitutional provision


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validating the partition and exchange of property "then existing or to be acquired" applies to "persons about to marry and spouses," but the provision validating written agreements concerning income or property derived from separate property applies only to spouses [Fanning v. Fanning, 828 S.W.2d 135, 141-142 (Tex. App.--Waco 1992), *aff'd in part, rev'd in part on other grounds per curiam*, 847 S.W.2d 225 (Tex. 1993)]. Thus, the Texas Constitution makes a distinction between agreements to partition or exchange, which may be accomplished both by persons about to marry and by spouses, and agreements recharacterizing the income or property from all or part of the separate property of either party, which may be accomplished only by spouses and not by persons about to marry [see Tex. Const. Art. 16 § 15]. Accordingly, parties should consider ratifying any Prenuptial Agreement after marriage.

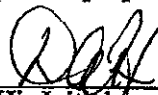
The Texas Family Code further provides that parties to an antenuptial agreement may contract with respect to [Fam. C. § 4.003(a)]:

1. The modification or elimination of spousal support.
2. The making of a will, trust, or other arrangement to carry out the provisions of the agreement.
3. The ownership rights in and disposition of the death benefits from a life insurance policy.
4. The choice of law governing the construction of the agreement.
5. Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

The provisions of an antenuptial agreement may not adversely affect the right of a child to support [Fam. C. § 4.003(b) (Fam.C. Annotations)].

There is some uncertainty as to what law governs a premarital property agreement when the law has changed between the date the contract was formed and the date enforcement is sought [*compare* Sadler v. Sadler, 769 S.W.2d 886, 886-887 (Tex. 1989)—*per curiam*, validity and enforceability of premarital agreement are determined by law in effect at time divorce decree was signed; Chiles v. Chiles, 779 S.W.2d 127, 129 (Tex. App.--Houston [14th Dist.] 1989, den.); Grossman v. Grossman, 799 S.W.2d 511, 513 (Tex. App.--Corpus Christi 1990, no writ) with Beck v. Beck, 814 S.W.2d 745, 749 (Tex. 1991)—1980 amendment to Tex. Const. Art. 16 § 15 authorized future premarital agreements and validated all premarital agreements entered into before 1980 pursuant to Fam. C. § 5.41 (now codified as Fam. C. §§ 4.002, 4.003 (Fam.C. Annotations), 4.106)].

It appears that prospective spouses may affect the way their property will be divided in the event their marriage terminates in divorce if, by antenuptial agreement, they provide that all their property will be held as separate rather than community property. In dividing the property of a divorcing couple, Texas courts draw a clear line between the separate and the community property of the spouses. The community property is divided between the two parties in a manner that the court deems just and right [Fam. C. §§ 7.001 (Fam.C. Annotations), 7.002 (Fam.C. Annotations)]. The separate property of each spouse remains the owner-spouse's and may not be awarded to the other spouse [Cameron v. Cameron, 641 S.W.2d 210, 213 (Tex. 1982)]. For example, an antenuptial agreement in which the prospective spouses provided for the division of property on divorce was enforced in Huff v. Huff, a case in which the divorcing couple's prenuptial agreement provided that each party would retain and manage all of his or her own property and earnings as each party's separate property and that neither party would have community property rights. On appeal, the court held that the trial court did not abuse its discretion in enforcing this agreement when it divided the parties' property [Huff v. Huff, 554 S.W.2d 841, 842-844 (Civ. App.--Waco 1977, dis.)].


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By contrast, a provision whereby the parties agree as to the division of their community property may be unenforceable. Such a provision may conflict with two public policies. One is the policy implicit in Family Code Sections 7.001 [(Fam.C. Annotations) and 7.002 (Fam.C. Annotations)], which empowers a court to divide divorcing parties' property in a manner that the court deems just and right. The other is the policy of the law to encourage the continuation of a marriage and to lend no inducements to its discontinuance. Any agreement construed as a contract between the parties to separate in the future is contrary to public policy and void [Myles v. Arnold, 162 S.W.2d 442, 445 (Civ. App.—El Paso 1942, ref.)].

Parties may wish to provide either that temporary alimony will not be paid or that one party will pay a specified amount to the other in the event of divorce. If parties wish to include such a provision in their antenuptial agreement, the parties understand that its enforceability has not been clearly established in Texas.

Family Code Section 4.003(a)(4) (Fam.C. Annotations), effective September 1, 1987, provides that parties to a premarital agreement may contract with respect to the modification or elimination of spousal support. It remains to be seen whether this statute applies to spousal support pending divorce. In a case decided before the enactment of Family Code Section 4.003(a)(4) (Fam.C. Annotations), a trial court found that a prenuptial agreement between the parties provided that one spouse would not seek temporary alimony in the event of divorce. The validity of the antenuptial agreement was not an issue in the case. On appeal, it was held that, in view of the prenuptial agreement regarding temporary alimony, it was not an abuse of the trial court's discretion to take into consideration the spouse's voluntary payment of temporary alimony in dividing the parties' property [Schecter v. Schecter, 579 S.W.2d 502, 506 (Civ. App.—Dallas 1978, no writ)].

There are competing public policies involved in the areas of antenuptial agreement and divorce. On one hand is the policy favoring broad construction of statutes authorizing premarital marital property agreements in order to allow the parties flexibility to contract with respect to property or other rights incident to the marriage [Williams v. Williams, 569 S.W.2d 867, 870 (Tex. 1978); see Huff v. Huff, 554 S.W.2d 841, 842-844 (Civ. App.—Waco 1977, dis.)]. On the other hand is the competing policy implicit in Family Code Sections 7.001 (Fam.C. Annotations) and 7.002 (Fam.C. Annotations), which empowers a court to divide divorcing parties' property in a manner that the court deems just and right. In addition, since it the policy of the law to encourage the continuation of a marriage and to lend no inducements to its discontinuance, any agreement that is construed as a contract between the parties to separate in the future is contrary to public policy and void [Myles v. Arnold, 162 S.W.2d 442, 445 (Civ. App.—El Paso 1942, ref.)].

The parties acknowledge their understanding of the above as well as further knowledge bestowed by separate legal counsel.

Stipulations

1. Dan A. Hughes and Brenda Wehmeyer Cortisoz, who are not now married, intend to become husband and wife by ceremony to be performed in Hawaii.
2. The parties are entering into this agreement in accordance with article XVI, section 15, of the Texas Constitution, as amended, and relevant sections of the Texas Family Code, altering by agreement what their marital property rights would be in certain property on and during their marriage and determining, in part, the claims each may lawfully assert against the other party and his or her estate, if and when the marriage is dissolved by judicial act or death.


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3. The Texas Family Code provides that the parties to a premarital agreement may contract concerning any matter, including personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty and as long as the rights of a child to receive support are not adversely affected.

4. Each party presently owns real and/or personal property as described in **Schedules A and B**. **Schedule A** contains the property of Dan A. Hughes, and **Schedule B** contains the property of Brenda Wehmeyer Cortisoz. The schedules are attached to this agreement and made a part of it for all purposes.

5. The parties, by entering into this agreement, are not attempting to prejudice the rights of preexisting creditors.

6. The parties do not intend by this agreement to make a gift from one party to the other party, but rather to enter into an agreement that will control their marital property rights and other spousal rights in a manner that is in important respects different from the manner in which the separate and community property rights or spousal claims would arise by operation of law in the absence of this agreement.

7. The parties intend to clarify their respective property rights to eliminate any uncertainty about those rights.

8. Dan A. Hughes and Brenda Wehmeyer Cortisoz intend by this agreement that no community property will be created during their marriage.

In consideration of the mutual love and respect between the parties; in consideration of the mutual promises, agreements, partitions, exchanges, conveyances, releases, waivers, and assignments contained in this agreement; in consideration of the parties' desire to establish rights and obligations by this agreement; and with the intent to be bound fully by the terms of this agreement, the parties covenant, agree, and contract as follows:

Article 1

Representations and Disclosures

1.1 No Oral Representations

Neither party is relying on any representations made by the other party about financial matters of any kind, other than the representations stated in this agreement and in any schedule or exhibit attached to it.

1.2 Disclosure

Each party represents and warrants to the other party that he or she has, to the best of his or her ability, made to the other party a complete and accurate/fair and reasonable disclosure of the nature and extent of his or her property, including values, and financial obligations, contingent or otherwise, and that the disclosure includes but is not limited to the properties and liabilities set forth in **Schedules A, B, C, and D** attached to this agreement and other documentation exchanged between the parties before their execution of this agreement. Each party additionally acknowledges that he or she has been provided a fair and reasonable disclosure of the other party's income, property, and


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financial obligations before the execution of this agreement. Furthermore, and before their execution of this agreement, Dan A. Hughes and Brenda Wehmeyer Cortisoz have previously offered to provide, or have provided, to the other party all information and documentation pertaining to all income, all property and its value, and all financial obligations that have been requested by the other party. Dan A. Hughes and Brenda Wehmeyer Cortisoz each acknowledge that he or she has, or reasonably could have had, full and complete knowledge of the property owned by the other party, as well as complete knowledge of all financial obligations of the other party.

Article 2

Children

2.1 Children

Dan A. Hughes is the parent of the following three children:

- (1) Dan Allen Hughes, Jr., an adult male
307 Grandview
San Antonio, Texas 78209
SSN: 459-84-2148
DOB: December 12, 1957
Place of Birth: Thomas Memorial Hospital; Beeville, Texas
Parents: Dan A. Hughes, Sr. and Juanita Wentz Hughes
- (2) Keleigh Diane Hughes Sasser, an adult female
45 Hewit Place
Corpus Christi, Texas 78404
SSN: 459-84-2137
DOB: January, 29, 1959
Place of Birth: Thomas Memorial Hospital; Beeville, Texas
Parents: Dan A. Hughes, Sr. and Juanita Wentz Hughes
- (3) William Hilton Hughes, an adult male
P. O. Box 4159
Beeville, Texas 78104-4159
SSN: 459-84-2115
DOB: January 15, 1962
Place of Birth: Thomas Memorial Hospital; Beeville, Texas
Parents: Dan A. Hughes, Sr. and Juanita Wentz Hughes

Brenda Wehmeyer Cortisoz is the parent of the following child:

- (1) Kelly Nicole Cortisoz, an adult female
26013 Silver Cloud
San Antonio, Texas 78258
SSN: 632-10-4832
DOB: December 5, 1984
Place of Birth: Santa Rosa Hospital, San Antonio, Texas
Parents: Brenda Wehmeyer Cortisoz and John Joseph Cortisoz


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2.2 *Obligations to Other Party's Children*

Neither party intends to assume and, unless a contrary intent is indicated by appropriate adoption proceedings, neither party will assume by virtue of their marriage any responsibility or obligation now existing or accruing in the future with respect to the other party's child or children, as the case may be, natural or adopted. The parties specifically agree that neither party will be responsible for or be required to pay any expenses for education, including college, for the other party's child or children, as the case may be. Each party agrees to indemnify and hold the other party and his or her property harmless from the assertion of any such claim or obligation now or in the future, except that if either party voluntarily pays or advances any money for educational or other expenses of the other party's child, no obligation of indemnification or reimbursement will arise unless an explicit written understanding to indemnify or reimburse is executed contemporaneously with the payment or advance.

Article 3

Property of the Parties

3.1 *No Joint Ownership*

As of the date of this agreement, the parties do not jointly own, legally or equitably, any property or property rights, nor does any sort of partnership or joint venture, oral or written, exist between the parties.

3.2 *Separate Property of Dan A. Hughes*

Brenda Wehmeyer Cortissoz expressly disclaims any express or tacit understanding or agreement that she has acquired or may in the future acquire any rights in Dan A. Hughes's property or income, including all interest or rights in any nonvested property rights. All property listed in **Schedule A** of this agreement is stipulated and agreed to be the sole and separate property of Dan A. Hughes and will remain the separate property of Dan A. Hughes. All mutations, changes, and increases of the properties owned by Dan A. Hughes at the time of the parties' marriage, including without limitation the properties listed in **Schedule A**, will be and remain the separate property of Dan A. Hughes. All of those properties then existing must be set aside to Dan A. Hughes in the event of a court-ordered declaration of voidness of marriage, annulment, or divorce or set aside to his estate in the event of his death.

Brenda Wehmeyer Cortissoz agrees that Dan A. Hughes's separate property includes but is not limited to the following, now and after marriage:

1. all properties listed in **Schedule A** attached to this agreement;
2. all mutations, changes, and increases in kind or in value of Dan A. Hughes's separate property;
3. all increases in kind or in value of Dan A. Hughes's separate property resulting from the time, talent, labor, or personal efforts of either or both parties;
4. all income and revenues from Dan A. Hughes's separate property, all income and property acquired as a result of Dan A. Hughes's separate property, and all income and property resulting from the reinvestment of that income, including interest and dividend income;


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5. all of Dan A. Hughes's interest in or claim to any future profits of any partnership, joint venture, or corporation owned by Dan A. Hughes at the time of the parties' marriage or acquired by Dan A. Hughes following the marriage, whether the profits are distributed or undistributed;
6. all profits, commissions, distributions, revenues, royalties, wages, salary, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by Dan A. Hughes after the date of the parties' marriage, and all income and property derived from the reinvestment of Dan A. Hughes's profits, commissions, distributions, revenues, royalties, wages, salary, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received during the marriage, together with all interest and dividend income received by Dan A. Hughes during the marriage;
7. all future contributions to all individual retirement accounts, all retirement plans, and all other employee benefit plans made by or on behalf of Dan A. Hughes after the date of the parties' marriage, together with all increases in value of all such plans;
8. all interests in any trust in which Dan A. Hughes has an interest, including but not limited to all corpus of those trusts, as well as all distributed and undistributed income from those trusts;
9. all recovery for personal injuries and/or property losses sustained by Dan A. Hughes during the parties' marriage, including any recovery for loss of earning capacity during the marriage; and
10. all property and property rights acquired by Dan A. Hughes by gift, devise, or descent.

3.3 *Separate Property of Brenda Wehmeyer Cortisoz*

Dan A. Hughes expressly disclaims any express or tacit understanding or agreement that he has acquired or may in the future acquire any rights in Brenda Wehmeyer Cortisoz's property or income, including all interest or rights in any nonvested property rights. All property listed in **Schedule B** of this agreement is stipulated and agreed to be the sole and separate property of Brenda Wehmeyer Cortisoz and will remain the separate property of Brenda Wehmeyer Cortisoz. All mutations, changes, and increases of the properties owned by Brenda Wehmeyer Cortisoz at the time of the parties' marriage, including without limitation the properties listed in **Schedule B**, will be and remain the separate property of Brenda Wehmeyer Cortisoz. All of those properties then existing must be set aside to Brenda Wehmeyer Cortisoz in the event of a court-ordered declaration of voidness of marriage, annulment, or divorce or set aside to her estate in the event of her death.

Dan A. Hughes agrees that Brenda Wehmeyer Cortisoz's separate property includes but is not limited to the following, now and after marriage::

1. all properties listed in **Schedule B** attached to this agreement;
2. all mutations, changes, and increases in kind or in value of Brenda Wehmeyer Cortisoz's separate property;
3. all increases in kind or in value of Brenda Wehmeyer Cortisoz's separate property resulting from the time, talent, labor, or personal efforts of either or both parties;

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4. all income and revenues from Brenda Wehmeyer Cortissov's separate property, all income and property acquired as a result of Brenda Wehmeyer Cortissov's separate property, and all income and property resulting from the reinvestment of that income, including interest and dividend income;
5. all of Brenda Wehmeyer Cortissov's interest in or claim to any future profits of any partnership, joint venture, or corporation owned by Brenda Wehmeyer Cortissov at the time of the parties' marriage or acquired by Brenda Wehmeyer Cortissov following the marriage, whether the profits are distributed or undistributed;
6. all profits, commissions, distributions, revenues, royalties, wages, salary, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by Brenda Wehmeyer Cortissov after the date of the parties' marriage, and all income and property derived from the reinvestment of Brenda Wehmeyer Cortissov's profits, commissions, distributions, revenues, royalties, wages, salary, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received during the marriage, together with all interest and dividend income received by Brenda Wehmeyer Cortissov during the marriage;
7. all future contributions to all individual retirement accounts, all retirement plans, and all other employee benefit plans made by or on behalf of Brenda Wehmeyer Cortissov after the date of the parties' marriage, together with all increases in value of all such plans;
8. all interests in any trust in which Brenda Wehmeyer Cortissov has an interest, including but not limited to all corpus of those trusts, as well as all distributed and undistributed income from those trusts;
9. all recovery for personal injuries and/or property losses sustained by Brenda Wehmeyer Cortissov during the parties' marriage, including any recovery for loss of earning capacity during the marriage; and
10. all property and property rights acquired by Brenda Wehmeyer Cortissov by gift, devise, or descent.

3.4 *No Commingling Intended*

Neither party intends to commingle his or her separate property with the separate property of the other party, except when intentionally done in a joint financial account, and neither party may claim an interest in any separate property of the other party as a result of such commingling, except as provided in this agreement.

3.5 *No Community Estate Will Arise*

Dan A. Hughes and Brenda Wehmeyer Cortissov specifically understand and agree that no community estate will arise or be created during their marriage. Therefore, Dan A. Hughes and Brenda Wehmeyer Cortissov agree that all earnings of each party, together with all income received, including but not limited to interest and dividend income, bonuses, director's compensation, commissions, wages or salary received for services rendered, profits, distributions, revenues, royalties, stock, stock options, warrants, and other compensation and benefits of any type earned or received by that party, and any income and property derived from the reinvestment of such income, will be the separate property of the respective party.


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3.6 Asset Descriptions

The parties have tried to use the correct legal description for each asset listed in any schedule attached to this agreement. If any asset is incorrectly described, the description used is adequate for the purposes of this agreement and accompanying schedules, and the parties agree to execute any additional paperwork required to confirm ownership in the name of the party in whose schedule the asset appears. If Dan A. Hughes has omitted any assets, the parties agree that to the extent he can show that any asset was owned prior to the anticipated marriage, that said assets was separate property of Dan A. Hughes and shall remain so during and after marriage.

3.7 Confirmation of Agreement and Income from Separate Property

The parties agree that, not later than thirty days after their marriage, they will each execute a Property Agreement between Spouses which ratifies this Prenuptial Agreement. The parties agree that, to the maximum extent allowed by law, the failure to execute the Property Agreement will not invalidate this agreement or affect any of its terms or provisions. Whether the Property Agreement is executed or not, all the provisions of this agreement are binding, including but not limited to the effect of causing the income from the separate property of Dan A. Hughes to be Dan A. Hughes's separate property and the income from the separate property of Brenda Wehmeyer Cortisoz to be Brenda Wehmeyer Cortisoz's separate property.

3.8 Management of Properties

Each party will have the full, free, and unrestricted right to manage the separate property over which he or she has control under section 3.101 of the Texas Family Code or succeeding provisions of similar import and nature, including without limitation the right to convey or encumber the property; to dispose of it by sale, gift, or otherwise; and to deal with it without taking into consideration any rights or interests of the other party. If the joinder of Dan A. Hughes or Brenda Wehmeyer Cortisoz ("joining party") should be required by law in connection with the execution of any document by the other party with respect to the separate property of the other party, on request and from time to time, the joining party must execute all such documents necessary to effect the desires of the other party, including gift tax returns, but without any personal liability of the joining party. Neither party will have the authority to encumber or dispose of the other party's separate property without the other party's express written consent.

3.9 Certain Events Not Evidence of Community Property

The following events may not, under any circumstances, be considered evidence of any intention to create community property:

1. the filing of joint tax returns;
2. the taking of title to property, whether real or personal, in joint tenancy or in any other joint or common form;
3. the designation of one party by the other party as a beneficiary of his or her estate or as trustee or any other form of fiduciary;
4. the combining or mixing by one party of his or her separate funds or property with the separate funds or property of the other party, including the pledging of joint or separate credit for the benefit of the other party's separate estate;


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5. any oral statement by either party;
6. any written statement by either party, other than a written agreement that contains an explicit statement of the party's intent to change the party's separately owned property into jointly owned property or a written agreement designating a particular piece of property as a gift to the other party;
7. the payment from the funds of either party for any obligations, including but not limited to the payment of mortgages, interest, real property taxes, repairs, or improvements on a separately or jointly held residence; and
8. the joint occupation of a separately owned residence, even though designated as a homestead.

The provisions of this section 3.9 are not comprehensive.

Article 4

Liabilities

4.1 *Liabilities of Dan A. Hughes*

The liabilities and obligations described in **Schedule C**, which is attached to this agreement and made a part of it for all purposes, and all other liabilities and obligations of Dan A. Hughes as of the date of the parties' marriage that are not included in **Schedule C** are the sole and separate property liabilities and obligations of Dan A. Hughes and must be satisfied and paid solely from his separate estate. Dan A. Hughes agrees to forever hold harmless, indemnify, and defend Brenda Wehmeyer Cortisoz and her property from any claim arising from these liabilities and obligations.

Any taxes, interest, or penalties that Dan A. Hughes may owe to any taxing authority, foreign or domestic, for years or taxable periods before the date of the parties' marriage are the sole and separate property liabilities and obligations of Dan A. Hughes, to be satisfied and paid solely from his separate estate and from which he agrees to forever hold harmless, indemnify, and defend Brenda Wehmeyer Cortisoz and her property from any claim.

4.2 *Liabilities of Brenda Wehmeyer Cortisoz*

The liabilities and obligations described in **Schedule D**, which is attached to this agreement and made a part of it for all purposes, and all other liabilities and obligations of Brenda Wehmeyer Cortisoz as of the date of the parties' marriage that are not included in **Schedule D** are the sole and separate property liabilities and obligations of Brenda Wehmeyer Cortisoz and must be satisfied and paid solely from her separate estate. Brenda Wehmeyer Cortisoz agrees to forever hold harmless, indemnify, and defend Dan A. Hughes and his property from any claim arising from these liabilities and obligations.

Any taxes, interest, or penalties that Brenda Wehmeyer Cortisoz may owe to any taxing authority, foreign or domestic, for years or taxable periods before the date of the parties' marriage are the sole and separate property liabilities and obligations of Brenda Wehmeyer Cortisoz, to be satisfied and paid solely from her separate estate and from which she agrees to forever hold harmless, indemnify, and defend Dan A. Hughes and his property from any claim.


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4.3 *Future Business Transactions of Dan A. Hughes*

To protect Brenda Wehmeyer Cortissov's separate property from liability associated with any future business transactions following the parties' marriage, excluding transactions conducted by Dan A. Hughes on behalf of his employer, Dan A. Hughes agrees to take all reasonable steps and perform all reasonable actions to ensure that all future business transactions in which Dan A. Hughes is involved during the parties' marriage are handled either through a separate-property entity of Dan A. Hughes that exists now or through a new entity capitalized with Dan A. Hughes's separate property in the future. Further, Dan A. Hughes agrees to take all steps and perform all actions necessary to prevent Brenda Wehmeyer Cortissov's separate property from being an obligor, a guarantor, or in any way liable for any future business transactions in which Dan A. Hughes participates.

4.4 *Future Business Transactions of Brenda Wehmeyer Cortissov*

To protect Dan A. Hughes's separate property from liability associated with any future business transactions following the parties' marriage, excluding transactions conducted by Brenda Wehmeyer Cortissov on behalf of her employer, Brenda Wehmeyer Cortissov agrees to take all reasonable steps and perform all reasonable actions to ensure that all future business transactions in which Brenda Wehmeyer Cortissov is involved during the parties' marriage are handled either through a separate-property entity of Brenda Wehmeyer Cortissov that exists now or through a new entity capitalized with Brenda Wehmeyer Cortissov's separate property in the future. Further, Brenda Wehmeyer Cortissov agrees to take all steps and perform all actions necessary to prevent Dan A. Hughes's separate property from being an obligor, a guarantor, or in any way liable for any future business transactions in which Brenda Wehmeyer Cortissov participates.

4.5 *Pending or Future Litigation*

Dan A. Hughes agrees to indemnify and hold Brenda Wehmeyer Cortissov and her property harmless from all costs and liabilities arising from all pending and future litigation caused or alleged to have been caused solely by Dan A. Hughes's acts or omissions.

Brenda Wehmeyer Cortissov agrees to indemnify and hold Dan A. Hughes and his property harmless from all costs and liabilities arising from all pending and future litigation caused or alleged to have been caused solely by Brenda Wehmeyer Cortissov's acts or omissions.

Article 5

Future Credit Transactions

5.1 *Future Credit Transactions of Parties*

If either party enters into a transaction wherein either party becomes obligated on any debt, and unless a contrary intent is specifically and expressly stated, the obligation must be satisfied by the party incurring the obligation or liability wholly from that party's separate property, and that party must hold the other party and his or her property harmless from the obligation and indemnify him or her if he or she is ever required to satisfy the obligation. The assets, if any, acquired through any such credit transactions will be and remain the separate property of a party to the extent the party obligates his or her separate property for the credit extended in acquiring the assets or resulting in the acquisition of the assets. Similarly, any business failure of the parties or any bankruptcy, reorganization, composition, arrangement, or other debtor/creditor action of or against a party will in no way affect the other party, and neither party is relying or will rely on the other party for any credit, accommodation, or indulgence in these regards.


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Article 6

Household and Personal Expenses

6.1 *Household and Personal Expenses*

The parties may agree to maintain one or more joint bank accounts, which will be designated as the "Hughes Household Account" or some similar name, and that the account will be used for the purposes described below. In such event, Dan A. Hughes agrees to contribute \$4,000 per month. Except as otherwise specifically stated, the funds on deposit in the account will be used for payment of the mortgage payment (principal and interest), rent, groceries, utilities, maintenance and repairs, and all other miscellaneous household expenses (collectively called "living expenses") that may arise during the marriage. The payment by Dan A. Hughes of all or a majority of any living expenses will not create a right of reimbursement by the party paying those living expenses, affect the character of any property currently in existence or property that may be acquired in the future, or create an ownership interest in any property by a party that the party does not already have and does not acquire in the future by other means.

To the extent the parties elect to open and maintain one or more joint bank accounts, each party will have an undivided one-half interest in the funds on deposit in the account(s) as his or her separate property. Each party will have an undivided one-half interest in all assets acquired with any funds from a joint bank account as his or her separate property.

If either party dies, all funds remaining in any joint bank account(s) will be the sole and separate property of the surviving party.

Article 7


Joint Acquisition of Assets

7.1 *Joint Acquisition of Assets*

The parties will have the option, but not the obligation, to acquire assets together in their joint names. If the parties jointly acquire assets following their marriage, they will each own an undivided interest in the jointly acquired assets as their respective sole and separate property in an amount equal to the percentage of their respective contributions toward the purchase of the assets. If the parties jointly acquire assets, and to the extent legal title to any or all of the assets can be perfected in their joint names, such as title to an automobile, boat, or real property, they will obtain title in their joint names. However, even though title to an asset acquired by the parties is held in their joint names, the percentage of ownership of such an asset will be controlled by the provisions of this article, and the taking of title in their joint names may not be interpreted to mean that each party has an undivided 50 percent ownership interest in jointly acquired assets. If legal title cannot be obtained in the parties' joint names with respect to a jointly acquired asset, the parties agree to execute a memorandum stipulating that the asset was jointly acquired by the parties. Jointly acquired property may not be deemed to be community property but instead will constitute each party's separate property in proportion to that party's contribution to the purchase price; provided, however, that if there are no records verifying the amount of each party's contribution toward the purchase of an asset, each party will own an undivided 50 percent interest in that asset. If the evidence of title reflects both parties' names, the parties will own that property as joint tenants with right of survivorship.


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Article 8

The parties acknowledge that they have secured separate tax advice from other than Michael J. Sullivan or any other attorney with the law firm of Upton, Mickits, Hardwick & Heymann, LLP, and based on that other advice, they include and / or omit certain provisions thus:

Taxes

8.1 Tax Liability

The parties agree to execute separate income tax returns during their marriage unless they agree that it is to their mutual advantage to file a joint tax return for any year.

For each year of the parties' marriage, Dan A. Hughes must report all of his separate-property income. In calculating Dan A. Hughes's separate-property tax liability, he is entitled to use all withholding, estimated tax payments, exemptions, deductions, charitable contributions, and tax credits (sometimes collectively called "adjustments") that are solely attributable to his separate-property estate and income. Dan A. Hughes is further entitled to use all current and prior year carryforwards (as well as all carryforwards arising in the future), including but not limited to net operating losses, passive losses, suspended losses, long-term capital losses, and short-term capital losses (sometimes collectively called "carryforwards") that are strictly associated with his separate-property estate and income. The income tax liability arising from Dan A. Hughes's separate property is the sole liability of Dan A. Hughes, who agrees to fully discharge that tax liability, including penalties and interest, if any, out of his separate-property estate. Dan A. Hughes further agrees to indemnify and hold Brenda Wehmeyer Cortisoz and her separate property harmless from (and Dan A. Hughes releases Brenda Wehmeyer Cortisoz and her property from) all such tax liability, including penalties and interest, if any, together with all tax liens of every kind and character that might hereafter arise from the filing of his separate return or his failure to file necessary or proper returns or to pay the required taxes with respect to his separate-property taxable income.

For each year of the parties' marriage, Brenda Wehmeyer Cortisoz must report all of her separate-property income. In calculating Brenda Wehmeyer Cortisoz's separate-property tax liability, she is entitled to use all adjustments and carryforwards that are solely attributable to her separate-property estate and income. The income tax liability arising from Brenda Wehmeyer Cortisoz's separate property shall be the sole liability of Brenda Wehmeyer Cortisoz, who agrees to fully discharge that tax liability, including penalties and interest, if any, out of her separate-property estate. Brenda Wehmeyer Cortisoz further agrees to indemnify and hold Dan A. Hughes and his separate property harmless from (and Brenda Wehmeyer Cortisoz releases Dan A. Hughes and his property from) all such tax liability, including penalties and interest, if any, together with all tax liens of every kind and character that might hereafter arise from the filing of her separate return or her failure to file necessary or proper returns or to pay the required taxes with respect to her separate-property taxable income.

Each party is solely obligated to pay, from his or her separate-property estate, all estimated tax payments, if any, associated with his or her separate-property tax liability that are required to be paid for all taxable years that the parties are married.

All tax refunds that may be received in the future are the sole and separate property of the party whose separate-property estate generated the refund.


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8.2 Joint Tax Returns

Notwithstanding the provisions of paragraph 8.1 above and the intent and desire of the parties to file separate tax returns and to retain the wholly separate character of their respective separate properties, the parties acknowledge that the Internal Revenue Code, as amended, and the regulations thereunder, and similar codes and regulations of other states in certain instances provide, or may provide in the future, savings in taxes for married couples filing joint returns. If that is the case, the parties may file joint returns, but their election to file joint tax returns for any year of their marriage does not constitute a waiver of any provision of this agreement.

Article 9

Dissolution of Marriage by Court Order

9.1 Property to Dan A. Hughes

If either party files any proceeding for divorce, annulment, or to declare their marriage void (a "dissolution proceeding"), Brenda Wehmeyer Cortisoz agrees that Dan A. Hughes will be awarded all his separate property, including all property described in this agreement as being the separate property of Dan A. Hughes. Brenda Wehmeyer Cortisoz agrees to release all interests or claims she may have in Dan A. Hughes's separate property. Brenda Wehmeyer Cortisoz further agrees to execute any documents necessary to set aside and confirm to Dan A. Hughes his separate property and to release any and all claims that Brenda Wehmeyer Cortisoz might have in and to Dan A. Hughes's separate property.

9.2 Property to Brenda Wehmeyer Cortisoz

In the event of a dissolution proceeding between the parties, Dan A. Hughes agrees that Brenda Wehmeyer Cortisoz will be awarded all her separate property, including all property described in this agreement as being the separate property of Brenda Wehmeyer Cortisoz. Dan A. Hughes agrees to release all interests or claims he may have in Brenda Wehmeyer Cortisoz's separate property. Dan A. Hughes further agrees to execute any documents necessary to set aside and confirm to Brenda Wehmeyer Cortisoz her separate property and to release any and all claims that Dan A. Hughes might have in and to Brenda Wehmeyer Cortisoz's separate property.


9.3 Liabilities to Dan A. Hughes

In the event of a dissolution proceeding between the parties, Dan A. Hughes agrees to be responsible for and pay all liabilities and obligations associated with his separate property, including all property described in this agreement as being the separate property of Dan A. Hughes. Dan A. Hughes further agrees to indemnify and hold Brenda Wehmeyer Cortisoz and her property harmless from all liabilities associated with Dan A. Hughes's separate property.

9.4 Liabilities to Brenda Wehmeyer Cortisoz

In the event of a dissolution proceeding between the parties, Brenda Wehmeyer Cortisoz agrees to be responsible for and pay all liabilities and obligations associated with her separate property, including all property described in this agreement as being the separate property of Brenda Wehmeyer Cortisoz. Brenda Wehmeyer Cortisoz further agrees to indemnify and hold Dan A. Hughes and his property harmless from all liabilities associated with Brenda Wehmeyer Cortisoz's separate property.


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9.5 *Waiver of Temporary Spousal Support, Spousal Maintenance, and Alimony*

The parties acknowledge there is no clear case law in Texas concerning the ability to waive spousal maintenance provisions of the Texas Family Code, chapter 8. Despite that, the parties voluntarily provide and contract:

Neither party is entering into the marriage to obtain spousal maintenance of any kind in the event of a dissolution proceeding. Each party waives any right that may exist under law to seek or obtain spousal maintenance or alimony from the other party. If a court of competent jurisdiction orders either party to pay to the other party, or to a third party on behalf of the other party, temporary spousal support or alimony of any kind during the pendency of a dissolution proceeding, that temporary spousal support or alimony paid by one party to the other in connection with such a dissolution proceeding must be reimbursed to the party paying the spousal support or alimony within five days after receipt by the receiving party. Thus, for example, if \$1,000 in temporary alimony is paid by Dan A. Hughes to Brenda Wehmeyer Cortissoz during the pendency of a dissolution proceeding, the sum of \$1,000 must be reimbursed to Dan A. Hughes by Brenda Wehmeyer Cortissoz within five days after Brenda Wehmeyer Cortissoz receives the \$1,000 from Dan A. Hughes.

The parties agree, in the event the receiving party fails to reimburse the paying party as required above, that the party paying the temporary spousal support, spousal maintenance, or alimony shall be allowed a dollar-for-dollar offset against all future temporary spousal support, spousal maintenance, or alimony payments to be paid by the paying party to the receiving party. In the event of a failure by the receiving to reimburse any temporary spousal support, spousal maintenance, or alimony payment to the paying party within five days as required above, the paying party shall notify the receiving party of the paying party's intent to exercise his or her right to offset all amounts unreimbursed at that point against all subsequent temporary spousal support, spousal maintenance, or alimony payments to be paid by the paying party. The paying party shall also notify the receiving party exactly which financial obligations the unreimbursed payments will be offset against. On receipt of that notice from the paying party, the receiving party shall be discharged from the obligation of reimbursement to the extent of the amount of the offset.

9.6 *Waiver of Right to Occupy Separate-Property Residence*

In the event of the filing of a dissolution proceeding, and in the event the parties' marital homestead is owned by one party as his or her separate property, the nonowner spouse agrees to waive all right he or she may have to continue residing in the marital homestead, both during the pendency of the dissolution proceeding and following the dissolution of the parties' marriage. In that event, the nonowning spouse agrees to vacate the marital homestead no later than 10 days following his or her receipt of notice of the filing of the dissolution proceeding.

9.7 *Release and Waiver*

If either party files a dissolution proceeding, neither party may request the Court to divide the property of either or both parties in a manner contrary to the terms of this agreement.

Each party relinquishes, disclaims, and waives all rights, title, and interest that he or she may have to seek a division of property and liabilities in a dissolution proceeding contrary to what is provided for in this agreement.


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9.8 *Division of Community Estate, if any, although none intended*

If the parties' marriage is dissolved by court order, all community property acquired during the marriage, if any, must be equally divided between the parties. No community property is contemplated by the marriage, but if there is any, then this paragraph applies.

9.9 *Attorney's Fees*

During the pendency of any dissolution proceeding, neither party may be required to pay interim attorney's fees, costs, or other expenses to the other party or the other party's attorney. Each party must pay his or her own attorney's fees, costs, and other expenses on final hearing of any dissolution proceeding.

Article 10

Dissolution of Marriage by Death

10.1 *Dan A. Hughes's Acceptance of Brenda Wehmeyer Cortisoz's Will and Waivers to Be Signed on Death of Brenda Wehmeyer Cortisoz*

Dan A. Hughes agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of Brenda Wehmeyer Cortisoz's death in full discharge, settlement, and satisfaction of any and all right, title, and interest that he, as Brenda Wehmeyer Cortisoz's husband, might otherwise acquire in her estate and property.

If the marriage of the parties is dissolved by the death of Brenda Wehmeyer Cortisoz, Dan A. Hughes agrees and hereby binds his personal representatives and heirs to agree to release and convey to Brenda Wehmeyer Cortisoz's estate any interest he may then have or claim to have in the separate property of Brenda Wehmeyer Cortisoz, including any property described in this agreement as being the separate property of Brenda Wehmeyer Cortisoz or as belonging to Brenda Wehmeyer Cortisoz's separate estate, other than any benefit conferred on Dan A. Hughes in article 11 of this agreement. Dan A. Hughes agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this agreement. Brenda Wehmeyer Cortisoz hereby binds her personal representatives and heirs to release and convey to Dan A. Hughes all of the interest, if any, that Brenda Wehmeyer Cortisoz or her estate may have in the then separate property of Dan A. Hughes and in all the property described in this agreement as being the separate property of Dan A. Hughes or as belonging to Dan A. Hughes's separate estate unless otherwise provided for in article 11 of this agreement.

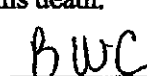
10.2 *Brenda Wehmeyer Cortisoz's Acceptance of Dan A. Hughes's Will and Waivers to Be Signed on Death of Dan A. Hughes*

Brenda Wehmeyer Cortisoz agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of Dan A. Hughes's death in full discharge, settlement, and satisfaction of any and all right, title, and interest that she, as Dan A. Hughes's wife, might otherwise acquire in his estate and property.

Unless designated as a named beneficiary under a written instrument, Brenda Wehmeyer Cortisoz waives and releases to Dan A. Hughes, his executors, administrators, or assigns, any and all rights of election given to her as the wife of Dan A. Hughes, or through her to her heirs, to take against his last will and testament under any statutes, now or hereafter in force, in Texas or any other state or foreign nation in which Dan A. Hughes may have property at the time of his death.


His Initials

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Her Initials

If the marriage of the parties is dissolved by the death of Dan A. Hughes, Brenda Wehmeyer Cortisoz agrees and hereby binds her personal representatives and heirs to agree to release and convey to Dan A. Hughes's estate any interest she may then have or claim to have in the separate property of Dan A. Hughes, including any property described in this agreement as being the separate property of Dan A. Hughes or as belonging to Dan A. Hughes's separate estate, other than any benefit conferred on Brenda Wehmeyer Cortisoz in article 11 of this agreement. Brenda Wehmeyer Cortisoz agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this agreement. Dan A. Hughes hereby binds his personal representatives and heirs to release and convey to Brenda Wehmeyer Cortisoz all of the interest, if any, that Dan A. Hughes or his estate may have in the then separate property of Brenda Wehmeyer Cortisoz and in all the property described in this agreement as being the separate property of Brenda Wehmeyer Cortisoz or as belonging to Brenda Wehmeyer Cortisoz's separate estate unless otherwise provided for in article 11 of this agreement.

10.3 Family Allowance to Surviving Spouse

The parties agree that the surviving spouse will not have the right to petition the court for the payment of a family allowance for the support of the surviving spouse following the death of a party. In that regard, the surviving spouse hereby waives and releases to the deceased party and his or her executors, administrators, or assigns any and all rights to a family allowance now or hereafter in force in Texas or any other state or foreign jurisdiction.

10.4 Life Estate in Homestead

The parties agree that Brenda Wehmeyer Cortisoz will have a life estate in the homestead of the parties if, at the time of Dan A. Hughes' death, the parties are still married to each other and there is not pending any dissolution proceeding or a suit for declaratory judgment to determine the validity of all or any portion of this agreement (a "declaratory judgment proceeding"). Likewise, the parties further agree that, if Dan A. Hughes dies at a time when a dissolution proceeding or a declaratory judgment proceeding is pending with respect to the parties' marriage, then Brenda Wehmeyer Cortisoz also irrevocably waives any right she might otherwise then have under the provisions of any "homestead" or "life estate" rights, now or hereafter in force under the constitution or the laws of Texas or any other state or foreign nation, as well as all rights she might have under the provisions of the Texas Probate Code, as amended, relating to the right to have a life estate in the homestead of the parties.

Except as noted, in the event of Dan A. Hughes' death, Brenda Wehmeyer Cortisoz irrevocably waives any right she might otherwise then have under the provisions of any "homestead" rights, now or hereafter in force under the constitution or the laws of Texas or any other state or foreign nation, as well as all rights she might have under the provisions of the Texas Probate Code, as amended, relating to the right to have a life estate in the homestead of the parties.

Article 11

The parties acknowledge that the waiver of an interest in certain retirement benefits is controlled by federal law. The parties acknowledge that they have been shown such law by their respective lawyers.


His Initials

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Her Initials

Retirement Benefits

11.1 Waiver of Retirement Benefits by Dan A. Hughes

Unless named by a written instrument as a beneficiary by Brenda Wehmeyer Cortisoz, Dan A. Hughes waives all right, title, and interest, if any, that he may acquire by virtue of his marriage to Brenda Wehmeyer Cortisoz in all of Brenda Wehmeyer Cortisoz's retirement benefits and disability benefits, whether lump sum or installment, any profit-sharing interests, and any other employee benefits arising out of Brenda Wehmeyer Cortisoz's past, present, or future employment. Dan A. Hughes acknowledges that this waiver includes all rights that he may have to receive benefits or payments from any 401(k) plan, SEP account, individual retirement account, profit-sharing plan, or any other type of employee benefit plan that Brenda Wehmeyer Cortisoz has or may have in the future. Dan A. Hughes further waives all rights he may have, after the marriage of the parties, to participate in any decisions concerning the designation of beneficiaries or election of benefits or any other types of decisions to be made by Brenda Wehmeyer Cortisoz under the terms of her current or future employee benefit plan or plans. Dan A. Hughes agrees to execute the Property Agreement between Spouses within five days of being presented that document in order to comply with all requests by Brenda Wehmeyer Cortisoz involving Brenda Wehmeyer Cortisoz's designation of beneficiaries in connection with her current or future employee benefit plan or plans of any type. Dan A. Hughes further agrees to consent in writing to, and accept, Brenda Wehmeyer Cortisoz's designation of beneficiary with respect to the plan or plans and to sign any spousal consent that might be requested or required by Brenda Wehmeyer Cortisoz at any time with respect to any such plan or plans, even if the consent does not provide for the payment of survivor benefits on Brenda Wehmeyer Cortisoz's death.

11.2 Waiver of Retirement Benefits by Brenda Wehmeyer Cortisoz

Unless named by a written instrument as a beneficiary by Dan A. Hughes, Brenda Wehmeyer Cortisoz waives all right, title, and interest, if any, that she may acquire by virtue of her marriage to Dan A. Hughes in all of Dan A. Hughes's retirement benefits and disability benefits, whether lump sum or installment, any profit-sharing interests, and any other employee benefits arising out of Dan A. Hughes's past, present, or future employment. Brenda Wehmeyer Cortisoz acknowledges that this waiver includes all rights that she may have to receive benefits or payments from any 401(k) plan, SEP account, individual retirement account, profit-sharing plan, or any other type of employee benefit plan that Dan A. Hughes has or may have in the future. Brenda Wehmeyer Cortisoz further waives all rights she may have, after the marriage of the parties, to participate in any decisions concerning the designation of beneficiaries or election of benefits or any other types of decisions to be made by Dan A. Hughes under the terms of his current or future employee benefit plan or plans. Brenda Wehmeyer Cortisoz agrees to execute the Property Agreement between Spouses within five days of being presented that document in order to comply with all requests by Dan A. Hughes involving Dan A. Hughes's designation of beneficiaries in connection with his current or future employee benefit plan or plans of any type. Brenda Wehmeyer Cortisoz further agrees to consent in writing to, and accept, Dan A. Hughes's designation of beneficiary with respect to the plan or plans and to sign any spousal consent that might be requested or required by Dan A. Hughes at any time with respect to any such plan or plans, even if the consent does not provide for the payment of survivor benefits on Dan A. Hughes's death.


His Initials


Her Initials

Article 12

Gifts

12.1 Gifts

The parties acknowledge that during their marriage each party may, from time to time, make gifts of property to the other party. These interspousal gifts may be made on a special occasion, such as a birthday or anniversary, or on any other occasion a party may choose. The parties recognize that frequently claims of "gifts" are alleged in the context of a dissolution proceeding. To remove any uncertainty about the issue of interspousal gifts, the parties agree that:

1. Gifts of wearing apparel, jewelry, and athletic equipment may be established by parol testimony if the item or property is customarily used and enjoyed exclusively by the party claiming it as a gift to him or her;
2. Gifts of other items of personal property not covered by item 1 above, such as furnishings, artwork, cash, and collections, must be established by clear and convincing evidence; and
3. Any property that is held by title, as in a deed, in a certificate, or by account name, may not be effectively transferred to the party claiming it as a gift unless, in fact, the deed, certificate, or account is transferred by name to the party claiming the gift.

12.2 Gift Tax Consequences

Each party retains the right to make gifts of his or her separate property without regard to blood or other relationship of the donee. Conditional on any such gift being made from the separate property of a party, the party making the gift may deem the other party as the donor of one-half of the gift for federal tax purposes, if allowable under the relevant law, but without personal liability to the deemed donor. If the deemed donor is held responsible for the payment of federal gift tax, the actual donor must indemnify and hold harmless the deemed donor and his or her property from the liability and must reimburse the deemed donor the amount of the tax, including all penalties and interest, if any, within ten days after the deemed donor has paid any such taxes, penalties, or interest.

Article 13

Independent Conveyances or Bequests

13.1 Independent Conveyances or Bequests

If either party voluntarily conveys to the other party an interest in his or her separate property that is declared by law, or by this agreement, to be the separate property of one party, either by will, survivorship agreement, or instrument of conveyance or by document of title signed by the transferring party, the provisions of that will, survivorship agreement, instrument of conveyance, or document of title control over the provisions of this agreement to the extent of any conflict between the two documents regarding such property other than property that is personal to the other party. Absent such a will, survivorship agreement, instrument of conveyance, or document of title expressly conveying such property, all properties remain in the ownership of the party owning or designated as owning the property as his or her separate property.


His Initials

Page 20 of 28


Her Initials

Nothing in this agreement may be construed as prohibiting one party from giving property to the other party by will, survivorship agreement, instrument of conveyance, document of title, or other written instrument between the parties.

Article 14

General Agreements

14.1 General Agreements

Except as specifically set forth in this agreement to the contrary, Dan A. Hughes and Brenda Wehmeyer Cortissoz agree to the following:

1. That the separate property of each party, and the property described or created in this agreement as being the separate property of or belonging to the separate estate of each party, will be free from any claim of the other party that may arise as a result of or during the marriage.
2. That any money used for the benefit of the other party will be presumed to be a gift to the other party, as contrasted with a payment for which reimbursement or repayment is later expected, unless the parties agree otherwise in writing.
3. That this agreement applies during the lifetime of both parties, including on dissolution of their marriage by court order, as well as on the death of either or both parties.
4. That this agreement extends to any rights, whether choate or inchoate, that may arise under the laws of any jurisdiction.

Article 15

Reimbursement

15.1 No Reimbursement Claims

The parties agree that neither party will be entitled to any reimbursement based on the time, talent, and effort expended by either party to benefit or enhance the other party's separate estate. No reimbursement claims may be allowed resulting from contributions made by a party from his or her separate estate for the living expenses of the parties, for the ordinary and customary maintenance of the separate property of the other party, or for any sums expended on or for the benefit of the other party. No reimbursement claims may be created as a result of any contribution made by a party from his or her separate estate for the purchase, discharge of any lien or encumbrance on, or improvement of the separate property of the other party.


Article 16

Economic Contribution

16.1 No Claims for Economic Contribution

Dan A. Hughes waives the right to assert any claim for economic contribution, as defined by Texas Family Code, that he might have in the future on behalf of or against the community estate. Dan A. Hughes further waives the right to assert any claim for economic contribution, as defined by the Texas Family Code, that he might have in the future against the separate estate of Brenda Wehmeyer Cortissoz.


His Initials


Her Initials

Brenda Wehmeyer Cortisoz waives the right to assert any claim for economic contribution, as defined by Texas Family Code, that he might have in the future on behalf of or against the community estate. Brenda Wehmeyer Cortisoz further waives the right to assert any claim for economic contribution, as defined by the Texas Family Code, that he might have in the future against the separate estate of Dan A. Hughes.

Article 17

Mediation

17.1 Mediation

The parties agree that this Agreement is not subject to binding arbitration. The parties agree to submit to voluntary, non-binding, mediation of any dispute or controversy regarding the validity, interpretation, or enforceability of this agreement, as well as all issues involving its enforcement in connection with a dissolution proceeding between the parties. Mediation must occur no later than 90 day after any divorce proceeding is filed. If divorce is filed, the parties agree to jointly apply to the court for any orders that are necessary to compel the parties to mediate in accordance with this Agreement. If the parties cannot agree on a Mediator, within fourteen days after either party's written request for mediation, the parties must jointly ask a Court to appoint a mediator. The cost of mediation will be borne equally by the parties. If the parties settle as a result of the voluntary mediation, a judgment setting forth the mediated settlement terms may be entered in any court of competent jurisdiction. If mediation does not result in a voluntary settlement, then the divorce case shall proceed to trial or other appropriate judicial resolution.

Article 18

General Provisions

18.1 When Effective

The parties are executing this agreement before their marriage, to be effective on the date of their marriage, and it will exist through the whole of their marriage and thereafter, until it is fully performed, amended, or revoked. This agreement is void following its execution if the parties are not married within ninety days.

18.2 Execution of Documents

Each party agrees to cooperate fully with the other in performing all acts and in executing, acknowledging, and delivering all instruments and documents required to accomplish the intent of this agreement.

18.3 Presumption of Separate Property

Any property held in Dan A. Hughes's individual name is presumed to be the separate property of Dan A. Hughes. Any property held in Brenda Wehmeyer Cortisoz's individual name is presumed to be the separate property of Brenda Wehmeyer Cortisoz. Any property or liability inadvertently omitted from the schedules attached to this agreement is the separate property or liability of the party to whom it belongs or by whom it was incurred.


His Initials


Her Initials

18.4 Enforceability

This agreement may be enforced by suit in law or equity by either of the parties or by their heirs, executors, attorneys, or assigns. Each party agrees that, by signing this agreement and accepting any benefit whatsoever under it, he or she is estopped and barred from making any claim of any kind at any time to any separate property or the separate estate of the other party or to any property described in this agreement as being the separate property of the other party. Each party waives his or her right to make claims to any separate property of the other party or to any property designated as belonging to the separate estate of the other party, whether the property is acquired before or after this agreement is signed.

18.5 Place of Performance; Governing Law; Application

All rights, duties, and obligations under this agreement are payable and enforceable in Bee County, Texas.

Texas law or United States law, as applicable, governs the construction and enforcement of this agreement to the maximum extent permitted by law.

The parties expressly intend and agree that this agreement applies to and governs all real and personal property, wherever situated, owned by either party at the time of marriage or acquired by either party after marriage, regardless of any change of domicile of the parties or the location of the real estate. This agreement is made in Texas, and Texas law in effect at the date of the parties' marriage must govern and be applied in the interpretation and enforcement of this agreement. If one or both of the parties ever becomes domiciled in a jurisdiction other than Texas, the status of all property thereafter acquired by that party must be controlled to the maximum extent by the terms of this agreement interpreted under Texas law in effect at the date of the parties' marriage. The desire of the parties that each preserve his or her separate property or separate estate under Texas law and keep it free from the claims of the other party corresponds to their desire that each party should have and hold the property free from the claims of the other party under the laws of all other jurisdictions, even if the other jurisdictions do not recognize community property but instead speak of "marital property" and "nonmarital property" or like terms. For any property of either party whose ownership is not controlled by the marital property laws of Texas, when this agreement speaks of property as being the separate property of a party, reference is made to property acquired in such a manner that it would meet the definition of separate property under the Texas Constitution or the Texas Family Code, as amended.

18.6 Successors

This agreement binds and inures to the benefit of the parties and their respective legatees, devisees, heirs, executors, legal and personal representatives, assigns, transferees, and successors in interest.

18.7 Waiver of Breach or Term

The waiver of any breach of any provision of this agreement does not waive any other breach of that or any other provision. Waiver of any term of this agreement may be accomplished only concerning future performance and only by a written instrument signed by both parties expressly stating the provisions waived.

18.8 Amendment or Modification

This agreement may be waived, abandoned, modified, amended, discharged, or terminated only by a written instrument signed by both parties that specifically identifies the waiver, abandonment, modification, amendment, discharge, or termination.


His Initials

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Her Initials

18.9 Attorney's Fees and Expenses for Enforcement

If either party brings an action or other proceeding to enforce this agreement or to enforce any judgment, decree, or order made by a court in connection with this agreement, the prevailing party will be entitled to recover reasonable attorneys' fees and other necessary costs from the other party. If either party files a declaratory judgment proceeding to determine the enforceability of this agreement, neither party will be entitled to an award of attorneys' fees unless a party successfully challenges the validity of this agreement, in which event the court will have the authority to award attorney's fees. If either party seeks to invalidate some or all of this agreement or the related Property Agreement between Spouses or seeks to recover property in a manner at variance with this agreement or the related Property Agreement between Spouses, the successful party will be entitled to recover reasonable attorneys' fees and other necessary costs from the other party.

18.10 Exclusive Remedy for Nonmonetary Breach

Except as expressly provided otherwise in this agreement, the exclusive judicial remedy of either party against the other for failure to perform any nonmonetary duty or obligation under any provision of this agreement is judicial enforcement by judgment for specific performance or mandatory injunction and writ of execution to compel performance, plus reasonable attorney's fees. Neither party is entitled to recover any damages, actual or consequential, for any nonmonetary breach. No failure of either party to perform any nonmonetary duty or obligation under this agreement diminishes or impairs the full effectiveness of its provisions.

18.11 Partial Invalidity

If any provision of this agreement is for any reason found to be unenforceable, all other provisions nonetheless remain enforceable. If a provision is deemed invalid because of its scope or breadth, it must be deemed valid to the extent of the scope or breadth permitted by law.

18.12 Assignment Prohibited

This agreement is personal to the parties, and neither party may assign or delegate any of his or her rights or obligations under it.

18.13 Entire Agreement

This instrument contains the parties' entire agreement on the subject matter of the agreement. This agreement replaces any earlier agreements or understandings, whether written or oral, and there are no contemporaneous written or oral agreements that are not fully expressed in it.

18.14 Titles and Captions

Article headings, titles, and captions contained in this agreement are merely for reference and do not define, limit, extend, or describe the scope of this agreement or any provision.

18.15 No Construction against Draftsman

No provision of this agreement may be interpreted for or against any party because the party or his or her legal representative drafted the provision.


His Initials

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Her Initials

18.16 Representation

The attorney representing Dan A. Hughes is Michael J. Sullivan, employed by the law firm of Upton, Mickits, Hardwick & Heymann, LLP, Frost Bank Plaza, 802 N. Carancahua, Suite 450; Corpus Christi, Texas 78470. The attorney representing Brenda Wehmeyer Cortisoz is Mr. Frank Warner, 310 E. Corpus Christi Street; Beeville, TX 78102, 361-358-2990. Dan A. Hughes has not received any legal, financial, or other kind of advice from Brenda Wehmeyer Cortisoz or from her attorney, Mr. Frank Warner, in connection with the advisability or nonadvisability of entering into this agreement. Brenda Wehmeyer Cortisoz has not received any legal, financial or any other kind of advice from Dan A. Hughes or from his attorney, Ron Stasny or Michael J. Sullivan, in connection with the advisability or nonadvisability of entering into this agreement.

Brenda Wehmeyer Cortisoz acknowledges that she has had the opportunity to retain independent counsel to represent her in connection with this agreement and that she has been encouraged by Dan A. Hughes and others to obtain an attorney of her choice to represent her. Brenda Wehmeyer Cortisoz did find her lawyer on her own. She reaffirms the warranties made by her in this agreement and further represents and warrants that she has the requisite knowledge, skill, and training to fully understand the consequences of her execution of this agreement. Finally, Brenda Wehmeyer Cortisoz represents and warrants that she has not received any legal, financial, or other kind of advice from Dan A. Hughes, or Michael J. Sullivan Sr. or any other attorney with the law firm of Upton, Mickits, Hardwick & Heymann, LLP in connection with the advisability or nonadvisability of entering into this agreement. *Not true BWC*

18.17 Incorporation of Schedules

All schedules to this agreement are fully incorporated into this agreement as completely as if they were copied verbatim in the body of it.

18.18 Nondisqualification

If any dispute arises out of this agreement, whether by arbitration or litigation, each party waives any claim of disqualification against representation of the other party by the attorneys who participated in negotiating and drafting this agreement.

18.19 Suits Affecting the Parent-Child Relationship

Nothing in this agreement affects either party's rights in any suit affecting the parent-child relationship.

18.20 Multiple Originals

This agreement is executed in multiple originals. This agreement is signed after the execution of the Waiver of Disclosure of Financial Information.

Article 19

Representations and Warranties

WARNING

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE IS PERMANENTLY SURRENDERING RIGHTS AND CLAIMS HE OR SHE WOULD OTHERWISE HAVE UNDER TEXAS LAW AND UNDER THE LAW OF OTHER JURISDICTIONS.

[Signature]
His Initials

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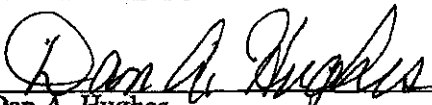
BWC
Her Initials

19.1 *Representations and Warranties of Dan A. Hughes*

My name is Dan A. Hughes. I represent and warrant that:

1. I have carefully read each and every page of this agreement and all schedules attached or referred to, in their entirety.
2. I am fully and completely informed by my attorney about the law relating to the subject matter of this agreement and of the Property Agreement between Spouses and about the spousal rights and liabilities of both parties on entering into marriage.
3. I AM ENTERING INTO THIS AGREEMENT VOLUNTARILY AFTER RECEIVING THE ADVICE OF INDEPENDENT COUNSEL AND AFTER RECEIVING SEPARATE TAX ADVICE FROM A TAX EXPERT WHO IS NOT MY LAWYER.
4. I have given careful and mature thought to the making of this agreement.
5. I fully and completely understand each provision of this agreement, concerning both the subject matter and the legal effect.
6. I have investigated the property and financial obligations of Brenda Wehmeyer Cortisoz sufficiently to satisfy any questions I have in that regard, and I expressly waive any right to disclosure of the property and financial obligations of Brenda Wehmeyer Cortisoz beyond the disclosures provided.
7. I am not relying on any fiduciary obligations owed by one party to the other party or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by Brenda Wehmeyer Cortisoz or anyone acting on her behalf.
8. I fully understand that, by signing this agreement and accepting any benefit whatsoever under it, I will be estopped from making any claim of any kind at any time to any separate property or the separate estate of Brenda Wehmeyer Cortisoz, except as expressly provided for in this agreement.
9. I fully understand that by executing this agreement I may be adversely affecting my inheritance rights and property and that I am permanently surrendering rights to income and property I would otherwise have under Texas law.
10. I am executing this agreement with intent to be bound fully by all its terms.

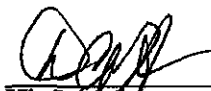
AGREED AS TO THE ENTIRE AGREEMENT



Dan A. Hughes

Date:

April 3, 2007



His Initials

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Her Initials

19.2 Representations and Warranties of Brenda Wehmeyer Cortissoz

My name is Brenda Wehmeyer Cortissoz. I represent and warrant that:

1. I have carefully read each and every page of this agreement and all schedules attached or referred to, in their entirety.
2. I am fully and completely informed by my attorney about the law relating to the subject matter of this agreement and of the Property Agreement between Spouses and about the spousal rights and liabilities of both parties on entering into marriage.
3. I AM ENTERING INTO THIS AGREEMENT VOLUNTARILY AFTER RECEIVING THE ADVICE OF INDEPENDENT COUNSEL AND AFTER RECEIVING SEPARATE TAX ADVICE FROM A TAX EXPERT WHO IS NOT MY LAWYER.
4. I have given careful and mature thought to the making of this agreement.
5. I fully and completely understand each provision of this agreement, concerning both the subject matter and the legal effect.
6. I have investigated the property and financial obligations of Dan A. Hughes sufficiently to satisfy any questions I have in that regard, and I expressly waive any right to disclosure of the property and financial obligations of Dan A. Hughes beyond the disclosures provided.
7. I am not relying on any fiduciary obligations owed by one party to the other party or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by Dan A. Hughes or anyone acting on his behalf.
8. I fully understand that, by signing this agreement and accepting any benefit whatsoever under it, I will be estopped from making any claim of any kind at any time to any separate property or the separate estate of Dan A. Hughes, except as expressly provided for in this agreement.
9. I fully understand that by executing this agreement I may be adversely affecting my inheritance rights and property and that I am permanently surrendering rights to income and property I would otherwise have under Texas law.
10. I am executing this agreement with intent to be bound fully by all its terms.

AGREED AS TO THE ENTIRE AGREEMENT

I am not entering this agreement on independent counsel advice

I do not understand all

of this agreement but am signing it of my own free will.

Brenda Wehmeyer Cortissoz
Brenda Wehmeyer Cortissoz
Date: *04/15/03*

I do not have Counsel.

[Signature]
His Initials

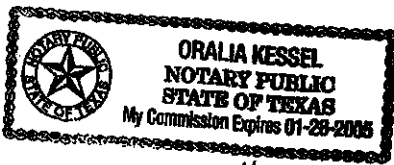
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BWC
Her Initials

EXECUTED in a single original, by agreement, on the dates and at the times of the acknowledgments shown below.

STATE OF TEXAS)
COUNTY OF BEE)

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement. This instrument was acknowledged before me at 4:35 P. M. on April 3, 2003 by Dan A. Hughes.



Oralia Kessel
Notary Public, State of Texas

Hawaii
STATE OF ~~TEXAS~~)
City and COUNTY OF ~~BEE~~ Honolulu) BWC
BWC

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement. This instrument was acknowledged before me at 10:24 A. M. on April 15, 2003 by Brenda Wehmeyer Cortissoz.

Melissa L. Fujioka
Notary Public, State of ~~Texas~~ Hawaii BWC

Melissa L. Fujioka

[Signature]
His Initials

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BWC
Her Initials

LS

Schedule A

To Premarital Agreement between Dan A. Hughes and Brenda Wehmeyer Cortissoz dated _____

The Separate Property of Dan A. Hughes includes property listed in the attached schedules:

SCHEDULE A - 1 REAL ESTATE LIST, PLUS 3 WARRANTY DEEDS (8 PAGES ATTACHED), AND WITH COMPANY MINERAL INTERESTS (SEE ATTACHED PROSPECT INVENTORY SUMMARY, 45 PAGES), AND ADDITIONAL OVERRIDING ROYALTY INTEREST (SEE ATTACHED INVENTORY OF PROPERTY SHEET, 15 PAGES)

SCHEDULE A - 2 STOCKS & BONDS (2 SHEETS ATTACHED)

SCHEDULE A - 3 MISC. SEPARATE PERSONAL PROPERTY WITH 7 PAGES ATTACHED

SCHEDULE A - 4 BALANCE SHEET - DOES NOT INCLUDE REAL ESTATE AND PERSONAL ACCOUNT (5 PAGES ATTACHED)

SCHEDULE A - 5 VEHICLE INFORMATION WITH ATTACHED TITLES, WITH A SINGLE PAGE CHART AND 20 PAGES ATTACHED

SCHEDULE A - 6 BANK STATEMENTS RE: DAN A. HUGHES COMPANY AND MISC. BANK STATEMENTS FROM VARIOUS ENTITIES OWNED IN WHOLE OR IN PART BY DAN A. HUGHES, WITH 30 PAGES ATTACHED

SCHEDULE A - 7 BANK STATEMENTS RE: DAN A. HUGHES RANCHES WITH 14 PAGES ATTACHED

SCHEDULE A - 8 BANK STATEMENTS RE: DAN A. HUGHES PERSONAL WITH 3 PAGES ATTACHED

1. The following real property, in attached Schedule A-1 including but not limited to all rental income, sales proceeds, warranties, keys, house plans, service contracts, and utility deposits relating to it, and more particularly described as follows: [legal description, See Schedule A-1].


His Initials


Her Initials

2. All sums of cash, stocks and bonds in the possession of or subject to the control of Dan A. Hughes, together with all interest income, mutations, enhancements, and increases therefrom, including money on account in banks, savings institutions, or other financial institutions, which accounts stand in Dan A. Hughes's name or from which Dan A. Hughes has a right to withdraw funds or which are subject to Dan A. Hughes's control, including but not limited to money on account in the following banks, savings institutions, or other financial institutions: [See Schedules A-2, 6, 7, 8].
3. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases, mutations, enhancements, interest income, and the proceeds therefrom, and all other rights related to any Keogh plan, profit-sharing plan, retirement plan, pension plan, annuity, money market investment account, individual retirement account, or like benefit program existing by reason of Dan A. Hughes's past, present or future employment.
4. All wearing apparel, jewelry, and other personal effects in the possession of or subject to the control of Dan A. Hughes or otherwise owned by him as of the date of the parties' marriage.
5. All personal property, household furnishings, fixtures, artwork, antiques, china, silver, crystal, equipment, guns, and other household items currently in the possession of or subject to the control of Dan A. Hughes, as well as all other items otherwise owned by him as of the date of the parties' marriage. [See Schedule A-3].
6. All policies of life insurance, including all cash values and any increases, mutations, enhancements, interest income, and dividend income received therefrom, insuring the life of Dan A. Hughes.
7. The trucks and automobiles, together with all prepaid insurance, depicted in Schedule A-5.
8. All other property and property rights set aside to Dan A. Hughes under the terms of this Premarital Agreement. [See Schedule A-4].



Dan A. Hughes



His Initials



Her Initials

RATIFICATION AND AMENDMENT OF PREMARITAL AGREEMENT

THIS AGREEMENT is made this 21st day of July, 2006, between DAN A. HUGHES ("DAN") and BRENDA WEHMEYER CORTISSOZ HUGHES ("BRENDA").

RECITALS

A. DAN and BRENDA were married on April 16, 2003, and since then have been and now are living together as husband and wife in Bee County, Texas.

B. Before their marriage DAN and BRENDA entered into a premarital agreement (the "Premarital Agreement"), which Premarital Agreement was executed by DAN on April 3, 2003, and was executed by BRENDA on April 15, 2003, whereby, among other things, the parties agreed:

1. To retain their respective rights, title, and interest of every kind and character in and to all of their separate property owned at the time of the marriage; and

2. That all mutations, changes and increases in kind or in value of each party's separate property would be retained by that party as his or her separate property; and

3. That all increases in kind and value in each party's separate property resulting from the time, talent, labor, or personal efforts of either or both of the parties would continue to be the separate property of the party who originally owned such property; and

4. That all income and revenue from each party's separate property, all income and property acquired as a result of either party's separate property, and all income and property resulting from the reinvestment of that income, including interest and dividend income shall be that party's separate property; and

5. That all of either party's interest in or claim to a future profit of any partnership, joint venture, or corporation owned by either of the parties at the time of the party's marriage or acquired by either party following marriage, whether the profits are distributed or undistributed shall remain that party's separate property; and

6. That all profits, commissions, distributions, revenues, royalties, wages, salary, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefit of any kind earned or received by either of the parties after the date of the party's marriage, and all income and property derived from the reinvestment of either party's profits, commissions, distributions, revenues, royalties, wages, salary, director's

compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any kind earned or received during the marriage, together with all interest and dividend income, received by either party during the marriage shall be the separate property of the party who receives such amounts; and

7. That all future contributions during the marriage to all individual retirement accounts, all retirement plans, and all other employee benefit plans made by or on behalf either party after the date of the party's marriage, together with all increases in value of all such plans shall be the separate property of the party making such contribution or on whose behalf such contribution was made; and

8. That all interests in any trusts in which either of the parties have an interest, including, but not limited to, all corpus of those trusts, as well as all distributed and undistributed income from those trusts shall be the separate property of the spouse who has an interest in those trusts; and

9. That all recovery for personal injuries and/or property losses sustained by either of the parties during the party's marriage, including any recovery for loss of earnings for incapacity during the marriage shall be the separate property of the spouse sustaining such injury or loss; and

10. That all property and property rights acquired by either of the parties by gift, devise or descent during the marriage shall be the separate property of the party receiving such property by gift, devise, or descent.

C. The parties wish to confirm and ratify all of the provisions of the Premarital Agreement, except as herein amended, by this Ratification and Amendment of Premarital Agreement (the "Ratification and Amendment Agreement").

D. The parties further desire to confirm and agree that the Premarital Agreement applies:

1. To all income and property arising from the separate property heretofore or hereafter acquired by either of them;

2. To all increases in value of separate property arising out of the personal efforts of the owner or attributable to any other cause, reason, or event;

3. To all other property including the characterization and classification of same as described in the Premarital Agreement and in this Ratification and Amendment Agreement; and

4. To all income, compensation and earnings of whatever nature for the personal services of either of the parties.

5. That any and all such income and property shall be the separate property of the spouse who owns the separate property from which the earnings arose, or the spouse whose personal efforts resulted in the earnings or increase in value of such property, and shall not be community property.

E. The parties wish to amend the Premarital Agreement to confirm and agree to the amounts which DAN shall be obligated to provide for BRENDA at the time that their marriage is terminated, either by divorce, annulment or by DAN's death.

NOW, THEREFORE, IT IS AGREED:

AGREEMENT

I.

PROPERTY RIGHTS

A. Confirmation of Property as Separate. The parties hereby confirm that the property described by the Premarital Agreement as separate property of a party continues to be that party's separate property and that all such property now owned by them and to be acquired in the future, including any income heretofore arising from their respective separate property and any increase in value of separate property which has occurred since the date of the marriage or which may hereafter occur including, but not limited to, any increase in value resulting from a party's personal services, skill, efforts, and work, and including any income, compensation or earnings of either party for the personal services of that party, is the separate property of that party. DAN's and BRENDA's separate property as of the execution of the Premarital Agreement is set forth in the Schedules attached to the Premarital Agreement.

B. Confirmation of Property Rights. Each party hereby agrees that to the extent that he or she now owns a community property interest in property of the other party or income which arose from the separate property of the other party as heretofore described and as described in the Premarital Agreement, he or she gives such interest to the party who was the owner of the separate property from which such community property interest arose.

II.

RATIFICATION

The parties hereto hereby confirm and ratify all provisions and terms of the Premarital Agreement, except as specifically amended by Article III of this agreement, and for purposes of such confirmation and ratification hereby incorporate the Premarital Agreement by reference into this Agreement.

III.

DISSOLUTION OF MARRIAGE

A. Confirmation of Provisions of Premarital Agreement. Each of the parties hereby specifically confirm and ratify all of the provisions of Article 9 and Article 10 of the Premarital Agreement which relate to the dissolution of the marriage, except and only to the extent that such provisions are modified by the provisions of Article III, Paragraph B of this Agreement.

B. Obligations of Dan Upon Dissolution of Marriage. Any provision of the Premarital Agreement or this Ratification and Amendment Agreement to the contrary notwithstanding, in the event of the dissolution of the marriage by court order or by the death of Dan, Dan hereby agrees that in either event, Brenda shall be entitled to receive and to own, in fee simple, as her sole and separate property, either by reason of transfer incident to the dissolution of the marriage by court order or by testamentary, non-testamentary or survivorship agreements by reason of Dan's death, the following:

1. All of the right, title, and interest in and to the real property which they now own and occupy as their homestead, together with all improvements thereon, being commonly known as 5156 Business Highway 181 North, Beeville, Texas, and legally described in short form as follows, Lot F, Tract 1 and 2, Hillcrest Heights, Bee County, Texas, consisting of approximately 5.72 acres, and Lot E, Tract 1 and 2, Hillcrest Heights, Bee County, Texas consisting of approximately 5.00 acres, which real property is also commonly known as the Albright property and the Rockhouse property, free and clear of any liens or indebtedness.

2. All of the "tangible personal property" means includes all of the parties' interest in and to (i) household furniture and furnishings, carpets and rugs, kitchenware and household goods and equipment, books, pictures, photographs, works of art, wearing apparel, jewelry, silver, china and other articles of household or personal use which are located at the homestead residence or residences at the time of his death, (ii) personal automobiles, boats, recreational vehicles and recreational equipment, wherever located and (iii) any club memberships, together with all rights that either party may have under any insurance policies relating to any and all of the foregoing. The term "tangible personal property" shall not include any furniture, fixtures, motor vehicles, and equipment used in or made a part of any business in which DAN has an ownership interest and shall not include any aircraft or airplanes, related equipment, and tractors used in connection with the operation of any aircraft or airplane.

3. All of the right, title, and interest in and to the real property consisting of approximately 1,711 acres of land in Bee County, Texas, and commonly known and referred to as the Charco Ranch, free and clear of any liens or indebtedness.

4. Cash or property having a value of Ten Million Dollars (\$10,000,000) as of the date of the dissolution of the marriage.

5. Such assets and property interests, if any, which DAN might give to BRENDA by gifts, inter vivos transfers, testamentary transfers, non-testamentary transfers, survivorship agreements, or other written agreements in addition to those amounts provided in Paragraphs B.1 through B.4 of this Article III; provided, however, it is expressly agreed by the parties that DAN is under no obligation to make any provisions for BRENDA other than those provided for in Paragraphs B.1 through B.4 of this Article III.

IV.

PARTITION, EXCHANGE AND GIFT

Though the parties do not contemplate there is or will be any community property acquired during the marriage, the parties partition, exchange with one another and gift one to the other, all of that which would otherwise be community property or their community estate, now existing or to be acquired, setting aside to each party the property described in the Premarital Agreement as the separate property of that party.

V.

GENERAL

A. Declaration. Each party acknowledges and declares that he or she:

1. Has been provided a fair and reasonable disclosure of the property and financial obligations of the other.

2. Has voluntarily or expressly waived any right to disclosure of property or financial obligations of the other party beyond the disclosure provided.

3. Has or reasonably could have had an adequate knowledge of the property and financial obligations of the other party.

4. Enters into this Ratification and Amendment Agreement voluntarily after receiving the advice of independent counsel.

5. BRENDA further acknowledges and declares that the handwritten comments on pages 25 and 27 of the Premarital Agreement are no longer applicable, are of no force and effect, and shall in no way be used to contest the validity of the Premarital Agreement or this Ratification and Amendment of Premarital Agreement.

B. Parties and Interest. This Ratification and Amendment Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and their respective heirs, legal representatives, successors, and assigns.

C. Recordation of Ratification and Amendment Agreement. This Ratification and Amendment Agreement may be recorded in the deed records of any county within or without the State of Texas in which either spouse may desire to record the same.


D. Invalid Provisions. If any provision of this Ratification and Amendment Agreement is held to be illegal, invalid, or unenforceable under present or future laws applicable thereto, the legality, validity, and enforceability of the remaining provisions of this Ratification and Amendment Agreement shall not be affected thereby, and in lieu of such illegal, invalid, or unenforceable provision, there shall be substituted automatically as a part of this Ratification and Amendment Agreement a provision as similar in terms, intent, and effect as may be possible and legal, valid, and enforceable.

E. Governing Law. This Ratification Agreement is to be interpreted under the laws of the State of Texas.

F. Relation of Ratification and Amendment Agreement to Premarital Agreement. The Premarital Agreement and this Ratification and Amendment Agreement are to be read together. This Ratification and Amendment Agreement is intended to ratify, confirm, and approve in all respects the Premarital Agreement as amended by Paragraph III of this Agreement in the same manner as if the Premarital Agreement had been signed subsequent to the date of the marriage of the parties.

EACH PARTY TO THIS AGREEMENT FULLY UNDERSTANDS THAT BY SIGNING THIS DOCUMENT, HE OR SHE MAY PERMANENTLY SURRENDER CLAIMS HE OR SHE WOULD OTHERWISE HAVE UNDER TEXAS LAW, INCLUDING, BUT NOT LIMITED TO, CLAIMS TO INCOME OR PROPERTY DERIVED FROM SEPARATE PROPERTY OF HIS OR HER SPOUSE AND INCOME DERIVED FROM THE PERSONAL EFFORTS OF HIS OR HER SPOUSE.

SIGNED in duplicate originals at 2:12 ~~am~~pm., this 21st day of July, 2006, in Bexar County, Texas.


DAN A. HUGHES

SIGNED in duplicate originals at 2:12 ~~am~~pm., this 21st day of July, 2006, in Bexar County, Texas.


BRENDA WEHMEYER CORTISSOZ HUGHES

APPROVED AS TO FORM

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San Antonio, Texas 78205 - 1521
(210)-554-5521

By: *Allen G. Paterson*

ALLAN G. PATERSON

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By: *A. Chris Heinrichs*

CHRIS A. HEINRICHS

Attorneys for BRENDA WEHMEYER CORTISSOZ HUGHES

STATE OF TEXAS

§

§

COUNTY OF Brewer

§

This instrument was acknowledged before me on this 21 day of July, 2006,
by DAN A. HUGHES.

Carol G. Hall
Notary Public, State of Texas

STATE OF TEXAS

§
§
§

COUNTY OF Bexar

This instrument was acknowledged before me on this 21 day of July, 2006,
by BRÉNDÁ WEHMEYER CORTISSOZ HUGHES.

Carole G. Hall
Notary Public, State of Texas

CAUSE NO. B-15-1011-CV-A

IN THE MATTER OF
THE MARRIAGE OF

DAN A. HUGHES, SR.
AND
BRENDA HUGHES

§
§
§
§
§
§

IN THE DISTRICT COURT

36th JUDICIAL DISTRICT

BEE COUNTY, TEXAS

**ORDER GRANTING PETITIONER'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Before the Court is Petitioner's Motion for Partial Summary Judgment ("Motion"). The Court sustains both Parties' objections to the extrinsic evidence offered on interpreting the Parties' Premarital Agreement. Having considered the Motion, the Premarital Agreement executed by the Parties, as ratified and amended, the Response, the Reply, the arguments of counsel during the September 9, 2015 summary judgment hearing, and the applicable authorities, the Court finds that the Motion is well taken and should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Petitioner's Motion for Partial Summary Judgment is hereby GRANTED and the Court declares as follows:

Under Paragraphs 7.1 and 18.4 the Premarital Agreement, as amended and ratified, (1) Petitioner owns an undivided interest in jointly acquired assets, including, but not limited to, jointly titled real property and joint brokerage accounts, as his sole and separate property in an amount equal to the percentage of his contribution toward the purchase of said assets; and (2) Respondent is ~~estopped and barred from making any claim of any kind at any time to any of Petitioner's separate property or to any property designated as belonging to Petitioner's separate estate, including, but not limited to, Petitioner's undivided interests in jointly acquired assets.~~



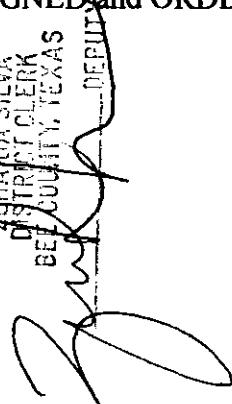
SIGNED and ORDERED this 11th day of September, 2015.


HON. STARR BAUER

FILED FOR RECORD

2015 SEP 14 PM 4:23

ANITA SILVA
DISTRICT CLERK
BEE COUNTY, TEXAS



3.1 The record of testimony was duly reported by Mandi Marie Leon, the official court recorder for the 36th Judicial District Court.

4. *Jurisdiction and Domicile*

4.1 The Court finds that the pleadings of Petitioner are in due form and contain all the allegations, information, and prerequisites required by law.

4.2 The Court, after receiving evidence, finds that it has jurisdiction of this case and of all the parties and that at least sixty days have elapsed since the date the suit was filed.

4.3 The Court further finds that, at the time this suit was filed, Petitioner had been a domiciliary of Texas for the preceding six-month period and a resident of Bee County for the preceding ninety-day period.

4.4 The Court further finds that all persons entitled to citation were properly cited and were before the Court.

5. *Directed Verdict.*

5.1 When both parties rested, DAN A. HUGHES made a motion for directed verdict that various pieces of property were DAN A. HUGHES' separate property. The motion was granted or denied as follows:

| | <u>Property</u> | <u>Ruling</u> |
|----|-------------------------------------|---------------|
| 1. | Trail Creek Ranch, Montana | Denied |
| 2. | Farish I Ranch - Bee County | Granted |
| 3. | Stringfellow Ranch - Edwards County | Granted |
| 4. | 170 Village Walk, Avon, Colorado | Denied |

- | | | |
|-----|---------------------------------------|--|
| 5. | 29 Albatross - Aransas County | Granted |
| 6. | 115 Dickerson Rd. - Bee County | Denied |
| 7. | Bee County minerals 3,895.17 acres | Denied as to the 1,711.01 acres under the Charco Ranch, but granted as to the remainder of the acreage |
| 8. | Danville LLC | Granted |
| 9. | JM Texas Land Fund No. 1 | Denied |
| 10. | JM Texas Land Fund No. 2 | Denied |
| 11. | JM Texas Land Fund No. 3 | Denied |
| 12. | JM Texas Land Fund No. 4 | Denied |
| 13. | JM Texas Land Fund No. 6 | Denied |
| 14. | JM Texas Land Fund No. 7 | Denied |
| 15. | FNB Bank acct. #8949557 Joint | Denied |
| 16. | FNB Bank acct. #8973733 Charco Ranch | Granted (as to 50%) |
| 17. | FNB Bank acct. #10015671 Trail Creek | Granted (as to 50%) |
| 18. | FNB Bank acct. #8949638 Real Estate | Granted (as to 50%) |
| 19. | Herndon Plant Oakley acct. #1939-3538 | Granted |
| 20. | JP Morgan acct. #05001244394 | Granted |
| 21. | Morgan Stanley acct. #228-028127-325 | Granted |
| 22. | Goldman Sachs acct. # 014-10671-0 | Granted |
| 23. | Dog & Bee LLC | Denied |
| 24. | Interest in Kel-Lee Properties | Denied |
| 25. | Note Receivable from Kel-Lee P'ties | Denied |
| 26. | 105 Marion Drive - Rockport | Denied |
| 27. | Prosperity Bank acct. no. 5073 | Denied |
| 28. | Herndon Plant Oakley acct. # 6943 | Denied |
| 29. | Herndon Plant Oakley acct. # 577 | Denied |
| 30. | Herndon Plant Oakley acct. # 9290 | Denied |
| 31. | Note Receivable 3138 N. Airport Rd. | Denied |
| 32. | Diamond necklace | Granted |

6. *Jury*

6.1 A jury, having been requested, was selected and questions of fact were submitted to the jury. A verdict was duly returned and filed on September 18, 2015, consisting of the following answers to the questions asked:

1 any complaints in direct testimony or cross examination
2 about --

3 MR. ORSINGER: The number of \$4,000 is nowhere.

4 THE COURT: Oh, yes it is, on Page 13 of 28.

5 MR. MEDLEY: Not in your charge.

6 THE COURT: No, not in the charge, in the
7 premarital agreement and what you're saying is of the -- in
8 that joint account is the money that Brenda took out over and
9 above what she should have taken out.

10 MR. ORSINGER: But I'm not suggesting that it's
11 limited to \$4,000, I'm suggesting that it's the jury to decide.

12 THE COURT: Right. I mean the way I read this,
13 \$4,000 was the minimum he had to put in. He could put in as
14 much as what he wanted to but then we're back to 50/50 and the
15 testimony is clear that she took out more than 50 percent.
16 Now, the way y' all did the math...

17 MR. MEDLEY: It was like \$300,000 more.

18 THE COURT: Yes, it was. All right, I'll be in
19 the office.

20 (Court is in recess 3:34pm)

21 (Case recalled 7:21pm)

22 THE COURT: The Court is recalling
23 B-15-1011-CV-A. This is the charge conference. I have
24 presented all counsel with a copy of the Charge of the Court.
25 Have you had sufficient time to review this charge,

1 Mr. Orsinger?

2 MR. ORSINGER: I have, Your Honor.

3 THE COURT: And Mr. Hall?

4 MR. HALL: Yes, Your Honor.

5 THE COURT: For the purposes of the record, let
6 it reflect the jury is not present. Mr. Orsinger, do you have
7 any objections to the charge?

8 MR. ORSINGER: No, Your Honor, I think over the
9 hours we've been working on this it has ruled out all my
10 concerns.

11 THE COURT: Mr. Hall, your objections?

12 MR. HALL: I do have a few, Your Honor. The
13 Respondent objects to Question number 2 on the following
14 grounds: (1) the question submits a matter of contract
15 interpretation on a contract that the Court has previously
16 ruled to be unambiguous to the jury which is impermissible and
17 cannot result in an ability to award damages. In addition,
18 there is no predicate question of liability on the part of the
19 Respondent that would justify an award of damages such as for
20 instance, do you find that Respondent breached the premarital
21 agreement by withdrawing more than 50 percent of the separate
22 property deposits from the account ending in 9557 which issue
23 I'm tendering to the Court for refusal. In addition, the
24 question as phrased potentially includes gifts such as the
25 two-million dollar gifts that were discussed under Tab Q with

1 the Petitioner's expert, Scott Turner.

2 THE COURT: I'm sorry, can you repeat that?

3 MR. HALL: Yes, the question is phrased,
4 potentially includes gifts such as the two-million dollar gifts
5 of Tab Q of Mr. Scott Turner's notebook. In addition, there is
6 no basis for an offset as a result of this question because the
7 ratification agreement talks about the award of the ten-million
8 dollars upon dissolution of marriage and there's no provision
9 in the contract for an offset as a result of that. Respondent
10 objects to Question number 3 which asks --

11 THE COURT: Let me address your Question number
12 2 first. I'm afraid we'll get away and I won't address
13 everything. As to the two-million dollar deposits that you are
14 afraid that they may include in Question 2, am I right so far?

15 MR. HALL: Yeah, among others.

16 THE COURT: I am overruling your objection on
17 that. I think it's addressed in Question 1 and if it's a gift,
18 it won't be considered. The request at issue that you have
19 given to the Court, I am inclined to include that simply
20 because I believe Question number 2 to be directly -- to be a
21 question directed to account 9557. That's the only account the
22 living expenses came out of and so as to your request of issue
23 I'm going to grant that. That will become a part and probably
24 what I'll do is put -- I will put your requested language, do
25 you find that Respondent -- well actually -- do you find that

1 Brenda W. Hughes breached the premarital agreement by
2 withdrawing more than her 50 percent separate property deposits
3 from First National Bank ending in 9557? I want to make this
4 part of Question 2, you know, and then, if so, were those funds
5 not used for living expenses as defined in the premarital
6 agreement to be considered as part of the ten million. I think
7 that's how I'm going to do it.

8 MR. HALL: Ok.

9 THE COURT: Now, what other part of Question 2
10 have I not ruled on?

11 MR. HALL: Well, what I need to do I guess,
12 Your Honor, is see how you're going to revise Question 2 and
13 then see if I have objections to it at that time.

14 THE COURT: Well, just a second because I want
15 to -- ok, let's go off the record.

16 (Off the record discussion.)

17 THE COURT: Back on the record.

18 MR. HALL: My question is it still submits an
19 issue -- impermissibly submits an issue of contract
20 interpretation to the jury. The question is multifarious and
21 there's no basis for a cause of action for the expenditure of
22 money over and above the living expenses as defined in the
23 premarital agreement.

24 THE COURT: All right, your objection is
25 overruled.

1 MR. HALL: My objection to Question number 3
2 which asks what amount, question mark, on the grounds there's a
3 comment on the weight of the evidence and suggests to the jury
4 that there should be an amount entered.

5 THE COURT: As to Question 3, overruled.

6 MR. HALL: Ok. Question 4, Respondent objects
7 to Question number 4 on the grounds that it is a question of
8 contract interpretation that is impermissibly asking the jury
9 to interpret the premarital agreement. In addition, there is
10 no predicate liability question such as the one that has been
11 tendered to the Court that would impose liability on the
12 Respondent for some act or failure to act.

13 THE COURT: Does that conclude your objection to
14 Question number 4?

15 MR. HALL: And the other objection, Your Honor,
16 is the way that question is phrased also potentially
17 encompasses gifts given to Brenda Hughes.

18 THE COURT: Your objections are overruled on
19 Question 4.

20 MR. HALL: Respondent objects to Question 5
21 which asks what amount on the grounds, that it's a comment on
22 the weight of the evidence and suggests to the jury that an
23 amount should be entered in the answer to the question.

24 THE COURT: Your objection is overruled.

25 MR. HALL: Respondent objects to Question 6

1 which asked if Brenda W. Hughes committed fraud with respect to
2 the separate property of Dan A. Hughes in that the saying is
3 overbroad and does not make a specific inquiry of conduct which
4 could result in liability on the part of Brenda Hughes.

5 THE COURT: Your objection is overruled.

6 MR. HALL: Respondent objects to Question number
7 7 which asks the jury to answer in dollars, answer sign, after
8 dollar sign blank on the grounds that it is a comment on the
9 weight of the evidence and suggests to the jury that there
10 should be an answer in dollars.

11 THE COURT: Your objection is overruled.

12 MR. HALL: Respondent objects to Question number
13 8 on the grounds that the definition of fiduciary duty is the
14 improper definition in this context. In addition, Respondent
15 objects to Question number 8 on the grounds that it does not
16 identify the transactions which are inquired about to be a
17 breach of the fiduciary duty in question.

18 THE COURT: What other definition are you
19 proposing, Mr. Hall? This is coming straight out of the
20 Patterned Jury Charges.

21 MR. HALL: There are a lot of definitions of
22 fiduciary duty.

23 THE COURT: What other definition are you asking
24 the Court to consider?

25 MR. HALL: Give me one moment. For instance,

1 I'm looking at the Texas Patterned Jury Charge for 2014 for
2 family and probate and the patterned jury charge 235.12 talks
3 about breach of duty by a trustee sale dealing which I think is
4 more appropriate and I hereby submit for the Court's
5 consideration the following issue, did the Respondent fail to
6 comply with her duty when she dealt with the Petitioner's
7 separate property in question, question mark, paragraph. The
8 Respondent fails to comply with her duty if she fails to act in
9 good faith or fails to act in accordance with the purposes of
10 the marriage. Good faith means an action that is prompted by
11 honesty of intention and a reasonable belief that the action
12 was probably correct.

13 There are a number of jury charges on breach of
14 fiduciary duty, Your Honor, and I just think that in this case
15 what is being submitted is the most onerous for the Respondent
16 issue on breach of fiduciary duty. There's one more I want to
17 point out to the Court.

18 THE COURT: Ok.

19 (Respondent reviewing.)

20 MR. HALL: That's the one I want to submit to
21 the Court.

22 THE COURT: May I see it?

23 MR. HALL: Yes.

24 THE COURT: Mr. Orsinger, I'll tell you I'm
25 inclined to sustain that objection and adopt his definition for

1 breach of fiduciary duty; do you have a response or an
2 objection to my doing so?

3 MR. ORSINGER: I'd like to see it when Mr. Hall
4 finds it or I can look at it myself.

5 MR. HALL: I've got it right here.

6 MR. ORSINGER: Mr. Hall has taken an instruction
7 in question out of the PJC that deals with the duty of a
8 trustee, that the trustee failed to comply with his duties of
9 trustee when he purchased the trust property so that's less
10 applicable than the one I pulled out in the general civil
11 patterned jury charges because mine was for all fiduciary
12 relationships. This one is proposed in the probate version for
13 trustees of an expressed trust.

14 THE COURT: And the one that you have put in
15 this charge that I am looking at is a fiduciary duty definition
16 as per the Texas Patterned Jury Charge?

17 MR. ORSINGER: Yes, but they're different
18 volumes so there's a volume for business litigation and there's
19 a different volume for family and probate and the one that
20 Mr. Hall is using if it's this one here is -- there's a family
21 law part in this probate part but the part that talks about a
22 trustee violating his duty as a probate issue because trustee
23 violations are jurisdiction in the probate court so...

24 MR. MEDLEY: Judge, that same definition that
25 they want to use is also in probate.

1 MR. ORSINGER: The definition out of the general
2 civil patterned jury charge is also in the probate jury charge?

3 MR. MEDLEY: Well, you get a choice. You get
4 this or you get the one that's more onerous and I think what
5 Tom is saying is that she was entrusted with her husband's
6 property and so you ought to be using the patterned jury charge
7 that deals with constructive trust, resulting trust, expressed
8 trust as opposed to the one that deals like with a personal
9 representative of like a personal representative -- guardian.

10 MR. HALL: Your Honor, I think what Mark is
11 talking about is the one you submitted, isn't it?

12 MR. ORSINGER: Yeah, but he said it was a choice
13 between that and this.

14 MR. MEDLEY: I'm just saying they're both in the
15 probate section of this book, that's all I'm saying.

16 THE COURT: Let me see the book. Mr. Medley, it
17 would appear you're correct. I've got breach of duty by
18 trustee and I've got the definition that's in my charge and
19 then I've got breach of duty by trustee and the definition that
20 y' all are asking that I adopt rather than this one.

21 MR. MEDLEY: I think the one they want is more
22 onerous and is really more designed for a guardian of someone
23 who is incapable of handling their own funds.

24 MR. ORSINGER: Judge, that is totally a probate
25 issue of guardianship so the one I used is the one that comes

1 out of general relations. It's the one that comes out of a
2 business.

3 MR. MEDLEY: I've got the business one on my
4 phone and it's the exact duplicate of what's in the probate. I
5 can present that to you.

6 MR. ORSINGER: Well, the question in the
7 instructions that Mr. Hall has singled out are not identical so
8 are they in two different locations in the same book?

9 MR. MEDLEY: I think what I'm saying is your --
10 the definition you're trying to use is in the probate section
11 of the book the Judge has in her hands. It's also in the
12 regular general civil.

13 MR. ORSINGER: So, they're identical?

14 MR. MEDLEY: They're identical. There's four
15 different versions in the general civil because it has to do
16 with whose burden of proof it is. All of them are talking
17 about situations where the duty of the person being accused --
18 you're setting the standard, the bar too high. The bar should
19 be that of a trustee which is why we picked out the one from
20 the trustee as opposed to a personal representative.

21 MR. ORSINGER: I have not seen the part in the
22 patterned jury charge that's here where the other alternative
23 language is but we don't have an expressed trust or trustee
24 here so I don't understand why we would be using the patterned
25 jury charge for a beneficiary suing a trustee of an expressed

1 trust.

2 MR. HALL: It's closer to the facts of this case
3 in my opinion. They're formal fiduciary duties and informal
4 fiduciary duties and the issue that you submit can depend on
5 that difference too.

6 MR. ORSINGER: This book is apparently
7 recommending that this be used when the trustee of an expressed
8 trust is being sued and we're not doing that.

9 THE COURT: Mr. Hall, I'm overruling your
10 objection as to that.

11 MR. HALL: Respectfully right.

12 THE COURT: Respectfully, most respectfully.

13 MR. HALL: The other objection I've got is to
14 Question number 9 where it instructs the jury to answer in
15 dollars as a comment on the weight of the evidence as a
16 suggestion to the jury that they should answer in dollars as
17 opposed to a possibility (Inaudible.)

18 THE COURT REPORTER: A possibility of what?

19 MR. HALL: If any.

20 THE COURT: Overruled. Thank you very much,
21 gentlemen.

22 MR. ORSINGER: Judge, before we -- let's do this
23 off the record.

24 THE COURT: All right.

25 (Off the record discussion.)

1 THE COURT: Back on the record.

2 MR. HALL: Respondent further objects to the
3 submission of Question number 2 on the grounds that breach of
4 contract was not pled by the Petitioner and it's not been tried
5 by consent.

6 MR. ORSINGER: Your Honor, I would like to go
7 back to my original instruction. You adopted that breach of
8 contract concept at his request. I did not request it. I did
9 not sue for breach of contract and I would like to go back to
10 the original instruction then because he's now gotten you to
11 submit this as a breach of contract and then claim that there's
12 no contract proven.

13 MR. HALL: My issue, Your Honor, the issue
14 originally phrased did not constitute a liability issue. It's
15 just asking the jury to interpret the contract. You can't just
16 say interpret this contract and give a sum of money. There's
17 got to be some kind of predicate liability issue pled. My
18 suggestion was breach of contract is the first thing that came
19 to my head but it can't be submitted if Mr. Orsinger didn't
20 plead it.

21 THE COURT: Mr. Hall, for the purposes of the
22 record, I want to clarify you are objecting to Question 2 as
23 amended by the Court in this previous discussion?

24 MR. HALL: Right.

25 THE COURT: All right. I am going to sustain

1 your objection and I'm going to take out of Question 2 the
2 language you asked to be put in; do you find that
3 Brenda W. Hughes withdrew more than her 50 percent of the
4 separate property deposits. I'm going to delete the language
5 breached the premarital agreement by withdrawing and replace it
6 with the verb withdrew and then continue on with the question
7 so I'm going to let Linda do that and I'm going to let everyone
8 read it and if you have any additional objections as is amended
9 then we can take that up then and we can order dinner.

10 (Reviewing all changes.)

11 THE COURT: Gentlemen, if you'll come over and
12 read the question as I have revised it and let me know.

13 MR. HALL: Ok. I'm ready.

14 THE COURT: Mr. Hall, you've had an opportunity
15 to review Question number 2 as revised by the Court?

16 MR. HALL: Yes, I have, Your Honor.

17 THE COURT: And do you have any objection to the
18 question as it now stands?

19 MR. HALL: I really do, Judge, and here is the
20 issue. If Brenda Hughes withdrew more than she should have out
21 of that account, that is arguably an action sounding in tort of
22 some kind or breach of contract which hasn't been pled and the
23 torts that have been pled are fraud and breach of fiduciary
24 duty so my objection to that issue is that it's duplicitous of
25 either the fraud issue or the breach of fiduciary duty issue

1 and gives them at least two or three bites at the apple.

2 THE COURT: Mr. Hall, where would you like
3 Question 2 to be?

4 MR. HALL: Well, I don't think it ought to be in
5 there at all.

6 THE COURT: Well, I know that but it's going in
7 there; do you think it would be better under actual fraud or
8 breach of fiduciary duty?

9 MR. HALL: I'm not promising the Court I'm not
10 going to object, you understand that, don't you, Your Honor? I
11 don't think that issue ought to be in there at all. I think
12 it's the exact duplicate. I mean, that theory of fraud was
13 Brenda withdrew too much money from that account.

14 THE COURT: I think that answers my question. I
15 think under actual fraud that's on Page 7.

16 MR. HALL: The definition of actual fraud is on
17 7, the issue is on Page 8

18 THE COURT: Ok. Under actual fraud we're going
19 to move Question 2 and Question 3 and Question 4 and Question
20 5. I think that makes more sense. Thank you for bringing that
21 to my attention.

22 MR. HALL: It's the very least I could do,
23 Your Honor.

24 THE COURT: Then we're going to be
25 renumbering maybe.

1 MR. ORSINGER: I think if two, three, four and
2 five are all part of the same section, then all we have to do
3 is move it down. To me, if you put them under the actual fraud
4 instructions, it doesn't address the situation where she took
5 more than she was supposed to but she didn't do it in order to
6 harm him but she took more than she was entitled to take so if
7 you move it out of actual fraud you constrict the --

8 THE COURT: I'll tell you, I'm a little worried
9 if I move those questions over to fraud then it implies fraud
10 by her doing that.

11 MR. HALL: Say that again, Judge.

12 THE COURT: I think -- let me start real
13 quick -- Linda, just put them back where they were. Just undo
14 all. I'm afraid by putting those questions under the
15 definitions or after the definitions of actual fraud, I think
16 that implies that what she did was fraud and the jury may not
17 find that. I think that that's a bad placement of those
18 questions so I'm going to leave them as they are and I'm going
19 to overrule your objection.

20 MR. HALL: And so it will be clear on the
21 record, Your Honor, the form of the charge that is being
22 produced now is the exact same form that I objected to
23 previously; is that true?

24 THE COURT: With the amendments that have been
25 made and indicated previously on the record.

1 MR. HALL: Yes, ok.

2 THE COURT: So, we're keeping those questions in
3 the same order and really the only question I think that's been
4 revised has been Question 2 and you read the last revision on
5 that question and objected and I overruled your objection.

6 MR. HALL: Fair enough. Can we go now?

7 (Laughter.)

8 THE COURT: All right, that's the Charge of the
9 Court that I will be reading first thing in the morning.

10 (End of proceedings 7:58pm)

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ORIGINAL

✓

NO. B-15-1011-CV-A

IN THE MATTER OF
THE MARRIAGE OF

DAN A. HUGHES, SR.
AND
BRENDA W. HUGHES

§
§
§
§
§
§

IN THE DISTRICT COURT

36TH JUDICIAL DISTRICT

BEE COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Here are the instructions for answering the questions:

1. Do not let bias, prejudice or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law given in these instructions and questions. Do not consider or discuss any evidence that was not presented in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless otherwise instructed in this charge.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not

measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. The answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

Definitions, Instructions and Questions

Separate and Community Property

In this case, there is no community property by agreement of the parties. The property of the spouses is characterized as the separate property of one spouse, or the separate property of the other spouse, or a combination of both.

A spouse's separate property consists of--

1. The property owned or claimed by the spouse before marriage.
2. The property acquired by the spouse during marriage by gift, devise, or descent.
3. The property set aside to the spouse by a premarital agreement.

Inception of Title

Property is "claimed before marriage" if the right to acquire or own the property arises before marriage, even if title to the property is acquired during marriage.

Gift, Devise, and Descent

"Gift" means a voluntary and gratuitous transfer of property coupled with delivery, acceptance, and the intent to make a gift. Where a gift is made, the person making the gift is the "donor," and the person receiving the gift is the "donee."

"Devise" means acquisition of property by last will and testament.

"Descent" means acquisition of property by inheritance without a will.

Tracing

The character of separate property is not changed by the sale, exchange, or change in form of the separate property. If separate property can be definitely traced and identified, it remains separate property regardless of the fact that the separate property may undergo mutations or changes in form.

Property With Mixed Characterization

An item of property may be-

1. Separate property of one spouse;
2. Separate property of the other spouse;
3. Any combination of these.

Where property is acquired during marriage, the part that is separate property of a spouse is the percentage of the purchase price paid with that spouse's separate property or separate credit. To calculate a separate-property interest, divide the separate-property contribution to the purchase price by the total purchase price.

Property may be acquired partly by gift and partly by purchase. In such a case, the portion acquired by gift is separate property of the donee. The portion acquired by purchase is the separate property of the spouse whose funds or credit were used to make the purchase, in accordance with the definitions and instructions regarding separate property given in this charge.

Premarital Agreement

A premarital agreement is an agreement between prospective spouses made in contemplation of marriage and to be effective on marriage. A premarital agreement must be in writing and signed by both parties. After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties.

The premarital agreement, as ratified and amended, controls the characterization of the property.

“Property” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

If an item of property set aside as separate property by a premarital agreement can be traced to other property and identified, the property will remain separate property even if the property has changed form.

Value

The value of an asset is its fair market value unless it has no fair market value.

"Fair market value" means the amount that would be paid in cash by a willing buyer who desires to buy, but is not required to buy, to a willing seller who desires to sell, but is under no necessity of selling.

If an asset has no fair market value, its value is the value of its current ownership as determined from the evidence.

Value and Characterization

QUESTION 1

Determine what percentage of each of the following items is the separate property of Dan A. Hughes, of Brenda W. Hughes, or of both. An item may be separate property of one spouse, separate property of the other spouse, or any combination of these.

Answer by stating the percentage that is the separate property of Dan A. Hughes, and the percentage that is the separate property of Brenda W. Hughes. The percentages in your answer must total 100 percent for each item. To find all or part of an item to be the separate property of a party, you must do so by clear and convincing evidence. "Clear and convincing evidence" is that measure or degree of proof that produces a firm belief or conviction that the allegations sought to be established are true.

| <u>Property</u> | <u>Gift to Brenda (yes or no)</u> | <u>Husband's Separate Property</u> | <u>Wife's Separate Property</u> |
|--|---|--|---|
| 1. Trail Creek Ranch, Montana | <u>NO</u> | <u>100</u> % + | <u>0</u> % = 100% |
| 2. 170 Village Walk, Avondale, Colorado | <u>NO</u> | <u>100</u> % + | <u>0</u> % = 100% |
| 3. 115 Dickerson Road, Bee County | <u>NO</u> | <u>100</u> % + | <u>0</u> % = 100% |
| 4. JM Texas Land Fund No. 1 | <u>NO</u> | <u>100</u> % + | <u>0</u> % = 100% |
| 5. JM Texas Land Fund No. 2 | <u>NO</u> | <u>100</u> % + | <u>0</u> % = 100% |
| 6. JM Texas Land Fund No. 3 | <u>NO</u> | <u>100</u> % + | <u>0</u> % = 100% |
| 7. JM Texas Land Fund No. 4 | <u>NO</u> | <u>70</u> % + | <u>30</u> % = 100% |
| 8. JM Texas Land Fund No. 6 | <u>NO</u> | <u>100</u> % + | <u>0</u> % = 100% |
| 9. JM Texas Land Fund No. 7 | <u>NO</u> | <u>100</u> % + | <u>0</u> % = 100% |
| 10. FNB 9557 Joint Acct | <u>NO</u> | <u>50</u> % + | <u>50</u> % = 100% |
| 11. Brenda W. Hughes' interest in Kel-Lee Properties, LLC | <u>NO</u> | <u>50</u> % + | <u>50</u> % = 100% |

| | | |
|--|------------|----------------------------------|
| 12. Note Receivable from Kel-Lee Properties LLC | <u>NO</u> | <u>50</u> % + <u>50</u> % = 100% |
| 13. The parties' interest in 105 Marion Drive, Rockport | <u>NO</u> | <u>50</u> % + <u>50</u> % = 100% |
| 14. Prosperity Bank acct. # 5073 | <u>NO</u> | <u>50</u> % + <u>50</u> % = 100% |
| 15. Herndon Plant Oakley acct. # 577 | <u>YES</u> | <u>0</u> % + <u>100</u> % = 100% |
| 16. Herndon Plant Oakley acct. # 9290 | <u>YES</u> | <u>0</u> % + <u>100</u> % = 100% |
| 17. Herndon Plant Oakley acct. # 6943 | <u>YES</u> | <u>0</u> % + <u>100</u> % = 100% |
| 18. Note Receivable from sale of 3138 N. Airport Rd. | <u>NO</u> | <u>50</u> % + <u>50</u> % = 100% |
| 19. Dog & Bee LLC | <u>NO</u> | <u>50</u> % + <u>50</u> % = 100% |

QUESTION 2

Do you find that Brenda W. Hughes withdrew more than her 50% of the separate property deposits made into First National Bank Account 9557 and, if so, are the funds (which were not used for living expenses as defined in the Premarital Agreement) to be considered as part of the \$10,000,000.00 described in Paragraph III.B.4 of the Ratification and Amendment of Premarital Agreement?

Answer: "Yes" or "No."

Answer: NO.

If your answer to Question 2 is "Yes", then proceed to answer Question 3.

QUESTION 3

What amount?

Answer: \$ 0

QUESTION 4

Are the cash and assets owned by Brenda W. Hughes as determined in Question 1 (other than the marital residence at 5156 Business Hwy. 181 N, Beeville, and the Charco Ranch and all gifts as determined in Question 1) to be considered as part of the \$10,000,000.00 described in Paragraph III.B.4 of the Ratification and Amendment of Premarital Agreement?

Answer "Yes" or "No."

Answer: Yes

If you answer to Question 4 is "Yes", then proceed to answer Question 5.

QUESTION 5

What amount? (Do not include in this number the amount, if any, found in Question 3).

Answer: \$ 1,536,053.85

Actual Fraud

A spouse commits fraud if that spouse transfers separate property of the other spouse or expends separate funds of the other spouse for the primary purpose of depriving the other spouse of the use and enjoyment of that property or those funds. Such fraud involves dishonesty of purpose or intent to deceive.

A relationship of confidence and trust exists between a husband and wife with regard to that portion of the other spouse's separate property that each spouse controls. This relationship requires that the spouses use the utmost good faith and frankness in their dealings with each other.

Because of the nature of the spousal relationship, conduct of a spouse affecting the property rights of the other spouse may be fraudulent even though identical conduct would not be fraudulent as between nonspouses.

QUESTION 6

Did Brenda W. Hughes commit fraud with respect to the separate property of Dan A. Hughes?

Answer "Yes" or "No."

Answer: Yes

If your answer to Question 6 is "Yes", then proceed to answer Question 7.

QUESTION 7

What sum of money, if paid now in cash, would fairly and reasonably compensate the separate estate of Dan A. Hughes for the damages, if any, resulting from the fraud of Brenda W. Hughes?

Answer in dollars.

Answer: \$ 2,393,206.90

Breach of Fiduciary Duty

QUESTION 8

Brenda W. Hughes owed Dan A. Hughes a fiduciary duty. To prove she complied with her duty, Brenda W. Hughes must show-

- a. the transactions in question were fair and equitable to Dan A. Hughes;
- b. Brenda W. Hughes made reasonable use of the confidence that Dan A. Hughes placed in her;
- c. Brenda W. Hughes acted in the utmost good faith and exercised the most scrupulous honesty toward Dan A. Hughes;
- d. Brenda W. Hughes placed the interests of Dan A. Hughes above her own, did not use the advantage of her position to gain any benefit for herself at the expense of Dan A. Hughes, and did not place herself in any position where her self-interest might conflict with her obligations as a fiduciary; and
- e. Brenda W. Hughes fully and fairly disclosed all important information to Dan A. Hughes concerning her transactions.

Did Brenda W. Hughes comply with her fiduciary duty to Dan A. Hughes?

Answer "Yes" or "No."

Answer: NO

If your answer to Question 8 is "No", then proceed to answer Question 9.

QUESTION 9

What sum of money, if paid now in cash, would fairly and reasonably compensate the separate estate of Dan A. Hughes for the damages, if any, resulting from Brenda W. Hughes' breach of fiduciary duty?

Answer in dollars.

Answer: \$ 2393206.90

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. You may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict.


If eleven jurors agree on every answer, those eleven jurors sign the verdict.

If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

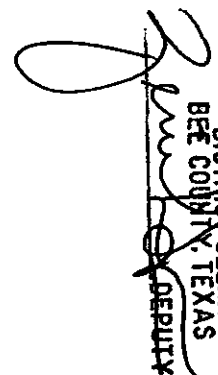
3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten or those eleven who agree on every answer will sign the verdict.

Do you understand these instructions? If you do not, please tell me now.

September 18, 2015
C 8:25 A.M.


THE HONORABLE STARR BAUER
JUDGE PRESIDING

FILED FOR RECORD
2015 SEP 18 AM 8:20


ZENNADA SHIVA
DISTRICT CLERK
BEE COUNTY, TEXAS
DEPUTY

Verdict Certificate

Check one:

☒ Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Dixie A. Lytle
Signature of Presiding Juror

DIXIE A. LYTLE
Printed Name of Presiding Juror

☐ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

☐ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

| SIGNATURE | NAME PRINTED |
|-----------|--------------|
| 1. _____ | _____ |
| 2. _____ | _____ |
| 3. _____ | _____ |
| 4. _____ | _____ |
| 5. _____ | _____ |
| 6. _____ | _____ |
| 7. _____ | _____ |
| 8. _____ | _____ |
| 9. _____ | _____ |
| 10. _____ | _____ |
| 11. _____ | _____ |

Checks Drawn on Mr. Dan A and Brenda Hughes
First National Bank of Beeville Acct #xxx9557
Handwritten by Brenda Hughes in the amount of \$50,000 or more
March 6, 2012 - June 18, 2014

| | | |
|------------|------|---------|
| 3/6/2012 | 7658 | 100,000 |
| 4/2/2012 | 7667 | 50,000 |
| 4/19/2012 | 7672 | 150,000 |
| 6/1/2012 | 7719 | 50,000 |
| 6/7/2012 | 7721 | 50,000 |
| 6/8/2012 | 7723 | 50,000 |
| 7/5/2012 | 7728 | 50,000 |
| 8/13/2012 | 7733 | 150,000 |
| 9/4/2012 | 7735 | 50,000 |
| 10/9/2012 | 7740 | 200,000 |
| 10/25/2012 | 7747 | 100,000 |
| 10/30/2012 | 7748 | 50,000 |
| 11/9/2012 | 7751 | 150,000 |
| 12/3/2012 | 7752 | 125,000 |
| 12/18/2012 | 9803 | 150,000 |
| 1/7/2013 | 9810 | 100,000 |
| 2/15/2013 | 9816 | 50,000 |
| 3/22/2013 | 9821 | 50,000 |
| 3/26/2013 | 9822 | 100,000 |
| 4/25/2013 | 9827 | 50,000 |
| 5/17/2013 | 9833 | 75,000 |
| 6/5/2013 | 9837 | 50,000 |
| 6/13/2013 | 9838 | 50,000 |
| 6/27/2013 | 9841 | 100,000 |
| 7/2/2013 | 9842 | 50,000 |
| 7/26/2013 | 9846 | 50,000 |
| 8/19/2013 | 9849 | 75,000 |
| 8/20/2013 | 9850 | 50,000 |
| 8/28/2013 | 9852 | 50,000 |
| 9/20/2013 | 9854 | 80,000 |
| 10/4/2013 | 9856 | 100,000 |
| 10/24/2013 | 9858 | 50,000 |
| 12/23/2013 | 9893 | 150,000 |
| 2/26/2014 | 9903 | 50,000 |
| 3/17/2014 | 9910 | 50,000 |
| 3/31/2014 | 9773 | 50,000 |
| 5/5/2014 | 9786 | 150,000 |
| 6/18/2014 | 9793 | 50,000 |

7RR679

Schedule K Shareholders' Pro Rata Share Items (continued)

| Other Information | | Total amount | |
|-------------------|---|--------------|----------|
| | | 17a | 17b |
| | 17 a Investment income | | |
| | b Investment expenses | | |
| | c Dividend distributions paid from accumulated earnings and profits | | |
| | d Other items and amounts (attach statement) | | |
| Reconciliation | 18 Income/loss reconciliation. Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and lines 14i. | 18 | -70,100. |

Schedule L Balance Sheets per Books

| | Beginning of tax year | | End of tax year | |
|--|-----------------------|------------|-----------------|------------|
| | (a) | (b) | (c) | (d) |
| Assets | | | | |
| 1 Cash | | 40,098. | | 16,183. |
| 2 a Trade notes and accounts receivable | | | | |
| b Loss allowance for bad debts | | | | |
| 3 Inventories | | | | |
| 4 U.S. government obligations | | | | |
| 5 Tax-exempt securities (see instructions) | | | | |
| 6 Other current assets (attach stmt) | | | | |
| 7 Loans to shareholders | | | | |
| 8 Mortgage and real estate loans | | | | |
| 9 Other investments (attach statement) | | | | |
| 10 a Buildings and other depreciable assets | 1,564,323. | | 1,564,323. | |
| b Less accumulated depreciation | 20,385. | 1,543,938. | 50,272. | 1,514,051. |
| 11 a Depreciable assets | | | | |
| b Less accumulated depletion | | | | |
| 12 Land (net of any amortization) | | 197,128. | | 197,128. |
| 13 a Intangible assets (amortizable only) | 1,490. | | 1,490. | |
| b Less accumulated amortization | 1,490. | 0. | 1,490. | 0. |
| 14 Other assets (attach stmt) | | | | |
| 15 Total assets | | 1,781,164. | | 1,727,362. |
| Liabilities and Shareholders' Equity | | | | |
| 16 Accounts payable | | | | |
| 17 Mortgages, notes, bonds payable in less than 1 year | | | | |
| 18 Other current liabilities (attach stmt) | | | | |
| 19 Loans from shareholders | | 1,851,866. | | 1,868,164. |
| 20 Mortgages, notes, bonds payable in 1 year or more | | | | |
| 21 Other liabilities (attach statement) | | | | |
| 22 Capital stock | | 1,000. | | 1,000. |
| 23 Additional paid-in capital | | | | |
| 24 Retained earnings | | -71,702. | | -141,802. |
| 25 Adjustments to shareholders' equity (all stmt) | | | | |
| 26 Less cost of treasury stock | | | | |
| 27 Total liabilities and shareholders' equity | | 1,781,164. | | 1,727,362. |

7R2954

Brenda Hughes
Assets Solely in Wife's Name

| | | | Estimated Value |
|--|-----------------------|-----------|-----------------|
| Real Estate | | | |
| 902 E. Randall, Beeville | 85% of listing Price | | 136,000.00 |
| 348 Petrus Lane, Beeville | 85% of listing Price | | 42,415.00 |
| 106 Marion Drive, Rockport | Appraisal Dist. Value | | 204,000.00 |
| Kel-Lee Properties LLC | | | |
| 119 N. Washington, Beeville | | | |
| 207 W. Bowie, Beeville | | | |
| 211 W. Bowie, Beeville | | | |
| 205 W. Bowie, Beeville | 85% of listing Price | | 510,000.00 |
| 201 N. Madison, Beeville | 85% of listing Price | | 191,250.00 |
| 141 Ridge Trail, San Antonio | Appraisal Dist. Value | | 276,370.00 |
| 710 N. Washington | 85% of listing Price | | 110,500.00 |
| N. Recindez Abst. 277, Bee Co. | 85% of listing Price | | 33,660.00 |
| Charco Road | 85% of listing Price | | 560,388.00 |
| Prosperity 3721 | 4/30/2015 | | 32,896.19 |
| Loan from Brenda Hughes | 12/31/2013 | | (1,868,164.00) |
| Dog & Bee Tangible Equipment etc. | | | |
| | 30% of Cost | | 525,042.90 |
| Bank Accounts | | | |
| Prosperity | 5073 | 5/4/2015 | 63,146.90 |
| Brokerage Accounts | | | |
| HPO IRA | 577 | 8/31/2015 | 13,123.65 |
| HPO Roth | 9290 | 8/31/2015 | 7,684.93 |
| HPO TOD | 6943 | 8/31/2015 | 835,734.34 |
| Note Receivable | | | |
| Sale of 3138 N. Airport Rd. | 5/2/2014 | | 209,950.00 |
| Loan to Kel-Lee Kel-Lee Properties LLC | 12/31/2013 | | 1,868,164.00 |
| Jewelry - at least | | | 154,000.00 |

Total Assets

~~3,523,746.91~~

3,313,746.91

7RR959

Mr. Dan A. & Brenda Hughes
Detail of Transactions in Joint
FNB acct. xxx9557

Assumes that all funds in the account are jointly owned with each party
owning one-half of the funds in the account as their separate property

| Date | ck # | Description | Deposits | | | Payments & Transfers | | | | Balance | Tab 1 |
|-----------|------|-------------------------|------------|----------|------------|----------------------|---------|------------|------------|------------|---------------|
| | | | DAH Sep | Other | Total | Joint | Husband | Wife | Total | | |
| 5/1/2008 | | Balance forward | | | 0.00 | | | | | 37,340.49 | |
| 5/1/2008 | | Wire Transfer Dep | 200,000.00 | | 200,000.00 | | | | 0.00 | 237,340.49 | Goldman Sachs |
| 5/2/2008 | 6466 | | | | 0.00 | 2,075.00 | | | 2,075.00 | 235,265.49 | |
| 5/2/2008 | 7134 | | | | 0.00 | 1,000.00 | | | 1,000.00 | 234,265.49 | |
| 5/2/2008 | 7141 | | | | 0.00 | 583.43 | | | 583.43 | 233,682.06 | |
| 5/2/2008 | 7139 | | | | 0.00 | 67.30 | | | 67.30 | 233,614.76 | |
| 5/5/2008 | 7151 | Brenda Hughes | | | 0.00 | | | 200,000.00 | 200,000.00 | 33,614.76 | |
| 5/5/2008 | 7150 | Heinrichs & DeGennaro | | | 0.00 | 9,587.36 | | | 9,587.36 | 24,027.40 | file #3207 |
| 5/5/2008 | 7149 | | | | 0.00 | 462.47 | | | 462.47 | 23,564.93 | |
| 5/5/2008 | 7143 | | | | 0.00 | 420.00 | | | 420.00 | 23,144.93 | |
| 5/5/2008 | 7142 | | | | 0.00 | 314.00 | | | 314.00 | 22,830.93 | |
| 5/5/2008 | 7144 | | | | 0.00 | 31.55 | | | 31.55 | 22,799.38 | |
| 5/5/2008 | 7153 | | | | 0.00 | 30.60 | | | 30.60 | 22,768.78 | |
| 5/5/2008 | 7138 | | | | 0.00 | 84.91 | | | 84.91 | 22,683.87 | |
| 5/6/2008 | | Dan Hughes | 100,000.00 | | 100,000.00 | | | | 0.00 | 122,683.87 | |
| 5/6/2008 | 7368 | Petsmart | | | 0.00 | 2,546.37 | | | 2,546.37 | 120,137.50 | |
| 5/6/2008 | 7370 | | | | 0.00 | 2,000.00 | | | 2,000.00 | 118,137.50 | |
| 5/6/2008 | 7136 | | | | 0.00 | 1,254.50 | | | 1,254.50 | 116,883.00 | |
| 5/6/2008 | 7369 | | | | 0.00 | 98.19 | | | 98.19 | 116,784.81 | |
| 5/6/2008 | 7148 | | | | 0.00 | 79.02 | | | 79.02 | 116,705.79 | |
| 5/6/2008 | 7145 | | | | 0.00 | 77.81 | | | 77.81 | 116,627.98 | |
| 5/6/2008 | 7140 | | | | 0.00 | 37.22 | | | 37.22 | 116,590.76 | |
| 5/6/2008 | 7147 | | | | 0.00 | 597.07 | | | 597.07 | 115,993.69 | |
| 5/7/2008 | | | | 1,283.00 | 1,283.00 | | | | 0.00 | 117,276.69 | |
| 5/7/2008 | 7155 | Brenda Hughes | | | 0.00 | | | 20,000.00 | 20,000.00 | 97,276.69 | |
| 5/7/2008 | 7152 | | | | 0.00 | 570.00 | | | 570.00 | 96,706.69 | |
| 5/7/2008 | 7146 | | | | 0.00 | 202.10 | | | 202.10 | 96,504.59 | |
| 5/7/2008 | 7135 | | | | 0.00 | 50.00 | | | 50.00 | 96,454.59 | |
| 5/9/2008 | 7371 | | | | 0.00 | 344.97 | | | 344.97 | 96,109.62 | |
| 5/9/2008 | 7154 | | | | 0.00 | 329.00 | | | 329.00 | 95,780.62 | |
| 5/12/2008 | 7180 | FNB-Furnitureland South | | | 0.00 | 9,199.73 | | | 9,199.73 | 86,580.89 | |
| 5/12/2008 | 7373 | Artwood | | | 0.00 | 5,000.00 | | | 5,000.00 | 81,580.89 | |
| 5/12/2008 | 7372 | | | | 0.00 | 185.00 | | | 185.00 | 81,395.89 | |
| 5/12/2008 | 7164 | | | | 0.00 | 79.40 | | | 79.40 | 81,316.49 | |
| 5/13/2008 | 7156 | Heinrichs & DeGennaro | | | 0.00 | 360.67 | | | 360.67 | 80,955.82 | file #3207 |
| 5/14/2008 | 7166 | | | | 0.00 | 187.50 | | | 187.50 | 80,768.32 | |
| 5/14/2008 | 7162 | | | | 0.00 | 103.87 | | | 103.87 | 80,664.45 | |
| 5/14/2008 | 7163 | | | | 0.00 | 73.60 | | | 73.60 | 80,590.85 | |
| 5/14/2008 | 7165 | | | | 0.00 | 50.00 | | | 50.00 | 80,540.85 | |
| 5/14/2008 | 7160 | | | | 0.00 | 150.70 | | | 150.70 | 80,390.15 | |

| Date | ck # | Description | Deposits | | | Payments & Transfers | | | | Balance | Tab 1 |
|-----------|------|------------------|-----------|----------|-----------|----------------------|---------|-----------|-----------|------------|-------|
| | | | DAH Sep | Other | Total | Joint | Husband | Wife | Total | | |
| 5/15/2008 | 7161 | | | | 0.00 | 100.00 | | | 100.00 | 80,290.15 | |
| 5/15/2008 | 7169 | | | | 0.00 | 79.95 | | | 79.95 | 80,210.20 | |
| 5/16/2008 | 7376 | | | | 0.00 | 2,208.14 | | | 2,208.14 | 78,002.06 | |
| 5/16/2008 | 7157 | | | | 0.00 | 165.00 | | | 165.00 | 77,837.06 | |
| 5/16/2008 | 7167 | | | | 0.00 | 50.00 | | | 50.00 | 77,787.06 | |
| 5/16/2008 | 7168 | | | | 0.00 | 49.00 | | | 49.00 | 77,738.06 | |
| 5/16/2008 | 7158 | | | | 0.00 | 35.68 | | | 35.68 | 77,702.38 | |
| 5/19/2008 | 7374 | | | | 0.00 | 2,008.68 | | | 2,008.68 | 75,693.70 | |
| 5/19/2008 | 7375 | Fia Cardservices | | | 0.00 | 11,818.11 | | | 11,818.11 | 63,875.59 | |
| 5/20/2008 | | Dan Hughes | 60,000.00 | | 60,000.00 | | | | 0.00 | 123,875.59 | |
| 5/20/2008 | 7377 | | | | 0.00 | 866.00 | | | 866.00 | 123,009.59 | |
| 5/20/2008 | 7183 | | | | 0.00 | 500.00 | | | 500.00 | 122,509.59 | |
| 5/21/2008 | 7378 | Brenda Hughes | | | 0.00 | | | 15,000.00 | 15,000.00 | 107,509.59 | BH |
| 5/21/2008 | 7159 | | | | 0.00 | 45.00 | | | 45.00 | 107,464.59 | |
| 5/21/2008 | 7123 | | | | 0.00 | 45.00 | | | 45.00 | 107,419.59 | |
| 5/23/2008 | 7181 | | | | 0.00 | 1,180.34 | | | 1,180.34 | 106,239.25 | |
| 5/27/2008 | 7185 | | | | 0.00 | 144.34 | | | 144.34 | 106,094.91 | |
| 5/27/2008 | 7182 | | | | 0.00 | 121.08 | | | 121.08 | 105,973.83 | |
| 5/28/2008 | 7379 | | | | 0.00 | 1,669.71 | | | 1,669.71 | 104,304.12 | |
| 5/29/2008 | 7186 | | | | 0.00 | 308.80 | | | 308.80 | 103,995.32 | |
| 5/30/2008 | 7187 | | | | 0.00 | 215.42 | | | 215.42 | 103,779.90 | |
| 5/30/2008 | 7188 | | | | 0.00 | 81.08 | | | 81.08 | 103,698.82 | |
| 5/31/2008 | | | | 132.09 | 132.09 | | | | 0.00 | 103,830.91 | |
| 6/2/2008 | 7196 | | | | 0.00 | 2,142.33 | | | 2,142.33 | 101,688.58 | |
| 6/2/2008 | 7380 | | | | 0.00 | 412.00 | | | 412.00 | 101,276.58 | |
| 6/3/2008 | 7197 | Louis Kaase | | | 0.00 | 4,722.12 | | | 4,722.12 | 96,554.46 | |
| 6/3/2008 | 7365 | | | | 0.00 | 2,125.00 | | | 2,125.00 | 94,429.46 | |
| 6/3/2008 | 7193 | | | | 0.00 | 697.64 | | | 697.64 | 93,731.82 | |
| 6/3/2008 | 7194 | | | | 0.00 | 67.30 | | | 67.30 | 93,664.52 | |
| 6/4/2008 | | | | 1,279.00 | 1,279.00 | | | | 0.00 | 94,943.52 | |
| 6/4/2008 | 7381 | Brenda Hughes | | | 0.00 | | | 20,000.00 | 20,000.00 | 74,943.52 | BH |
| 6/4/2008 | 7382 | Jack Linney | | | 0.00 | 12,200.00 | | | 12,200.00 | 62,743.52 | |
| 6/4/2008 | 7206 | | | | 0.00 | 553.48 | | | 553.48 | 62,190.04 | |
| 6/4/2008 | 7190 | | | | 0.00 | 199.12 | | | 199.12 | 61,990.92 | |
| 6/5/2008 | 7207 | | | | 0.00 | 1,600.00 | | | 1,600.00 | 60,390.92 | |
| 6/5/2008 | 7184 | | | | 0.00 | 1,500.00 | | | 1,500.00 | 58,890.92 | |
| 6/5/2008 | 7192 | | | | 0.00 | 314.00 | | | 314.00 | 58,576.92 | |
| 6/5/2008 | 7195 | | | | 0.00 | 65.83 | | | 65.83 | 58,511.09 | |
| 6/5/2008 | 7191 | | | | 0.00 | 26.41 | | | 26.41 | 58,484.68 | |
| 6/6/2008 | 7204 | | | | 0.00 | 149.30 | | | 149.30 | 58,335.38 | |
| 6/6/2008 | 7203 | | | | 0.00 | 77.94 | | | 77.94 | 58,257.44 | |
| 6/6/2008 | 7201 | | | | 0.00 | 51.72 | | | 51.72 | 58,205.72 | |
| 6/6/2008 | 7205 | | | | 0.00 | 27.43 | | | 27.43 | 58,178.29 | |
| 6/6/2008 | 7199 | | | | 0.00 | 21.40 | | | 21.40 | 58,156.89 | |

| Date | ck # | Description | Deposits | | | Payments & Transfers | | | | Balance | Tab 1 |
|-----------|------|-----------------------|-----------|--------|-----------|----------------------|---------|-----------|-----------|------------|------------|
| | | | DAH Sep | Other | Total | Joint | Husband | Wife | Total | | |
| 6/6/2008 | 7189 | | | | 0.00 | 326.43 | | | 326.43 | 57,830.46 | |
| 6/6/2008 | 7198 | | | | 0.00 | 150.70 | | | 150.70 | 57,679.76 | |
| 6/9/2008 | | Wire Transfer Dep | 75,000.00 | | 75,000.00 | | | | 0.00 | 132,679.76 | |
| 6/9/2008 | 7211 | | | | 0.00 | 205.00 | | | 205.00 | 132,474.76 | |
| 6/10/2008 | 7385 | Saks | | | 0.00 | 5,919.56 | | | 5,919.56 | 126,555.20 | |
| 6/10/2008 | 7386 | Tony Legner | | | 0.00 | 5,000.00 | | | 5,000.00 | 121,555.20 | |
| 6/11/2008 | 1405 | | | | 0.00 | 1,000.00 | | | 1,000.00 | 120,555.20 | |
| 6/11/2008 | 7210 | Heinrichs & DeGennaro | | | 0.00 | 294.88 | | | 294.88 | 120,260.32 | file #3207 |
| 6/12/2008 | | Dan Hughes | 60,000.00 | | 60,000.00 | | | | 0.00 | 180,260.32 | |
| 6/12/2008 | 7218 | Brenda Hughes | | | 0.00 | | | 75,000.00 | 75,000.00 | 105,260.32 | |
| 6/12/2008 | 7202 | | | | 0.00 | 19.95 | | | 19.95 | 105,240.37 | |
| 6/13/2008 | 7387 | Cash | | | 0.00 | | | 5,000.00 | 5,000.00 | 100,240.37 | BH |
| 6/13/2008 | 7216 | | | | 0.00 | 833.08 | | | 833.08 | 99,407.29 | |
| 6/13/2008 | 7212 | | | | 0.00 | 50.00 | | | 50.00 | 99,357.29 | |
| 6/13/2008 | 7214 | | | | 0.00 | 4.06 | | | 4.06 | 99,353.23 | |
| 6/16/2008 | 7209 | | | | 0.00 | 595.38 | | | 595.38 | 98,757.85 | |
| 6/16/2008 | 7200 | | | | 0.00 | 325.00 | | | 325.00 | 98,432.85 | |
| 6/17/2008 | 7221 | | | | 0.00 | 1,467.26 | | | 1,467.26 | 96,965.59 | |
| 6/17/2008 | 7390 | | | | 0.00 | 1,000.00 | | | 1,000.00 | 95,965.59 | |
| 6/17/2008 | 7220 | | | | 0.00 | 905.00 | | | 905.00 | 95,060.59 | |
| 6/17/2008 | 7213 | | | | 0.00 | 749.79 | | | 749.79 | 94,310.80 | |
| 6/17/2008 | 7219 | | | | 0.00 | 167.15 | | | 167.15 | 94,143.65 | |
| 6/18/2008 | 7208 | McCain Victory 2008 | | | 0.00 | 4,600.00 | | | 4,600.00 | 89,543.65 | |
| 6/18/2008 | 7217 | | | | 0.00 | 45.00 | | | 45.00 | 89,498.65 | |
| 6/19/2008 | 7388 | | | | 0.00 | 1,909.91 | | | 1,909.91 | 87,588.74 | |
| 6/19/2008 | 7215 | | | | 0.00 | 129.77 | | | 129.77 | 87,458.97 | |
| 6/24/2008 | 7391 | | | | 0.00 | 355.60 | | | 355.60 | 87,103.37 | |
| 6/24/2008 | 7223 | | | | 0.00 | 121.08 | | | 121.08 | 86,982.29 | |
| 6/25/2008 | 7224 | | | | 0.00 | 580.59 | | | 580.59 | 86,401.70 | |
| 6/26/2008 | 7222 | | | | 0.00 | 100.00 | | | 100.00 | 86,301.70 | |
| 6/30/2008 | | | | 102.22 | 102.22 | | | | 0.00 | 86,403.92 | |
| 6/30/2008 | 7225 | Brenda Hughes | | | 0.00 | | | 20,000.00 | 20,000.00 | 66,403.92 | |
| 6/30/2008 | ach | | | | 0.00 | 411.00 | | | 411.00 | 65,992.92 | |
| 6/25/2008 | 7226 | | | | 0.00 | 554.66 | | | 554.66 | 65,438.26 | |
| 6/25/2008 | 7227 | | | | 0.00 | 399.69 | | | 399.69 | 65,038.57 | |
| 6/25/2008 | 7228 | | | | 0.00 | 67.30 | | | 67.30 | 64,971.27 | |
| 6/25/2008 | 7229 | | | | 0.00 | 82.74 | | | 82.74 | 64,888.53 | |
| 6/25/2008 | 7230 | | | | 0.00 | 155.43 | | | 155.43 | 64,733.10 | |
| 6/25/2008 | 7231 | | | | 0.00 | 272.75 | | | 272.75 | 64,460.35 | |
| 6/25/2008 | 7232 | | | | 0.00 | 233.57 | | | 233.57 | 64,226.78 | |
| 6/27/2008 | 7233 | | | | 0.00 | 358.78 | | | 358.78 | 63,868.00 | |
| 6/27/2008 | 7234 | | | | 0.00 | 187.24 | | | 187.24 | 63,680.76 | |
| 7/3/2008 | 7235 | | | | 0.00 | 85.00 | | | 85.00 | 63,595.76 | |
| 7/3/2008 | 7236 | | | | 0.00 | 52.82 | | | 52.82 | 63,542.94 | |

| Date | ck # | Description | Deposits | | | Payments & Transfers | | | | Balance | Tab 1 |
|-----------|------|-----------------------|-----------|----------|-----------|----------------------|---------|-----------|-----------|------------|-------------------|
| | | | DAH Sep | Other | Total | Joint | Husband | Wife | Total | | |
| 7/3/2008 | 7237 | | | | 0.00 | 125.96 | | | 125.96 | 63,416.98 | |
| 7/3/2008 | 7238 | | | | 0.00 | 250.00 | | | 250.00 | 63,166.98 | |
| 7/3/2008 | 7239 | | | | 0.00 | 10.72 | | | 10.72 | 63,156.26 | |
| 7/3/2008 | 7240 | | | | 0.00 | 124.49 | | | 124.49 | 63,031.77 | |
| 7/3/2008 | 7241 | | | | 0.00 | 45.00 | | | 45.00 | 62,986.77 | |
| 7/3/2008 | 7242 | Chase | | | 0.00 | 17,181.29 | | | 17,181.29 | 45,805.48 | |
| 7/7/2008 | | | | 1,279.00 | 1,279.00 | | | | 0.00 | 47,084.48 | |
| 7/7/2008 | | Dan Hughes | 60,000.00 | | 60,000.00 | | | | 0.00 | 107,084.48 | |
| 7/7/2008 | 7243 | | | | 0.00 | 167.79 | | | 167.79 | 106,916.69 | |
| 7/7/2008 | 7244 | | | | 0.00 | 150.58 | | | 150.58 | 106,766.11 | |
| 7/7/2008 | 7245 | Heinrichs & DeGennaro | | | 0.00 | 2,914.61 | | | 2,914.61 | 103,851.50 | file #2815 |
| 7/7/2008 | 7246 | Brenda Hughes | | | 0.00 | | | 20,000.00 | 20,000.00 | 83,851.50 | |
| 7/7/2008 | 7247 | | | | 0.00 | 1,685.65 | | | 1,685.65 | 82,165.85 | |
| 7/15/2008 | 7248 | | | | 0.00 | 50.00 | | | 50.00 | 82,115.85 | |
| 7/15/2008 | 7249 | | | | 0.00 | 165.00 | | | 165.00 | 81,950.85 | |
| 7/15/2008 | 7250 | | | | 0.00 | 1,267.20 | | | 1,267.20 | 80,683.65 | |
| 7/15/2008 | 7251 | | | | 0.00 | 120.60 | | | 120.60 | 80,563.05 | |
| 7/15/2008 | 7252 | | | | 0.00 | 387.48 | | | 387.48 | 80,175.57 | |
| 7/15/2008 | 7253 | | | | 0.00 | 362.33 | | | 362.33 | 79,813.24 | |
| 7/15/2008 | 7254 | | | | 0.00 | 45.00 | | | 45.00 | 79,768.24 | |
| 7/17/2008 | | | | 101.41 | 101.41 | | | | 0.00 | 79,869.65 | |
| 7/17/2008 | 7255 | | | | 0.00 | 49.00 | | | 49.00 | 79,820.65 | |
| 7/17/2008 | 7392 | | | | 0.00 | 2,400.00 | | | 2,400.00 | 77,420.65 | BH's cks-no dates |
| 7/17/2008 | 7393 | | | | 0.00 | 105.20 | | | 105.20 | 77,315.45 | BH's cks-no dates |
| 7/17/2008 | 7395 | | | | 0.00 | 1,000.00 | | | 1,000.00 | 76,315.45 | BH's cks-no dates |
| 7/17/2008 | 7396 | Artwood | | | 0.00 | 5,750.00 | | | 5,750.00 | 70,565.45 | BH's cks-no dates |
| 7/17/2008 | 7397 | | | | 0.00 | 1,057.63 | | | 1,057.63 | 69,507.82 | BH's cks-no dates |
| 7/17/2008 | 7398 | | | | 0.00 | 93.47 | | | 93.47 | 69,414.35 | BH's cks-no dates |
| 7/17/2008 | 7399 | | | | 0.00 | 225.00 | | | 225.00 | 69,189.35 | BH's cks-no dates |
| 7/17/2008 | 7400 | Brenda Hughes | | | 0.00 | | | 60,000.00 | 60,000.00 | 9,189.35 | BH |
| 7/17/2008 | 7401 | | | | 0.00 | 150.00 | | | 150.00 | 9,039.35 | BH's cks-no dates |
| 7/17/2008 | 7366 | | | | 0.00 | 2,125.00 | | | 2,125.00 | 6,914.35 | BH's cks-no dates |
| 7/17/2008 | ach | | | | 0.00 | 40.18 | | | 40.18 | 6,874.17 | BH's cks-no dates |
| 7/21/2008 | 7256 | | | | 0.00 | 113.24 | | | 113.24 | 6,760.93 | |
| 7/25/2008 | | Dan Hughes | 75,000.00 | | 75,000.00 | | | | 0.00 | 81,760.93 | |
| 7/28/2008 | 7257 | | | | 0.00 | 279.05 | | | 279.05 | 81,481.88 | |
| 7/28/2008 | 7258 | | | | 0.00 | 255.48 | | | 255.48 | 81,226.40 | |
| 7/28/2008 | 7259 | | | | 0.00 | 394.98 | | | 394.98 | 80,831.42 | |
| 7/28/2008 | 7260 | | | | 0.00 | 868.12 | | | 868.12 | 79,963.30 | |
| 7/28/2008 | 7261 | | | | 0.00 | 82.07 | | | 82.07 | 79,881.23 | |
| 7/28/2008 | 7262 | | | | 0.00 | 81.17 | | | 81.17 | 79,800.06 | |
| 7/28/2008 | 7263 | | | | 0.00 | 77.61 | | | 77.61 | 79,722.45 | |
| 7/28/2008 | 7264 | | | | 0.00 | 231.17 | | | 231.17 | 79,491.28 | |
| 7/31/2008 | 7265 | | | | 0.00 | 46.80 | | | 46.80 | 79,444.48 | |

| Date | ck # | Description | Deposits | | | Payments & Transfers | | | | Balance |
|-----------|------|--------------------|-----------|----------|-----------|----------------------|---------|------|-----------|------------|
| | | | DAH Sep | Other | Total | Joint | Husband | Wife | Total | |
| 7/31/2008 | 7266 | | | | 0.00 | 94.93 | | | 94.93 | 79,349.55 |
| 7/31/2008 | 7267 | | | | 0.00 | 77.94 | | | 77.94 | 79,271.61 |
| 7/31/2008 | 7268 | | | | 0.00 | 83.76 | | | 83.76 | 79,187.85 |
| 7/31/2008 | 7269 | | | | 0.00 | 52.45 | | | 52.45 | 79,135.40 |
| 8/1/2008 | | | | 513.38 | 513.38 | | | | 0.00 | 79,648.78 |
| 8/1/2008 | 7270 | | | | 0.00 | 0.00 | | | 0.00 | 79,648.78 |
| 8/4/2008 | 7271 | | | | 0.00 | 0.00 | | | 0.00 | 79,648.78 |
| 8/4/2008 | 7272 | | | | 0.00 | 17.44 | | | 17.44 | 79,631.34 |
| 8/4/2008 | 7273 | | | | 0.00 | 150.61 | | | 150.61 | 79,480.73 |
| 8/4/2008 | 7274 | Wicker Basket | | | 0.00 | 9,110.32 | | | 9,110.32 | 70,370.41 |
| 8/4/2008 | 7275 | J Wilkinson Co Inc | | | 0.00 | 7,883.23 | | | 7,883.23 | 62,487.18 |
| 8/6/2008 | | Dan Hughes | 75,000.00 | | 75,000.00 | | | | 0.00 | 137,487.18 |
| 8/6/2008 | 7276 | | | | 0.00 | 1,300.00 | | | 1,300.00 | 136,187.18 |
| 8/7/2008 | | | | 1,279.00 | 1,279.00 | | | | 0.00 | 137,466.18 |
| 8/7/2008 | | | | 49.89 | 49.89 | | | | 0.00 | 137,516.07 |
| 8/7/2008 | 7277 | | | | 0.00 | 288.48 | | | 288.48 | 137,227.59 |
| 8/7/2008 | 7278 | | | | 0.00 | 205.00 | | | 205.00 | 137,022.59 |
| 8/7/2008 | 7279 | | | | 0.00 | 704.19 | | | 704.19 | 136,318.40 |
| 8/8/2008 | 7280 | | | | 0.00 | 1,000.00 | | | 1,000.00 | 135,318.40 |
| 8/11/2008 | 7281 | | | | 0.00 | 100.00 | | | 100.00 | 135,218.40 |
| 8/11/2008 | 7282 | | | | 0.00 | 100.00 | | | 100.00 | 135,118.40 |
| 8/11/2008 | 7283 | | | | 0.00 | 50.00 | | | 50.00 | 135,068.40 |
| 8/11/2008 | 7284 | | | | 0.00 | 33.02 | | | 33.02 | 135,035.38 |
| 8/12/2008 | 7285 | | | | 0.00 | 2,400.00 | | | 2,400.00 | 132,635.38 |
| 8/12/2008 | 7286 | McCoy's | | | 0.00 | 6,789.46 | | | 6,789.46 | 125,845.92 |
| 8/12/2008 | 7287 | | | | 0.00 | 702.78 | | | 702.78 | 125,143.14 |
| 8/12/2008 | 7288 | | | | 0.00 | 1,889.18 | | | 1,889.18 | 123,253.96 |
| 8/13/2008 | 7289 | Koehler Insurance | | | 0.00 | 10,307.00 | | | 10,307.00 | 112,946.96 |
| 8/13/2008 | 7290 | | | | 0.00 | 1,269.00 | | | 1,269.00 | 111,677.96 |
| 8/13/2008 | 7291 | Farmer's Insurance | | | 0.00 | 7,106.00 | | | 7,106.00 | 104,571.96 |
| 8/13/2008 | 7292 | | | | 0.00 | 1,060.00 | | | 1,060.00 | 103,511.96 |
| 8/19/2008 | 7293 | | | | 0.00 | 66.09 | | | 66.09 | 103,445.87 |
| 8/19/2008 | 7294 | | | | 0.00 | 476.72 | | | 476.72 | 102,969.15 |
| 8/21/2008 | 7295 | | | | 0.00 | 636.81 | | | 636.81 | 102,332.34 |
| 8/21/2008 | 7296 | | | | 0.00 | 28.00 | | | 28.00 | 102,304.34 |
| 8/25/2008 | 7297 | | | | 0.00 | 81.17 | | | 81.17 | 102,223.17 |
| 8/25/2008 | 7298 | | | | 0.00 | 301.15 | | | 301.15 | 101,922.02 |
| 8/25/2008 | 7299 | | | | 0.00 | 395.61 | | | 395.61 | 101,526.41 |
| 8/25/2008 | 7300 | | | | 0.00 | 147.88 | | | 147.88 | 101,378.53 |
| 8/25/2008 | 7301 | | | | 0.00 | 500.00 | | | 500.00 | 100,878.53 |
| 8/25/2008 | 7302 | | | | 0.00 | 81.66 | | | 81.66 | 100,796.87 |
| 8/25/2008 | 7303 | | | | 0.00 | 229.52 | | | 229.52 | 100,567.35 |
| 8/25/2008 | 7367 | | | | 0.00 | 2,125.00 | | | 2,125.00 | 98,442.35 |
| 8/25/2008 | 7402 | | | | 0.00 | 200.00 | | | 200.00 | 98,242.35 |

BH's cks-no dates

BH's cks-no dates

7RR1134

| Date | ck # | Description | Deposits | | | Payments & Transfers | | | | Balance | Tab 1 |
|-----------|------|----------------------------|------------|----------|------------|----------------------|---------|-----------|-----------|------------|-------------------|
| | | | DAH Sep | Other | Total | Joint | Husband | Wife | Total | | |
| 8/25/2008 | 7403 | | | | 0.00 | 1,600.00 | | | 1,600.00 | 96,642.35 | BH's cks-no dates |
| 8/25/2008 | 7404 | | | | 0.00 | 1,151.03 | | | 1,151.03 | 95,491.32 | BH's cks-no dates |
| 8/25/2008 | 7405 | | | | 0.00 | 29.00 | | | 29.00 | 95,462.32 | BH's cks-no dates |
| 8/25/2008 | 7406 | | | | 0.00 | 460.00 | | | 460.00 | 95,002.32 | BH's cks-no dates |
| 8/25/2008 | 7407 | Brenda Hughes | | | 0.00 | | | 50,000.00 | 50,000.00 | 45,002.32 | BH |
| 8/25/2008 | 7408 | | | | 0.00 | 265.00 | | | 265.00 | 44,737.32 | BH's cks-no dates |
| 8/25/2008 | 7409 | Zach Baldwin | | | 0.00 | 4,000.00 | | | 4,000.00 | 40,737.32 | BH's cks-no dates |
| 8/25/2008 | 7410 | | | | 0.00 | 373.36 | | | 373.36 | 40,363.96 | BH's cks-no dates |
| 8/25/2008 | 7411 | | | | 0.00 | 825.00 | | | 825.00 | 39,538.96 | BH's cks-no dates |
| 8/25/2008 | 7412 | Leah Curry | | | 0.00 | 10,000.00 | | | 10,000.00 | 29,538.96 | BH's cks-no dates |
| 8/25/2008 | 7413 | Brenda Hughes | | | 0.00 | | | 20,000.00 | 20,000.00 | 9,538.96 | BH |
| 8/28/2008 | | Dan Hughes | 100,000.00 | | 100,000.00 | | | | 0.00 | 109,538.96 | |
| 8/26/2008 | 7304 | | | | 0.00 | 79.49 | | | 79.49 | 109,459.47 | |
| 8/26/2008 | 7305 | 3-G Electric | | | 0.00 | | | 7,699.78 | 7,699.78 | 101,759.69 | |
| 8/31/2008 | | | | 86.40 | 86.40 | | | | 0.00 | 101,846.09 | |
| 8/27/2008 | 7306 | | | | 0.00 | 94.41 | | | 94.41 | 101,751.68 | |
| 8/28/2008 | 7307 | | | | 0.00 | 341.41 | | | 341.41 | 101,410.27 | |
| 8/28/2008 | 7308 | | | | 0.00 | 83.76 | | | 83.76 | 101,326.51 | |
| 8/29/2008 | 7309 | 3-G Electric | | | 0.00 | | | 12,869.39 | 12,869.39 | 88,457.12 | |
| 9/1/2008 | 7170 | | | | 0.00 | 2,125.00 | | | 2,125.00 | 86,332.12 | |
| 9/2/2008 | 7310 | Antonio Gutierrez | | | 0.00 | 3,200.00 | | | 3,200.00 | 83,132.12 | |
| 9/3/2008 | 7311 | | | | 0.00 | 825.31 | | | 825.31 | 82,306.81 | |
| 9/3/2008 | 7312 | | | | 0.00 | 90.00 | | | 90.00 | 82,216.81 | |
| 9/3/2008 | 7313 | | | | 0.00 | 779.40 | | | 779.40 | 81,437.41 | |
| 9/3/2008 | 7314 | | | | 0.00 | 33.44 | | | 33.44 | 81,403.97 | |
| 9/3/2008 | 7315 | | | | 0.00 | 152.60 | | | 152.60 | 81,251.37 | |
| 9/5/2008 | 7316 | | | | 0.00 | 454.13 | | | 454.13 | 80,797.24 | |
| 9/5/2008 | 7317 | | | | 0.00 | 569.72 | | | 569.72 | 80,227.52 | |
| 9/8/2008 | | | | 1,279.00 | 1,279.00 | | | | 0.00 | 81,506.52 | |
| 9/9/2008 | 7318 | | | | 0.00 | 374.97 | | | 374.97 | 81,131.55 | |
| 9/9/2008 | 7319 | | | | 0.00 | 50.00 | | | 50.00 | 81,081.55 | |
| 9/9/2008 | 7320 | | | | 0.00 | 134.12 | | | 134.12 | 80,947.43 | |
| 9/9/2008 | 7321 | | | | 0.00 | 18.40 | | | 18.40 | 80,929.03 | |
| 9/9/2008 | 7322 | | | | 0.00 | 229.00 | | | 229.00 | 80,700.03 | |
| 9/9/2008 | 7323 | | | | 0.00 | 1,823.83 | | | 1,823.83 | 78,876.20 | |
| 9/9/2008 | 7324 | | | | 0.00 | 693.32 | | | 693.32 | 78,182.88 | |
| 9/9/2008 | 7325 | | | | 0.00 | 222.55 | | | 222.55 | 77,960.33 | |
| 9/9/2008 | 7326 | | | | 0.00 | 43.31 | | | 43.31 | 77,917.02 | |
| 9/9/2008 | 7327 | | | | 0.00 | 215.98 | | | 215.98 | 77,701.04 | |
| 9/9/2008 | 7328 | 3-G Electric | | | 0.00 | | | 18,434.50 | 18,434.50 | 59,266.54 | |
| 9/11/2008 | 7329 | Kenny Wehmeyer-cash for BH | | | 0.00 | 1,600.00 | | | 1,600.00 | 57,666.54 | |
| 9/12/2008 | | Dan Hughes | 100,000.00 | | 100,000.00 | | | | 0.00 | 157,666.54 | |
| 9/16/2008 | 7330 | Dave Moore | | | 0.00 | 6,500.00 | | | 6,500.00 | 151,166.54 | 1995 Bombardier |
| 9/16/2008 | 7331 | 3-G Electric | | | 0.00 | | | 10,043.61 | 10,043.61 | 141,122.93 | |

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| Date | ck # | Description | Deposits | | | Payments & Transfers | | | | Balance |
|-----------|------|---------------|------------|----------|------------|----------------------|---------|-----------|-----------|------------------------------|
| | | | DAH Sep | Other | Total | Joint | Husband | Wife | Total | |
| 9/16/2008 | 7332 | | | | 0.00 | 133.30 | | | 133.30 | 140,989.63 |
| 9/19/2008 | 7333 | 3-G Electric | | | 0.00 | | | 19,672.18 | 19,672.18 | 121,317.45 |
| 9/19/2008 | 7334 | | | | 0.00 | 510.44 | | | 510.44 | 120,807.01 |
| 9/19/2008 | 7335 | | | | 0.00 | 136.42 | | | 136.42 | 120,670.59 |
| 9/19/2008 | 7336 | | | | 0.00 | 0.00 | | | 0.00 | 120,670.59 cleared in oct |
| 9/19/2008 | 7337 | | | | 0.00 | 580.59 | | | 580.59 | 120,090.00 |
| 9/23/2008 | | Dan Hughes | 125,000.00 | | 125,000.00 | | | | 0.00 | 245,090.00 |
| 9/23/2008 | 7338 | | | | 0.00 | 438.63 | | | 438.63 | 244,651.37 |
| 9/23/2008 | 7339 | | | | 0.00 | 83.49 | | | 83.49 | 244,567.88 |
| 9/24/2008 | 7340 | | | | 0.00 | 81.17 | | | 81.17 | 244,486.71 |
| 9/24/2008 | 7341 | | | | 0.00 | 0.00 | | | 0.00 | 244,486.71 cleared in oct |
| 9/26/2008 | 7342 | 3-G Electric | | | 0.00 | | | 30,067.01 | 30,067.01 | 214,419.70 |
| 9/26/2008 | 7414 | Tusiny? Co | | | 0.00 | 2,998.11 | | | 2,998.11 | 211,421.59 BH's cks-no dates |
| 9/26/2008 | 7415 | | | | 0.00 | 813.50 | | | 813.50 | 210,608.09 BH's cks-no dates |
| 9/26/2008 | 7417 | Pam Bailey | | | 0.00 | 15,000.00 | | | 15,000.00 | 195,608.09 BH's cks-no dates |
| 9/26/2008 | 7419 | | | | 0.00 | 465.73 | | | 465.73 | 195,142.36 BH's cks-no dates |
| 9/26/2008 | 7420 | | | | 0.00 | 312.35 | | | 312.35 | 194,830.01 BH's cks-no dates |
| 9/26/2008 | 7421 | | | | 0.00 | 599.00 | | | 599.00 | 194,231.01 BH's cks-no dates |
| 9/26/2008 | 7422 | | | | 0.00 | 182.24 | | | 182.24 | 194,048.77 BH's cks-no dates |
| 9/26/2008 | 7423 | | | | 0.00 | 683.91 | | | 683.91 | 193,364.86 BH's cks-no dates |
| 9/26/2008 | 7424 | | | | 0.00 | 200.00 | | | 200.00 | 193,164.86 BH's cks-no dates |
| 9/26/2008 | 7425 | Brenda Hughes | | | 0.00 | | | 25,000.00 | 25,000.00 | 168,164.86 BH |
| 9/26/2008 | 7427 | Utopia | | | 0.00 | 7,500.00 | | | 7,500.00 | 160,664.86 BH's cks-no dates |
| 9/26/2008 | 7428 | | | | 0.00 | 300.00 | | | 300.00 | 160,364.86 BH's cks-no dates |
| 9/26/2008 | 7429 | | | | 0.00 | 750.00 | | | 750.00 | 159,614.86 BH's cks-no dates |
| 9/26/2008 | 7430 | | | | 0.00 | 312.12 | | | 312.12 | 159,302.74 BH's cks-no dates |
| 9/30/2008 | | | | 133.37 | 133.37 | | | | 0.00 | 159,436.11 |
| 10/2/2008 | 7171 | | | | 0.00 | 2,125.00 | | | 2,125.00 | 157,311.11 |
| 10/2/2008 | 7344 | | | | 0.00 | 600.38 | | | 600.38 | 156,710.73 |
| 10/2/2008 | 7350 | | | | 0.00 | 77.94 | | | 77.94 | 156,632.79 |
| 10/3/2008 | 7345 | | | | 0.00 | 85.24 | | | 85.24 | 156,547.55 |
| 10/3/2008 | 7346 | Chase | | | 0.00 | 17,855.07 | | | 17,855.07 | 138,692.48 |
| 10/3/2008 | 7343 | | | | 0.00 | 186.25 | | | 186.25 | 138,506.23 |
| 10/6/2008 | 7426 | Land Title Co | | | 0.00 | 50,000.00 | | | 50,000.00 | 88,506.23 |
| 10/6/2008 | 7431 | Brenda Hughes | | | 0.00 | | | 20,000.00 | 20,000.00 | 68,506.23 BH |
| 10/6/2008 | 7432 | | | | 0.00 | 1,600.00 | | | 1,600.00 | 66,906.23 |
| 10/6/2008 | 7348 | | | | 0.00 | 939.30 | | | 939.30 | 65,966.93 |
| 10/6/2008 | 7341 | | | | 0.00 | 594.02 | | | 594.02 | 65,372.91 |
| 10/6/2008 | 7349 | | | | 0.00 | 199.81 | | | 199.81 | 65,173.10 |
| 10/7/2008 | | | | 1,341.94 | 1,341.94 | | | | 0.00 | 66,515.04 |
| 10/7/2008 | | Dan Hughes | 100,000.00 | | 100,000.00 | | | | 0.00 | 166,515.04 |
| 10/7/2008 | 7351 | 3-G Electric | | | 0.00 | | | 8,821.42 | 8,821.42 | 157,693.62 |
| 10/7/2008 | 7347 | | | | 0.00 | 1,000.00 | | | 1,000.00 | 156,693.62 |
| 10/9/2008 | 7760 | Brenda Hughes | | | 0.00 | | | 20,000.00 | 20,000.00 | 136,693.62 |