

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

PROBATE AND FAMILY COURT
DOCKET NO. 04D-1906-DV1

ROBERT PAUL NICKSE,
Plaintiff

VS.

JANE C. DANIEL,
Defendant

12

DEFENDANT'S SECOND PRE TRIAL MEMORANDUM

- A. MEETING OF THE PARTIES: The attorneys for the respective parties met at the office of Plaintiff's counsel on Tuesday, December 5, 2006 to discuss the case in detail and a potential resolution of this divorce. The parties did not attend this meeting.
- B. STIPULATION OF FACT: The parties were married on December 24, 1998 and separated in December of 2002. This is the second marriage for both parties. There are no children of this marriage. During the marriage, the Plaintiff engaged in limited assistance to the Defendant in the operation of her business, a bed and breakfast inn owned by the Defendant and operated as The Charles⁴Hovey House Bed and Breakfast, LLC.

As part of their marriage, the Defendant transferred title to her real property located at 4 Hovey Street, Gloucester from herself individually to herself and the Plaintiff as Tenants by The Entirety.

The Plaintiff also owns an interest in a piece of property outside of the United States, in Vieques, Puerto Rico. The other two owners are his siblings. It is the Defendant's understanding that the value of the Vieques property exceeds \$1 Million.

The Defendant has a substantial debt to a Judgment Creditor, which debt arose during the marriage in April 2002. The creditor is Vera Lee. The amount of the Judgment, with interest, exceeds \$30 Million.

During the pendency of this divorce action, the Defendant's Judgment Creditor brought an action in Middlesex Superior Court against both of these parties, claiming Fraudulent Transfer, in an attempt to invalidate the current title to the property at 4 Hovey Street, Gloucester, held by these parties as Tenants by The Entirety. The action was settled by written agreement between the Plaintiff and the Defendant's Judgment Creditor. The settlement involved the Plaintiff transferring his interest in the Hovey Street property back to the Defendant. In return, the Plaintiff received a contractual promise by Defendant's Judgment Creditor to pay the Plaintiff approximately \$250,000 when the Judgment Creditor liquidates the Defendant's property. The Defendant has disclaimed

this transfer, and has challenged the validity of this settlement agreement in an equity action in this Court, Docket No. 06E-0061-GC1. The Defendant contends that the settlement agreement between the Plaintiff and Defendant's Judgment Creditor is invalid because, if the settlement agreement were permitted to stand, the Plaintiff would ultimately get a significant portion of the Defendant's equity assets which he would not otherwise be entitled to from this divorce.

In December of 2006, the Court consolidated that Equity action with this Divorce action.

- C. **CONTESTED ISSUES OF FACT:** The Defendant contests that she should be required to share any of her assets with the Plaintiff. The Defendant submits that M.G.L. c. 208, s. 34 would require the Plaintiff to take responsibility for a portion of the debt owed to Defendant's Judgment Creditor. Further, the Defendant contests any payments that the Plaintiff may receive by Defendant's Judgment Creditor as a result of the settlement agreement from the Middlesex Superior Court action.
- D. **DISCOVERY STATUS:** There is outstanding discovery on both sides. The Defendant has responded to Plaintiff's Request for Production of Documents, but has yet to answer Plaintiff's Interrogatories. The Plaintiff's response to Defendant's Request for Production is now overdue, despite the fact that counsel for both parties have discussed exchanging information and documents. The Defendant has also notified the Plaintiff that she would like to take Plaintiff's deposition, which has been agreed to but not yet scheduled.
- E. **CUSTODY NOT AT ISSUE.**
- F. **WITNESSES:**
Defendant would testify on her own behalf.
Defendant may call the Plaintiff to testify at the time of trial.
Defendant may need to call additional witnesses, and reserves the right to supplement this list of witnesses prior to trial.
- G. **EXHIBITS:**
Evidence of the Defendant's personal liabilities, including her Judgment Creditor's Judgment;
Evidence of Defendant's business income and expenses;
Evidence of Plaintiff's interest in real property outside of the United States;
Evidence of Plaintiff's assets and other liabilities;
Whereas there remains outstanding discovery and other unknown issues, Defendant reserves the right to supplement this exhibit list prior to trial.
- H. **DEPOSITIONS:**
The Plaintiff has not taken Defendant's Deposition. The Defendant will take the Plaintiff's Deposition prior to trial. Defendant reserves the right to supplement this issue prior to trial.

I. REAL ESTATE ISSUES:

There are several issues relative to real estate, including valuation and division of the interest in 4 Hovey Street, Gloucester, the valuation of the Plaintiff's Vieques real property interest, and the determination of the Plaintiff's interest which he would get under the settlement agreement with Defendant's Judgment Creditor at the time of any Sheriff's Sale of the 4 Hovey Street property.

J. ALIMONY OR PROPERTY DIVISION:

Whereas this is a short-term marriage, Defendant contends that there is no alimony issue. Defendant contends there are several property division issues, particularly related to the interest that the Plaintiff may get under the settlement agreement with the Defendant's Judgment Creditor. Defendant reserves the right to supplement this issue prior to trial.

K. LENGTH OF TRIAL:

Estimated 3 hours.

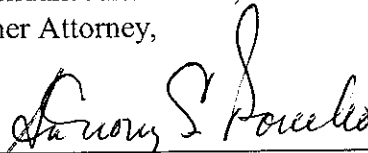
L. FINANCIAL STATEMENT:

Both parties have submitted Financial Statements for this hearing.

M. CHILD SUPPORT GUIDELINES:

There are no children of this marriage.

Respectfully submitted,
Defendant Jane Daniel,
By her Attorney,



Anthony S. Porcello, Esq.
324 Main Street
Gloucester, MA 01930
(978) 283-3600
B.B.O. # 555329

Dated: February 26, 2007

Divorce July 24, 2007