

AFFIDAVIT OF JANE DANIEL

My name is Jane Daniel. Before the events I recount below, I was a writer and a small literary publisher.

In December, 1998, I married Robert Nickse. Four years later, my husband left and thereafter filed for divorce. I signed the divorce agreement under extreme duress: I was being threatened with imprisonment if I refused.

The history of this situation is complex. Subsequent to the marriage, I was named a defendant in a lawsuit over a Holocaust memoir published by the tiny publishing company I founded. In late 2001 a \$33 million judgment entered against my company and me in favor of the book's author and ghostwriter, Misha Defonseca and Vera Lee, respectively. I filed a notice of appeal, the first step in what would become a decade and a half of legal battles to undo what the Court of Appeals ultimately found to be "a grave miscarriage of justice."

With the divorce in the works, my estranged husband, Robert Nickse, entered into an agreement with judgment creditor Vera Lee, (the Agreement for Judgment referenced below) whereby he (Robert) would receive \$250,000 in exchange for a quit claim deed that would facilitate Lee's execution against my home prior to the divorce. Lee's attorney, Frank Frisoli filed Robert's quitclaim deed.

Through supplementary process proceedings in Gloucester District Court, judgment creditor Lee then obtained a payment order for \$2,000 a month, money I did not have. The lawsuit had killed my business and ruined me financially; I was renting rooms in my house to get by. My father made the monthly payments for a time. When he died the payments ended. I called a lawyer from the phone book who counseled people in debt. She told me, "If you don't have the money, you won't go to jail. We don't have debtors' prison anymore."

That is why, when I was in Gloucester District Court for yet another hearing, I was completely taken aback when the judge sentenced me to ten days in MCI Framingham. Right there in front of the whole courtroom, I was shackled with a chain around my waist, my wrists cuffed together and shackles around my ankles. I was not allowed to make a phone call.

In a state of disbelief I waited for a long time in a cell with another woman who was charged with driving the car in a drug-related heist. At last the Essex County Sheriffs van arrived, making the rounds to collect prisoners from various courthouses in the county, a long process. The handcuffs were so tight that my wrists swelled till they were rubbed raw. Every bump in the road caused pain. I hadn't eaten all day.

We arrived at the prison long after dark. I didn't know the time because my watch had been taken from me, along with my purse, glasses and jewelry. I could pick them up when I got out, I was told.

There were forty or so other women being brought in that night. We were herded into a big windowless room with built-in benches around the perimeter, where we waited to be called one-by-one for the intake process. There wasn't enough room for everybody to sit. Leaning against a wall, I looked around at the other prisoners. I was the oldest one there. A young black girl, apparently reading the fatigue on my face, stood up and offered me her seat.

We were strip-searched, sent to the shower and given a brief medical exam. I asked the clinician who was putting a blood pressure cuff on my arm for the time. It was almost midnight. I wouldn't be going with the others, I was told. My blood pressure was so high that I was being sent to the "infirmary."

This turned out to be a bleak, cavernous room with maybe twenty cots, which were mostly occupied. A huge glass "picture window" looks out into a main corridor that is patrolled by male correction officers garbed like storm troopers. In the corner there's a

learned that Nickse and Lee had executed the Agreement for Judgment described above. It was to be funded by \$250,000 from the sale of my home.

Anthony Porcello of Gloucester was my divorce attorney. My nerves were raw from many months of legal battering when I arrived at his office to go over the divorce agreement I was to sign. What he told me that afternoon put me into a state of shock. He had received a phone call, he said, from Vera Lee's attorney, Frank Frisoli who stated that he would remove the stay on the contempt citation and have me incarcerated if I didn't sign the divorce agreement giving my husband \$250,000. In fact, my lawyer said, Mr. Frisoli had wanted me to know that if I didn't comply I would never get away from him. He would hunt me down, and after he died, his children would hunt me down. As I listened to these words, I felt my throat constrict with fear.

On the day the divorce was finalized in probate court, my husband and his lawyer Orestes Brown sat in the Clerk's Office across the table from my attorney and me. The divorce agreement that was presented for me to sign contained the financial terms outlined in the March, 2006 Nickse/Lee Agreement for Judgment. Belongings of mine, that my husband at the last minute decided that he wanted, were handwritten by Mr. Brown into the divorce agreement. There was nothing I could say. Terrified of going to prison again, I signed.

Then we entered the courtroom. As I stood before the bench I was numb. Through a fog, I heard the judge ask me, Had I entered the agreement of my own free will? I did the only thing I was capable of doing at that time, I answered, "Yes."

When it was all over and we left the courtroom Attorney Frisoli was waiting for me in the hall, all smiles. He immediately approached and introduced an unfamiliar woman, the realtor, he said, who would be handling the sale of my home. I believed that he was really there to see that I behaved as he had instructed. Had I answered "No" to the judge's routine question, I had no doubt that my next stop would have been Gloucester District Court and then MCI Framingham.

The marriage had lasted only four years. All assets, including the house I purchased with my own money, all mortgage payments, and all income had come from by me. Moreover, at the time of the divorce my husband had recently been named beneficiary of a substantial spendthrift trust, while I had a \$33 million judgment hanging over my head. I would never have accepted that lopsided and unfair divorce agreement had I not been completely intimidated.

Shortly after I got divorced I sought therapy for acute anxiety and was diagnosed with PTSD due to the lawsuits I had been engaged in. I had begun the appeal process and believed that ultimately justice would prevail and I would overturn the judgment (which has happened in part.)

I've spent 15 years in back-to-back litigations trying to put my life back together. After the trial, I filed an appeal based on judicial error — and lost. While the appeals process was proceeding I spent years working to uncover evidence of fraud by the author of the memoir. I filed another appeal based on incontrovertible evidence that my author's Holocaust story was a hoax — and lost again. At last, in November, 2010 the Appeals Court ruled that in acting pro se at the beginning of the lawsuit, Misha Defonseca had stepped into the shoes of an officer of the court and had “perpetrated an extraordinary fraud upon the court.” The verdict with respect to Lee, however, was allowed to stand; she had been represented from the outset by Attorney Frisoli. Absent fraud on the court, the statute of limitations for challenging Lee expired long before I uncovered the truth.

My fraudulent Holocaust memoirist fought the verdict until she ran out of appeals. As soon as it became final, I filed for bankruptcy and began an action to overturn the divorce agreement.

POSTSCRIPT

In April, 2012 Lee was back in Gloucester District Court seeking to have the stay on the mittimus revoked. Judge Richard Mori obliged with a finding of contempt for failure to make payments on the execution, irrespective of the fact that the obligation to do so had been suspended in the Settlement Agreement with Lee that I signed on August 16, 2007 and no new court order was in place. I was again taken in shackles to MCI Framingham where I served 20 days.

The day after I was incarcerated, my appeal counsel, Joseph Orlando, received a letter offering to drop Lee's opposition to our motion for reconsideration. The terms: I could get out of prison if I agreed to pay \$23,000 in suspended court-ordered payments plus more than \$46,630 for Attorney Frisoli's legal fees, to be deducted from my Homestead Exemption when my house was sold. I knew what I would be in for in that awful place and I steeled myself. I served the full term.

Sworn under pains and penalties of perjury this 15th day of December, 2015.

Jane Daniel