

JJS,		: IN THE COURT OF COMMON PLEAS OF
		: LYCOMING COUNTY, PENNSYLVANIA
	Plaintiff	:
		:
	vs.	: NO. 05-20,711
		: CIVIL ACTION - LAW
KDS,		: IN DIVORCE
		: DECLARATORY JUDGMENT
	Defendant	: ADJUDICATION

**Date: October 18, 2006**

**INTRODUCTION**

The matter before the court is an action for declaratory judgment filed by the Defendant, KDS, seeking special relief in this divorce case. Ms. S requests that this court enter an order declaring that the Antenuptial Agreement signed by the parties on their wedding date, October 22, 1994, is not valid and is unenforceable. An evidentiary hearing was held in this case on April 26, 2006 and legal argument was held on May 15, 2006 after proposed findings of facts, conclusions of law, and discussion of the case and proposed order were filed by counsel.

Based upon the hereinafter stated findings of facts, discussion and conclusions of law, this court has determined that Ms. S is entitled to the relief she requests and an order holding the Antenuptial Agreement to be invalid and unenforceable will be entered.

**FINDINGS OF FACT**

1. The parties signed the ANTENUPTIAL AGREEMENT (Defendant's Exhibit 1, sometimes hereafter "Agreement") involved in this case on October 22, 1994, the date of their wedding.

2. The Antenuptial Agreement included a release of all of JJS's assets from any and all claims or legal interest KDS would have in this divorce proceeding.

3. JJS and KDS (formerly Haney) had started to date in the Fall of 1992. They were engaged on December 25, 1993 and married on October 22, 1994. They began to live together prior to the spring of 1993 at what was referred to as the old farmhouse.

4. At the time of their marriage, JJS and KDS had been residing at the residence owned by JJS in Linden since at least May of 1994.

5. JJS and KDS both resided at the Linden home until JJS moved out in March 2005.

6. JJS had a net worth in excess of \$1 million as of October 22, 1994, the wedding day and date the agreement was signed. This included the value of his interests as beneficiary in trusts established by the families of his parents the S (father) and Stanbro (mother) families.

7. JJS did not make a full and complete disclosure of the value or the identity of his assets included on the Antenuptial Agreement to KDS at any time.

8. Exhibit A of the Antenuptial Agreement which sets forth the assets of JJS provides as follows:

#### EXHIBIT A

##### JJS

1. Real estate situate at R.R. #1, Linden, PA, filed at Book 1328, Page 207.

2. Investment account with Rosenblum, Silverman and Sutton of San Francisco, California, Investment Brokerage.

3. Trust accounts that are undistributed with Commonwealth/Meridian Bank.
4. Heavy Equipment:
  - Caterpillar D4H, D47U, D6-8U, 95IC, 416B
  - #12 Grader
  - #10 Tractor
  - #15 Tractor
  - Mack Dump Truck with 20 ton tag along trailer
5. Sole Proprietorship – S, Earth Working Services and any other equipment related to this business.
6. Any assets or cash prior to marriage on October 22, 1994.
7. Gun collection, all guns inherited from father, H. J. S and/or acquired prior to October 22, 1994.

10. Although Exhibit A to the Antenuptial Agreement lists certain assets of JJS, there was no written disclosure of the value of any of those assets, either in the Antenuptial Agreement, in Exhibit A, or in any other document.

11. JJS has acknowledged at trial and the Court finds that at the time of entry into the Antenuptial Agreement his assets specifically included:

1. Two accounts in the name of JJS at Smith-Barney, Shearson, valued at \$256,095.94 and \$28,294.82 as of December 31, 1993 (Defendant's Exhibits 2 and 3).
2. Meridian Trust Company, trustee for Jeff S, U/A executed by G. S 12/9/84 valued at \$74,910.74 as of March 31, 1994 (Defendant's Exhibit 4; also referenced as the Gertrude S Trust).
3. Meridian Trust Company and D. S and S. Wolcott, Co-Trustees for Jeff S U/WOL Gertrude S, valued as of 3/31/94 at \$126,877.54 (Defendant's Exhibit 5).
4. Meridian Trust Company, Trustee for Jeffrey S, U/W of Harold J. S, Jr., valued as of 12/31/95 at \$174,696.66 (Defendant's Exhibit 6).

5. Interest in a trust established by his mother, Diane Stanbro, the Stanbro Family Trust of which his share would have been at least equal to \$100,000.00 payable at the death of his mother, plus the receipt of income there from until her death. (See deposition of Diane Stanbro, December 9, 2005, Defendant's Exhibit 14, e.g., pp. 7-10)

6. An interest in a real estate investment company established by his mother, Diane Stanbro, named "J Group", which held real estate and an investment account as its assets, of which his share was worth in excess of \$30,000.00. (Id. at pp. 13-15)

7. An anticipatory interest in the Mellish Trust, which had an undetermined value and for his anticipatory interest payable at the death of his mother.

12. The value of JJS's assets in 1994 was nominally \$1 million (see among others, synopsis of assets, Defendant's Exhibit 14, supra, pp. 36-37).

13. Jeffrey J S did discuss with KDS several months before the wedding his desire to have her sign an Antenuptial Agreement, which would be limited specifically to assets being held in a trust established by his father.

14. Mr. S made a similar statement to Kimberly S's parents (Herman and Sandra Koch) concerning a prenuptial agreement to be limited to his interests in his father's trust. JJS made this statement to Mr. and Mrs. Koch and KDS during a dinner at the home of Mr. and Mrs. Koch a few months before the wedding, where the only parties present were Mr. and Mrs. Koch, JJS and KDS.

15. There was no discussion at that time as to the value of the trusts. There was no discussion that Mr. S intended to include in the prenuptial agreement any assets except his father's trust.

16. Mrs. Koch asked her daughter several times after that dinner whether Mr. S had, in fact, provided her with such an agreement.

17. Prior to the wedding, Mr. S had only discussed with KDS a limited Antenuptial Agreement applying only to assets while they remained in a trust established by his father.

18. Without objection from her parents, KDS verbally agreed to sign a prenuptial agreement which would release her rights to assert any claims against the trust established by JJS's father.

19. On October 12, 1994, Mr. and Mrs. Koch conveyed approximately 19 acres of land to JJS and KDS in joint names as a wedding gift. They did this knowing that KDS was going to relinquish her rights to the trust created by Mr. S's father.

20. As of 1993 and 1994 through the date of the wedding, JJS would have had knowledge of the existence of all of the assets set forth on Exhibit A and also of the assets listed above in finding of fact that were not set forth on Exhibit A with the exception of the Mellish Trust. This knowledge by his testimony included the J Group although he testified he did not know its value. His knowledge would have been gained at least from receiving income tax information reports, such as K-1's or other income reporting forms which he would have used for reporting his income taxes (See among others, Defendant's Exhibit 14, supra, at pp. 9, 10; 12, 13; 40), as well as quarterly trust statements from the three Meridian Trust Company Trust accounts. (See Defendant's Exhibits 3, 4, and 5).

21. JJS did not disclose the value of his assets to KDS at any time prior to her signing of the Agreement.

22. JJS did not disclose to KDS, prior to the signing of the marital agreement, the existence of the two accounts at Smith-Barney Shearson, the Gertrude S trusts with Meridian Trust Company, his interest in the Diane Stanbro Family Trust, his interest in the J Group, nor his interest in the Mellish Trust. He would have had knowledge of all of those interests, if not the value thereof, with the exception of the Mellish Trust when the Agreement was signed. KDS had no knowledge of the existence of these specific assets at the time the Agreement was signed.

23. The Agreement was prepared by Mr. S's attorney, Thomas A. Marino, Esquire, at Mr. S's request. Mr. Marino had represented Mr. S in various matters over a long period of time.

24. Mr. S's uncle, David S, and a close friend, Thomas Worth, had urged JJS to have KDS sign an Antenuptial Agreement to protect his assets.

25. Approximately a month before the wedding KDS and JJS were at the law office of Mr. S's attorney, Thomas A. Marino, Esquire, and a brief discussion was held by the three of them to the effect that Mr. Marino was going to prepare a prenuptial agreement. The exact date of the meeting is unknown. There was no discussion at that time as to what assets Mr. S owned nor as to what assets were going to be included in the agreement.

26. At the time of this meeting there was no prenuptial agreement in written form. (Plaintiff's Exhibit 5, Deposition of Thomas A. Marino, Esquire, p.7)

27. This was the only such meeting which included KDS; however, Mr. S and his attorney met two to three times to discuss the Antenuptial Agreement. (*Id.*, at pp. 16, 39-41.)

28. Mr. Marino did not give any legal advice to KDS.

29. JJS supplied Mr. Marino all the information for the list of assets listed in Exhibit A of the Antenuptial Agreement. (*Id.* at p. 9)

30. At the time of preparing the Antenuptial Agreement Mr. Marino had knowledge of the approximate value of the trust account listed in Exhibit A of the Antenuptial Agreement. (*Id.*, at p. 29)

31. JJS told Mr. Marino when the Antenuptial Agreement was being prepared that the trust account paid him about \$2,500.00 per month. (*Ibid.*)

32. The provisions of the Antenuptial Agreement followed the usual form of this type of agreement that Mr. Marino used at that time, including language to the effect that the parties agreed they had made a full and complete disclosure of their assets and income and also language to the effect that values may not be exact and that values may fluctuate and be subject to opinion. (*Id.* at p. 28, 30-31)

33. Mr. Marino did not discuss any values with KDS. (*Id.* at p. 32)

34. The Antenuptial Agreement did not reflect any values for any assets of Mr. S, it listed no assets for Kimberly D. (Haney) S.

35. A party reading only the Antenuptial Agreement in Exhibit A would have no knowledge of the net worth of either of the parties to the Agreement and would have no knowledge of the value of any of the assets of JJS listed on Exhibit A to the Antenuptial Agreement.

36. JJS received the draft of the Antenuptial Agreement from his attorney shortly after October 8, 1994.

37. Based on the transmittal letter to Mr. S from Mr. Marino, JJS received the draft of the Antenuptial Agreement almost two weeks before the date of the wedding on which the parties executed the Antenuptial Agreement, October 22, 1994.

38. KDS did not receive a copy of the Antenuptial Agreement until JJS handed it to her on the day of the wedding.

39. JJS and KDS were living together before their marriage and had numerous opportunities during which they would have been able to review and execute the Antenuptial Agreement if Mr. S had asked to do so.

40. The Antenuptial Agreement was signed on the day of the wedding at the Reighard House, the site where KDS and her bridesmaids were dressing and preparing for the wedding. KDS had not told Mr. S that she was too busy to execute the Antenuptial Agreement prior to that time; nor had she told Mr. S that she preferred to execute the Antenuptial Agreement on the day of the wedding at the site where she and her bridesmaids would be preparing for the wedding ceremony. The decision to request the Agreement be signed at that date and time was made solely by Mr. S who that same week had been again prompted by his best friend, Mr. Worth, and his uncle, David S, to secure a signed agreement prior to the wedding.

41. JJS had made arrangements with Reighard's prior to October 22, 1994 to be sure a notary would be available.

42. KDS at the request of JJS signed the Antenuptial Agreement on October 22, 1994, at the Reighard House before Jacqueline Platt, a Notary Public, believing it referred only



to a release of her rights in his father's trust. Had she known it pertained to all of his assets she would not have signed the Agreement.

43. KDS was surprised and upset by JJS's request on the day of the wedding that she sign the Antenuptial Agreement.

44. KDS was upset and in tears when she returned to the room after signing the Antenuptial Agreement. She expressed shock and hurt feelings about this to her Maid of Honor, Ms. Geary. She also stated words to the effect that plaintiff Jeffrey D. S had "hit her with this" – a reference to a prenuptial agreement – only a short time before the wedding ceremony.

45. KDS had not advised her parents that she had the Antenuptial Agreement in her possession prior to October 22, 1994.

46. On October 22, 1994 prior to the wedding ceremony, KDS advised her Mother, Sandra Koch, that she had signed an Antenuptial Agreement.

47. KDS and her Mother agreed not to tell KDS's step-father, Herman Koch, until after the wedding ceremony.

48. Herman Koch and KDS have a close relationship.

49. Herman Koch disliked JJS and regarded him as "arrogant" and "no good".

50. Herman Koch believed that JJS did not know the word "honesty".

51. KDS knew if she told her Father she had signed the Antenuptial Agreement prior to the ceremony, he would not have wanted her to proceed with the ceremony.

52. KDS desired to marry JJS despite his request that she sign the Antenuptial Agreement.

53. JJS did not make any oral or written disclosure of his assets to defendant Kimberly S at any time in October of 1994, the month of the wedding.

54. There is no evidence that KDS received any written or oral disclosure of the value of JJS's assets at any time in October 1994 or, indeed, at any time within six months before the execution of the Antenuptial Agreement on the date of the parties' wedding (October 22, 1994).

55. When she did sign the Antenuptial Agreement, KDS did so without reading it, relying upon the prior representations made by JJS that the assets involved were his interests in his father's trust.

#### **DISCUSSION**

The Court finds that defendant KDS has clearly and convincingly proven that there was no full and fair disclosure of the value of Jeffrey S's assets before the execution of the Antenuptial Agreement on October 22, 1994. There is no evidence of any written disclosure of the value of Mr. S's assets being made and the facts establish the absence of any oral disclosure by Mr. S of the value of his assets before the date of the execution of the Antenuptial Agreement. Further, the court finds JJS induced KDS to sign the Antenuptial Agreement by his misrepresentation to her that the intent of the agreement was to have her release her spousal claims against a family trust established by his father, a representation upon which she relied when she signed the agreement without reading it.

Plaintiff JJS testified in this case that he remembers making a detailed disclosure of the value of his assets to his then fiancée Kimberly D. Haney shortly after their engagement in December of 1993 or January of 1994. Mr. S contends that the disclosure occurred because of

an incident in which someone made a comment to Kimberly D. Haney regarding Mr. S's apparent wealth. JJS asserts that, as a result of this incident, he made a detailed disclosure of the value of his assets to her and that this disclosure of assets specifically included showing his fiancée the then current account statements detailing the value of his investment account, the value of his interests as beneficiary of certain Commonwealth/Meridian Bank trusts and his most recent federal income tax return. He also testified about maintaining an organized filing system of such business information. He testified that this information was going to "make or break" their relationship because he needed to explain his wealth was so minimal that they would always have to work for a living.

JJS has also testified that he openly disclosed the nature and value of his assets to KDS throughout the parties' marriage up until near the time of their separation in 2005. Ms. S has testified that the truth is precisely the opposite and that Mr. S generally kept his financial records unavailable to Ms. S throughout virtually the entire time during which the parties lived together as husband and wife.

KDS has testified in this case that, although JJS did complain to her from time to time about a perception in the community that he was wealthy, JJS never made any disclosure of the value of his assets in December of 1993, January of 1994 or at any other time before nor on their wedding on October 22, 1994. Ms. S has testified that she knew before the wedding that Mr. S had an investment account, but that she had no knowledge regarding the approximate value of that account. Ms. S has also testified that she knew before the wedding that Mr. S was a beneficiary of certain trusts established by the S family and that some of those trusts provided for distributions at five-year intervals. However, Ms. S has testified that she had no knowledge

of the approximate amount of those distributions or of the value of Mr. S's interests as beneficiary of those trusts. Finally, Ms. S has testified that she knew before the wedding that Mr. S was engaged in an earthworking business and owned certain heavy equipment, but she had no knowledge regarding the approximate value of that business or of the heavy equipment and earthmoving equipment JJS had purchased before October 22, 1994.

The Court finds, based on all of the evidence and on an evaluation of the credibility of both parties, that JJS's testimony concerning the alleged detailed disclosure of the value of his assets in December of 1993 or January of 1994 is not credible. The Court accepts as credible KDS's testimony concerning the absence of any such disclosure and her lack of knowledge of the value of Mr. S's assets at all times before the execution of the Antenuptial Agreement. This evaluation of credibility also includes the court's observance of the demeanor of each of the parties on the witness stand.

Mr. S has asserted at trial that he still has no way of providing this court with details as to the value of his trusts and investments as they existed in 1994. He stated he went through everything but that Defendant's Exhibits 2 through 6 were all he could find. That is inconsistent with his testimony about the organized filing system he maintained and from which he asserts Ms. S would surely have gained knowledge as to the value of his trusts and investments. It is also inconsistent with him telling his counsel who prepared the Agreement that his income from the trust accounts listed on the agreement was \$2,500.00 per month. From that knowledge he certainly would have had a basis to estimate their overall value. Even at trial, he stated he could not "guess" their actual value. Surely if he was as concerned as to the misconception people had as to his wealth and that he wanted Ms. S to know the truth,

which was either “going to make or break” their relationship he would be able to remember the values he disclosed to her and most likely would have preserved some record of the documents he relied upon.

JJS would have this court believe he learned information regarding his trust and assets held by Diane Stanbro (his mother) only after KDS’s counsel completed depositions and discovery requests. This is not plausible, especially in view of his mother’s testimony which indicates he would have received information to be included on his income tax returns. His mother’s deposition also confirms such information appeared on his 1993 tax return.

The testimony of Mr. S concerning the detailed conversation he had with his fiancée after their engagement confounds this court. It appears Mr. S wanted to convince the future Mrs. S that he was not worth marrying for his money. This was a concern he had even after having lived with her for many months and becoming engaged. At that time it seems that the motive of Mr. S would have been to show Ms. Kimberly Haney that he really had very little money. How would he have convinced her of that? Would he have shown her the 1993 Year End Summaries of the Smith-Barney Shearson statements introduced as Defendant’s Exhibits 2 and 3 which showed annual income of nearly \$9,000.00 and holdings in excess of \$275,000.00. Such might have had the opposite effect in that she would have thought that he did have some significant monies. Or, perhaps in addition to that, he would have shown her the Meridian Trust Account statements introduced as Defendant’s Exhibits 4, 5, and 6 for the period ending March 31, 1994. These assets would have shown a total value of approximately \$375,000.00 with significant income. In fact, as he told his attorney at the time, if he had shown his full

income from the trust he would have shown her \$2,500.00 per month or nearly \$30,000.00 per year. This certainly would have been significant income in 1993/1994.

The significance of this income is particularly when contrasted with the parties joint income tax return filed in 2001 that shows a total adjusted gross income of only \$6,014.00 (and as noted on Defendant's Exhibit 7, adjusted gross income for tax year 2000 of \$25,657.00). That tax return also shows a business loss of \$19,000.00 and the information sheet attached to Defendant's Exhibit 7 shows a business loss of \$6,000.00 for Mr. S's excavating business. The same return indicates Mrs. S had wages of \$16,000.00.

In addition to these financial assets of approximately \$600,000.00 to \$650,000.00 Mr. S then certainly would have indicated that he was receiving income tax information disclosing that he also would have income from Stanbro Family Trust established by his mother and also a group known as the J Group which had investments in real estate and other assets. Even if it is accurate that Mr. S did not know the extent of these assets (despite the fact that he was a main trustee) he in his discussion with the then Ms. Haney would have been able to simply point these out to her and let her draw whatever beliefs she wanted to as to her value assuming that he could not really suggest one. Was Mr. S's asserted conversation in 1993/1994 to convince Ms. S they would have to survive on their working income? Not likely if you accept the assertion that Mr. S has made that his excavation business never really makes any money. Therefore, if Mr. S had such a conversation with Ms. S it seems that a truthful disclosure would have tended to make her believe she was marrying a man of wealth who didn't really have to work for his living, which would have been contrary to the stated purpose of Mr. S in sitting down and having this financial come clean talk. We do not believe the conversation occurred.

If a truthful disclosure had been made by Mr. S to Ms. Haney in 1993/1994 it might be reasonable to assume that Ms. Haney would have received the impression that Mr. S was worth nearly a million dollars (as demonstrated by his mother's deposition) and as he acknowledged at trial. Is that the make it or break it situation that Mr. S was concerned about? Hardly. Rather it seems that his purpose at that time would have been to minimize his assets to try to demonstrate to Ms. Haney that he had no where near a million dollars in assets. That would have been far from the truth. It would not have been a fair accurate and full disclosure.

Further, Mr. S also advances other inconsistent assertions to the fact that he made a full and complete disclosure to Ms. Haney shortly after their engagement. In one respect, he contends in various parts of his testimony that he didn't really know what he was worth and had no concern for it; that his finances were not really a matter of great concern to him. That seems to run counter to his asserted concern that he wanted to make sure that Ms. S knew his actual worth because it would indicate that he had some idea of his actual worth and wanted to make sure she knew it. The other contention raised throughout the trial by Mr. S is that there was really no need to disclose his worth to Ms. S because she was fully aware of them because of the financial statements and other information coming into the home which she regularly received and would have reviewed and been well aware of. Assuming that was so, prior to the marriage it was reasonable to believe that this would have also occurred prior to their engagement during the significant period of time they were living together. Therefore, when it was time to have the make or break talk, Mr. S could have simply pointed out to Ms. S that she knew the rumors about him having a lot of money going around in the community and that she was marrying for that money were untrue, because she certainly knew from all of these

financial statements coming in that there really wasn't anything he had an interest in of significant value.

This aspect of Mr. S's testimony raises a credibility concern with this court because while at one time he talked about keeping detailed filing systems, at other times he seems to contend that he didn't really know what his income was, he didn't give much attention to it and left it solely to the trustees to pay him whatever they deemed was appropriate with little concern on his part. Overall, this court could not ascertain a consistent position concerning what he knew or did not know about his finances in Mr. S's testimony, but regardless of which theory is accepted it is clear to this court that he did not make a disclosure of his complete financial picture to Ms. Haney and in fact withheld significant information from her. For what reason. The only plausible reason is that from at least the time of their engagement he had decided to accept the advice of his family and friends to protect his assets from her. In the overall picture of things, this court believes that is what most likely drove Mr. S to act the way he did in so far as proceeding to have the Agreement signed just prior to the wedding. He initially represented he intended to have her sign a release of rights to a specific asset. He brought this up in a discussion with her and later also in front of her parents. At those times, he talked specifically about his father's trust interest and for family reasons he wanted this release signed. It is clear that no other assets were discussed, otherwise, this court is certain Ms. S's parents would have exhibited and immediately expressed some significant concern. They already had a disfavorable view of Mr. S and the marriage situation their daughter was getting into. Mr. S desired to delay providing Ms. Haney with a copy of the Antenuptial Agreement until the date of the wedding was to prevent Mr. and Mrs. Koch from having the agreement



reviewed by their family lawyer and to avoid a confrontation with Ms. Haney's parents, which would very likely have occurred. Mr. and Mrs. Koch certainly would not have given their property to both Mr. and Mrs. S as a wedding gift if they had known that Mr. S intended to make all of his assets subject to the Antenuptial Agreement.

Further, it appears that early on and leading right up to the week before the wedding, family members and friends of Mr. S had urged him to be concerned about Ms. Haney and that he should make sure that he was going to protect himself. There is no indication in anyway that he disdained their advice. In fact, he reportedly indicated some concern about the fact that several days prior to the wedding Ms. S had not signed the agreement in his conversations with his close friend, Mr. Worth. That is inconsistent with his contentions at trial that he had no doubt that she was going to sign it and that they had preplanned to sign the agreement on the day of the wedding. In fact, these inconsistencies support this court's finding that he intentionally waited to the day of the wedding in order to take advantage of and deceive his fiancée.

Ms. S obviously was upset when confronted with this agreement on the wedding day. This upset was not due to the fact that she was not going to release her interest in the his father's trust but certainly at that time she would have had a right to assume that other more marital and loving concerns would have been on his mind rather than financial ones. Regardless of her upset, based upon her intention and desire to marry Mr. S she readily signed the agreement without looking at it or discussing it with him relying upon what he had previously told her, just as he anticipated she would.

The only credible reason why the Antenuptial Agreement was not signed until the date of the wedding was Mr. S's desire to avoid full and fair disclosure of the value of his assets to his intended wife because of a fear she would not agree. Such a disclosure by Mr. S would have been a "make or break" moment in their relationship and we believe Mr. S knew Ms. S would not have willingly and knowingly signed off all of her rights to all of his assets just as she testified she would not have and as her parents testified they would have strenuously opposed. Mr. S did not want the relationship broken. Therefore, he pursued his deception by postponing the signing until he knew she would sign without reading or question his representations.

The circumstances under which Kimberly D. Haney was presented with (and then executed) the Antenuptial Agreement on the day of her wedding and only a short time before the ceremony were inherently coercive and made it impossible for any full or fair disclosure to occur with respect to either the terms of the Antenuptial Agreement or the nature and value of the assets covered by the Agreement. The Court accepts as credible KDS's testimony that, at the time she executed the Antenuptial Agreement, she believed that the agreement was limited to assets while they remained in trusts established by his father, as JJS had previously stated to her. At the time when she signed the Antenuptial Agreement, she had no knowledge that she was relinquishing all legal rights to any interest in property acquired by Mr. S from the trusts or otherwise throughout the duration of her marriage. Clearly she had relied upon the representations the man she was about to marry had made for the last several months.

JJS's representation to Ms. Haney that the Antenuptial Agreement would be limited to assets while they remained in the trust established by his father was material to the Antenuptial

Agreement. JJS knew that the actual terms of the Antenuptial Agreement differed dramatically from the oral representation he had made to Kimberly D. Haney regarding the contents of the agreement and that he acted with the intent of misleading Ms. Haney into relying on his materially inaccurate description of the purported limited effect of the Antenuptial Agreement.

KDS justifiably relied on plaintiff JJS's misrepresentation concerning the contents and terms of the Antenuptial Agreement and that defendant KDS suffered damage as a result of the misrepresentation in that she signed the Antenuptial Agreement based on a materially false description of its terms.

It is well settled under Pennsylvania law that, in order for an Antenuptial Agreement to be valid, there must be "full and fair disclosure" of the value of the assets of the parties. See, e.g., *Simeone v. Simeone*, 581 A.2d 162 (1990). The rationale for the rule requiring full and fair disclosure is to ensure that a party can "make an intelligent decision concerning the rights which will be given up under the terms of the Agreement." *Nitkiewicz v. Nitkiewicz*, 535 A.2d 664 (Pa.Super.1988). This principle is to be applied to the particular facts of this case, keeping in mind that Pennsylvania law also recognizes that when the Agreement was entered the parties stood in a position of mutual trust and confidence calling for such disclosure. *Simeone*, supra at 167.

If the parties state in their Antenuptial Agreement that there has been full and fair disclosure, then a presumption arises that there was in fact such disclosure. *Simeone*, supra. This presumption can be rebutted by clear and convincing evidence that the disclosure was not full and fair. *Cooper v. Oakes*, 629 A.2d 944 (Pa.Super.1993). If the challenging party is successful in proving that there has not been disclosure, then the burden shifts to the other party

to prove that the lack of disclosure was immaterial. *In re Harris Estate*, 245 A.2d 647 (Pa. 1968). KDS has met her obligation in this regard.

The list of assets set forth in Exhibit A to the Antenuptial Agreement does **not** satisfy the requirement of “full and fair” disclosure under Pennsylvania law. The law is clear that a mere list of assets -- without any disclosure of the value of each asset -- is completely insufficient to satisfy the disclosure requirement. See e.g., *Ebersole v. Ebersole*, 713 A.2d 103 (Pa. Super. 1998) (holding an Antenuptial Agreement invalid for lack of full and fair disclosure when the Agreement merely listed (without providing any values of) categories of assets such as real estate, automobiles, stocks, bonds, mutual funds, retirement plans and bank accounts). See also *Mormello v. Mormello*, 682 A.2d 824 (Pa. Super. 1996), disapproving on other grounds by *Stoner v. Stoner*, 819 A.2d 529 (Pa. 2003) (holding an Antenuptial Agreement invalid based on the absence of full and fair disclosure when the Agreement referred to the principal asset (the husband’s pension), but failed to provide any disclosure of the value of the pension rights (found to be \$300,000.00 in that case). Further, the failure of Mr. S to include all of his assets on Exhibit A or to otherwise disclose them to Mrs. S obscured the picture of his true financial position, contravening the requirement of Pennsylvania law. *Hess v. Hess*, 580 A.2d 357 (Pa. Super 1990).

Because the Antenuptial Agreement involved in this case does not contain any disclosure of the value of JJS’s assets, the only remaining question in this case is whether Mrs. S was otherwise aware of his financial assets sufficient to satisfy the requirement of “full and fair disclosure” under Pennsylvania law.

The purpose of full and fair disclosure to KDS prior to execution of the Antenuptial Agreement is to enable her to “make an intelligent decision concerning the rights which would be given up under the terms of the [Antenuptial Agreement] ...,” *Nitkiewicz v. Nitkiewicz*, 535 A.2d 664 (Pa. Super. 1988). There is no proof KDS independently knew and understood the value of Mr. S’s assets even a discussion of assets ten (10) months before the execution of the Antenuptial Agreement on October 22, 1994, for the purpose of maintaining their engagement and wedding plans as contended by Mr. S occurred simply would not constitute the required “full and fair disclosure” of the value of Mr. S’s assets for purposes of ensuring the enforceability and validity of an Antenuptial Agreement. There certainly would be no knowledge as to whether there had been any change on the value of his assets. Mr. S has not provided any testimony as to whether there was any change in his financial position during that ten (10) months.

Moreover, Mr. S’s admissions that he lacked knowledge about the nature and value of certain of his assets and interests as beneficiary under various trusts provides alternative grounds for concluding as a matter of law that the required “full and fair disclosure” did not occur in this case. Mr. S has admitted that he had no information about the value of his interest as beneficiary in one of the Gertrude S trusts, which the evidence shows could have been worth \$150,000.00 or more as of October 22, 1994. Mr. S has also professed that he had little or no knowledge on October 22, 1994 of the value of his interests in the J Group (worth at least \$55,000.00) or in the Stanbro Family Trust (worth at least \$100,000.00). Thus, by his own admission, Mr. S could not have provided full and fair disclosure of assets with a combined value of \$300,000.00 or more.

The court is unaware of any case in Pennsylvania in which a party seeking to enforce an Antenuptial Agreement has attempted to excuse himself or herself from the requirement of full and fair disclosure of the value of the assets based on ignorance or lack of specific knowledge of one's own assets. It is certainly not unusual for a party to need the assistance of an accountant or other financial advisor or as Mr. S claims, trustees, to provide full and complete disclosure of certain kinds of assets. Mr. S now asserts he sought this assistance. This court concludes that under Pennsylvania law a party cannot assert ignorance or lack of specific knowledge of the value of one's own assets as a basis for avoiding or complying with the requirement of full and fair disclosure. Just as the husband in *Mormello v. Mormello*, 682 A.2d 824 (Pa. Super. 1996), supra, was not entitled to enforce an Antenuptial Agreement against his wife because of his failure to disclose the \$300,000.00 value of his pension rights, Mr. S is not entitled to enforce the Antenuptial Agreement in this case. He did not (and by his testimony could not) provide full and fair disclosure concerning his interests in the S and Stanbro Family Trusts and the J Group. The value of these assets as of October 22, 1994 almost certainly exceeded \$300,000.00, which was a material part of JJS's net worth as of October 22, 1994, assuming that Mr. S has fully disclosed the value of his assets as of October 22, 1994.

The court concludes in view of the absence of any written or oral disclosure of the value of JJS's assets at any time before the execution of the Antenuptial Agreement that there was no such full and fair disclosure of the value of Mr. S's assets to Mrs. S at any time before the execution of the Antenuptial Agreement. The Agreement is invalid and unenforceable.

#### **LEGAL CONCLUSIONS**

1. The term of the Antenuptial Agreement which explicitly provide that “full and complete disclosure of their assets and income to each other” raises the presumption that a full and fair disclosure was made to KDS, based on clear and convincing evidence she has overcome this presumption and established that the Agreement does not contain a full and fair disclosure of the nature and extent of JJS’s financial assets nor the value thereof. (See *Mormello v. Mormello*, 682 A.2d 824, 829 (Pa. Super. 1996).

2. As the Agreement does not enumerate all of the assets of Jeffrey D. S and does not provide values for the assets which are enumerated and KDS was not aware of Mr. S’s worth at the time she entered the Agreement by any other circumstances. Therefore, the requirements of a full and fair disclosure have not been met and the Agreement is unenforceable. See, *Ebersole v. Ebersole*, 713 A.2d. 103, 104 (Pa. Super. 1998).

3. JJS failed to provide full and fair disclosure of the value of his assets before the parties executed the Antenuptial Agreement on October 22, 1994. The absence of disclosure of the values of the assets in this case involved highly material information, which should have been disclosed to KDS (then Kimberly D. Haney) before she executed the Antenuptial Agreement.

4. JJS made materially misleading statements to KDS (then Ms. Haney) concerning the purported limited effect of the Antenuptial Agreement that he intended to present to Ms. Haney, thus invalidating the Antenuptial Agreement on the basis of a material misrepresentation in the inducement in entering the Agreement. As such, the Agreement may be voided even if that misrepresentation is not fraudulent. *Simeone*, 581 A.2d at 167; *Mormello*, 682 A.2d 828. See also *Sabad v. Fessendenk*, 825 A.2d 682, 691 (2003).

5. KDS has also met her burden under Pennsylvania law of proving fraud by clear and convincing evidence which has established: (1) a representation; (2) which was material to the entry into the Agreement; (3) made falsely, with knowledge of its falsity or was at least reckless as to whether it is true or false; (4) with the intent of misleading another into relying on it; (5) her justifiable reliance on the misrepresentation; and (6) resulting injury approximately caused by the reliance. See, e.g., *Porreco v. Porreco*, 811 A.2d 556, 570 (Pa. 2002). For the reasons set forth in the foregoing Findings of Fact, this court finds that Defendant, KDS has proven all of these elements of fraud with respect to JJS's statements concerning the purported limited effect of the Antenuptial Agreement. In view of the presence of fraud, these materially misleading statements provide an additional, independent legal ground supporting this court's conclusion that the Antenuptial Agreement involved in this case is invalid and unenforceable.

Accordingly, the following order will be entered.



**ORDER**

The defendant KDS's request for a declaratory judgment holding that the Antenuptial Agreement dated October 22, 1994 entered into by her and Plaintiff, JJS, is unenforceable is GRANTED. The Agreement is hereby declared invalid and unenforceable.

BY THE COURT,

William S. Kieser, Judge

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