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**ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

AUG 18 2010

John A. Clarke, Executive Officer/ Clerk  
By: R. Arraiga, Deputy

11  
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES**

14  
15 In re Marriage of  
16 JAMIE McCOURT,  
17 Petitioner,  
18 v.  
19 FRANK H. McCOURT, JR.,  
20 Respondent.

CASE NO. BD 514309

[Assigned to Hon. Scott M. Gordon –  
Dept. 88]

**PETITIONER'S NOTICE OF MOTION  
AND MOTION *IN LIMINE* TO ADMIT  
INTO EVIDENCE PETITIONER'S TRIAL  
EXHIBITS 1, 2 AND 3 – THE  
UNALTERED VERSIONS OF MARITAL  
PROPERTY AGREEMENT EXECUTED  
BY RESPONDENT IN CALIFORNIA ON  
APRIL 14, 2004; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: August 30, 2010  
Time: 8:30 a.m.  
Dept.: 88

Action Filed: October 27, 2009  
Trial Date: August 30, 2010

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TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 30, 2010 at 8:30 a.m. in Department 88 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles, California 90012, Petitioner Jamie McCourt, through her counsel of record herein, will appear and move the Court for an order *in limine* admitting into evidence Petitioner's Trial Exhibits 1, 2, and 3, unaltered versions of the "marital property agreement" signed by Respondent, Frank McCourt, in California on April 14, 2004, before they were altered by attorney Lawrence Silverstein of Bingham McCutchen.

Petitioner's motion is based on this Notice, the attached memorandum of points and authorities, all of the Court's files in this matter and upon such other and further evidence and argument as may be presented at or before the hearing on the motion.

DATED: August 18, 2010

Respectfully submitted,  
WASSER, COOPERMAN & CARTER, P.C.  
KINSELLA WEITZMAN ISER KUMP &  
ALDISERT LLP

By: Dennis Wasser *gem*  
Dennis M. Wasser  
Attorneys for Petitioner Jamie McCourt

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Frank and Jamie McCourt were married on November 3, 1979. At the beginning of this  
4 proceeding, Frank proffered a “marital property agreement” (the “MPA”) signed by both parties  
5 and notarized by their attorney, Lawrence Silverstein (“Silverstein”) of Bingham McCutchen  
6 (“Bingham”) in Massachusetts on March 31, 2004. This document included an Exhibit A that  
7 according to Frank made the Los Angeles Dodgers, including their stadium and surrounding land  
8 (the “Dodger assets”) his separate property for all purposes, including divorce. As the Court is  
9 aware, and as it is set forth in detail in our trial brief, we believe that the MPA proffered by Frank  
10 is invalid as a matter of law for several independent reasons. As the Court is also aware, Jamie  
11 has always contended that the purpose of the MPA was to preserve the protection that the family’s  
12 residences had in Massachusetts against claims by business creditors, and that neither she nor  
13 Frank intended or understood in 2004 that any agreement would diminish her rights to the Dodger  
14 assets if the parties were divorced.

15 Earlier this month, Frank and Silverstein made three stunning admissions that completely  
16 undermine Frank’s case and confirm Jamie’s consistent story that she never understood that any  
17 agreement was intended to deprive her of her marital property rights in the Dodgers assets.

18 Discovery had earlier revealed that Jamie and Frank in 2004 signed two versions of the  
19 “marital property agreement,” one of which was signed by both parties on March 31, 2004 in  
20 Massachusetts (the “Massachusetts version of the MPA”) and one signed by Jamie on March 31 in  
21 Massachusetts and by Frank on April 14 in California (the “California version of the MPA”).  
22 Three copies of each version were signed, resulting in a total of six copies. After the California  
23 version of the MPA was discovered, Frank and Silverstein initially contended that the California  
24 version of the MPA was in fact identical to the Massachusetts version except for the date and  
25 location of Frank’s signing.

26 However, earlier this month: First, Frank and Silverstein admitted that at the time the final  
27 California version of the MPA was signed and notarized, it contained an Exhibit A that expressly  
28 excluded the Dodger assets from Frank’s separate property, thereby preserving Jamie’s then

1 existing rights to the Dodger assets. Second, they admitted that after the final California version  
2 had been signed and notarized, but before a copy was produced in this proceeding during  
3 discovery, that agreement had been altered (without Jamie's knowledge or approval) to say that  
4 the Dodger assets were included in Frank's separate property. Third, they admitted that their prior  
5 testimony in this proceeding that the California version was identical in its terms with the  
6 Massachusetts version of the MPA originally proffered by Frank was not true.

7       Significantly, these admissions came only after forensic analysis of the original documents  
8 and word processing records subpoenaed from Silverstein's law firm had proven their prior  
9 representations to be untrue.

10       Jamie now brings this motion to establish the admissibility of Petitioner's Trial Exhibits 1,  
11 2, and 3, which are copies of the three original California versions of the MPA as they actually  
12 existed when signed and notarized, before any tampering – i.e., with the Exhibit A that expressly  
13 excludes the Dodger assets from Frank's separate property.

14 **II. STATEMENT OF FACTS**

15       It is undisputed that in February 2004, after Frank and Jamie had purchased the Dodger  
16 assets and were planning to move to California, they were advised by Silverstein that because of  
17 California's community property laws, a written agreement had to be executed if they were to  
18 continue to protect their residences from business creditors, as they had long done in  
19 Massachusetts. It is also undisputed that when the parties lived in Massachusetts, an equitable  
20 distribution state, the residences, which were in Jamie's name to protect them from business  
21 creditors, and the businesses (which were in Frank's name) all were marital property, which under  
22 Massachusetts laws would have been divided equally or substantially equally between the parties  
23 in the event of a divorce.

24       Two versions of the MPA were executed. According to Bingham, the purpose of  
25 executing the Massachusetts version, before the couple moved to California was to try to avoid a  
26 "gap" that might otherwise have existed between the couple's move to California and their  
27 execution of the MPA, which Bingham's California office feared might create a possible  
28 fraudulent conveyance issue. The purpose of the California version was that Silverstein had been

1 advised by Bingham's California office that there was a danger that an MPA signed by both  
2 parties in Massachusetts before the couple moved to California would not be valid in California.  
3 The two versions of the MPA were identical in all respects except for when and where they were  
4 signed and the terms of the Exhibit A that was attached. The Massachusetts version of the MPA  
5 included an Exhibit A that purported to make the Dodger assets Frank's separate property.  
6 However, when signed by the parties (both when Jamie signed it on March 31 and when Frank  
7 signed it on April 14), the California version of the MPA included an Exhibit A that expressly  
8 excluded the Dodger assets from Frank's separate property preserving Jamie's marital property  
9 rights in those assets.

10       Significantly, the Exhibit A attached to the California version of the MPA at the time it  
11 was signed and notarized (which expressly preserved Jamie's rights to the Dodger assets) was  
12 identical to the Exhibit A attached to each of the drafts that were reviewed and edited by  
13 Silverstein, Frank, and Frank's financial advisor (Jeff Ingram) on March 30, 2004, the day before  
14 Jamie signed all versions of the MPA. As discussed in more detail below, this is further evidence  
15 that the Exhibit A attached to the California version of the MPA at the time it was signed and  
16 notarized, which excluded the Dodger assets from Frank's separate assets, was what the parties  
17 had always intended.

18       Initially, Frank proffered to this Court only the Massachusetts version of the MPA. Even  
19 after the California version was identified, Frank and Silverstein continued to represent to Jamie  
20 and to this Court that the Massachusetts version and the California version were identical. (Jamie  
21 had never been given any copy of the signed California version prior to this proceeding.  
22 Silverstein had represented to her that the California version was kept in the Bingham vault and  
23 was identical to the copy of the Massachusetts version that she had previously been furnished.)  
24 Indeed, Frank and Silverstein produced in this proceeding what purported to be a copy of the  
25 California version of the MPA that was identical to the Massachusetts version. We now know  
26 that the copy of the California version produced by Frank and Silverstein in this proceeding was  
27 not a copy of the actual California version as signed and notarized, but instead was the  
28 fraudulently altered document that substituted an Exhibit A that made the Dodger assets separate

1 property for the Exhibit A actually attached when the California version was signed and notarized  
2 which expressly excluded the Dodger assets from Frank's separate property and preserved Jamie's  
3 marital property rights in the Dodger assets.

4 The California version of the MPA as actually signed by the parties, Petitioner's Trial  
5 Exhibits 1-3, provides that the Dodger assets were excluded from Frank's separate property. As  
6 explained in Jamie's trial brief, that should now be the end of the matter. However, following our  
7 discovery that the California version as actually signed and notarized expressly excluded the  
8 Dodger assets from Frank's separate property, Frank now argues that the Exhibit A attached to the  
9 California version when signed by the parties was, variously, a "clerical error" or a "typographical  
10 error."

11 Neither Frank nor Silverstein have ever reconciled their recent "clerical error" or  
12 "typographical error" argument with the fact that the Exhibit A which excluded the Dodger assets  
13 from Frank's separate property was originally prepared by Silverstein personally in his  
14 handwriting, excludes the Dodger assets not once but twice in the same exhibit, and was not  
15 changed in the "revised version" of the MPA that was prepared after noon on March 30 by  
16 Silverstein's office after Silverstein had met that morning with Frank and Frank's financial advisor  
17 and had corrected typographical errors. Instead, Frank now asserts that neither he nor Silverstein  
18 ever read the California version of the MPA prior to signing, and that no one ever told him that the  
19 California version attached an exhibit that excluded the Dodger assets from his separate property.  
20 In support of his remarkable claim that neither he nor the drafter of the MPA knew what was  
21 included, Frank relies primarily on two arguments:

22 (1) First, Frank relies heavily on his and Silverstein's testimony that on the morning of  
23 March 31, 2004, Jamie and Frank read the MPA and exhibits at their home in Massachusetts, and  
24 that Silverstein thoroughly went through the MPA and exhibits, explaining its provisions,  
25 answering questions, and making clear what the effect of the MPA would be. Frank and  
26 Silverstein say that the Exhibit A that was reviewed and explained on March 31 was the Exhibit A  
27 that purported to make the Dodger assets Frank's separate property. There is no  
28 contemporaneous, independent evidence to support that self-serving testimony. Moreover, that



1 testimony overlooks the now admitted fact that three of the six copies which Jamie signed on  
2 March 31 and which the parties supposedly read and reviewed in actuality contained the Exhibit A  
3 that expressly excluded the Dodger assets from Frank's separate property.

4 Their testimony purporting to describe a detailed and lengthy discussion on March 31 is  
5 also inconsistent with the circumstances of the day: the couple and their children left shortly after  
6 noon that day to fly to California and were busy packing that morning; Frank's assertion that he  
7 never read (and no one ever explained to him) the California version of the MPA with its Exhibit  
8 A; Frank's general lack of memory of March 31 (he can't remember when he got up, what else he  
9 did, whether he went to the office, whether his children were at the house, or even that he flew to  
10 California later that day); Frank's admission in 2008 that he did not even remember signing the  
11 MPA and that he then believed that it did not deprive Jamie of her rights to the Dodger assets in  
12 the event of a divorce; Silverstein's billing and time records for March 31 (which show that he  
13 only billed half an hour in total and that a portion of his time at the McCourt's home was devoted  
14 to matters other than the MPA); and Silverstein's purported total lack of any memory as to the  
15 signing of the California version of the MPA (except that he was present) and of when, or how, or  
16 with whom, or why, he improperly altered the California version after it was signed and notarized.

17 Frank and Silverstein have a remarkable failure of recollection of what happened on March  
18 31, 2004 and April 14, 2004, except that they both purport to remember in detail describing an  
19 Exhibit A that was attached to the Massachusetts version of the MPA but not to either the  
20 California version or to any of the drafts of the Massachusetts or California versions of the MPA.

21 (2) Second, Frank also relies on a March 22, 2004 letter to him and Jamie which  
22 asserts that the intended effect of the contemplated MPA was to preserve the assets in each  
23 person's name as their separate property. However, it is unclear whether the letter was ever  
24 actually delivered to Jamie (Frank's testimony as to when and how he and Jamie received it is  
25 inconsistent with the contemporaneous written record); the letter was written and sent prior to the  
26 time Exhibit A was drafted (the exhibits of separate property attached to the draft MPA that  
27 accompanied the March 22 letter were blank); and the letter misleadingly indicated there was not  
28 an actual conflict between Jamie and Frank's interests and failed to give Jamie the unambiguous

1 advice recommended by Silverstein's California partner that she needed to retain separate and  
2 independent counsel.

3 Perhaps most importantly, the letter at the beginning says that the purpose of the MPA is to  
4 "preserve" the parties' rights, and specifically references the attached draft of the MPA which  
5 makes clear that the ultimate determinative of Frank's separate property was Exhibit A to the  
6 MPA (and, as we have shown, the actual Exhibit A to the California version of the MPA expressly  
7 provides that the Dodger assets are excluded from Frank's separate property).

8 By contrast, Jamie's position that the MPA was intended to preserve the status quo in the  
9 sense that the family residences would be protected from business creditors but that her then  
10 existing rights with respect to the Dodger assets would not change is supported by virtually all of  
11 the contemporaneous evidence. For example:

12 (1) In Massachusetts the family's residences, which were in Jamie's name,  
13 were protected from business creditors and all of the couple's assets, including the Dodger assets,  
14 whether held in Jamie's name or in Frank's name would be divided equitably between Jamie and  
15 Frank in the event of a divorce; and

16 (2) Everyone has testified, and the contemporaneous documentation makes  
17 clear, that the only purpose of the MPA was to preserve the protection that the family residences  
18 had from business creditors in Massachusetts. This could readily be accomplished without  
19 adversely affecting Jamie's rights in and to the Dodger assets in the event of a divorce in  
20 California; indeed, Silverstein drafted papers in March 2004 that did just this.

21 (3) Even under Frank's version of the facts, the first time he was given  
22 anything in writing that even mentions the Dodger assets as being affected by the MPA is March  
23 30 – and the first time Jamie is given anything is March 31 at the time she signed the MPA.

24 (4) The Dodger assets were by far the couple's most important asset – and  
25 Jamie's heart's desire. It is not credible that so momentous a decision as to give up all her existing  
26 rights to the Dodger assets would be made without any written analysis, advice, questions, or  
27 discussion of the pros and cons of doing so; or of alternatives that would accomplish her objective  
28 of creditor protection for the residences without affecting her existing rights to the Dodger assets;



1 or even of the fact that what was being considered would affect her rights to the Dodger assets.  
2 (Frank and Silverstein have admitted that there was never even oral discussion of alternatives  
3 which would accomplish Jamie's creditor protection objectives while preserving her rights to the  
4 Dodger assets. If the MPA had been intended to deprive Jamie of her rights to the Dodger assets,  
5 it would have been the grossest malpractice and misconduct for Silverstein not to have researched  
6 and discussed less onerous alternatives with her; his failure to discuss such alternatives can only  
7 be rationally explained if no one expected in 2004 that Jamie's rights to the Dodger assets would  
8 be adversely affected.)

9 (5) In fact, given the importance of the Dodger assets to Jamie, her role in their  
10 acquisition, including her role as head of the transition team, her interest and her participation in  
11 the running of the Dodger assets, and her acknowledged interest in sharing in the value of the  
12 assets she and Frank had created together over three decades, it simply is not credible that she  
13 knowingly would have given up her rights to the Dodger assets under any circumstances.

14 (6) Frank has now admitted that he was not seeking in the MPA any "price" or  
15 "quid pro quo" for agreeing to preserve the protection from business creditors for the residences in  
16 Jamie's name when the family moved to California. It is, accordingly, even more  
17 incomprehensible that Jamie would have knowingly paid the "price", or given the "quid pro quo",  
18 of her rights in the Dodger assets without any discussion, analysis, or consideration of alternatives.

19 (7) In June 2008, when Jamie and Frank were informed by Leah Bishop, their  
20 California estate planning lawyer, that the Massachusetts version of the MPA purported to deprive  
21 Jamie of rights to the Dodger assets if the parties were divorced in California, Jamie made clear in  
22 writing (before she was even considering divorce) that there had to be a mistake because that was  
23 not what was intended.

24 (8) Frank's initial response in this proceeding to Jamie's original argument that  
25 the MPA proffered by Frank was a "mistake" was to try to ridicule the idea that Jamie had not  
26 fully read and understood what she signed. However, during discovery, it was revealed that Frank  
27 himself had told Leah Bishop in June 2008 that he did not remember signing the MPA, that he  
28 agreed that it was a mistake if the MPA were construed so as to deprive Jamie of any rights in the

1 Dodger assets, and that in June, 2008, he and Jamie instructed Bishop to “fix the problem.”

2 (9) Moreover, Frank testified that when he signed the California version of the  
3 MPA on April 14, he himself did not read it, that he only “thumbed through” the body of the MPA  
4 and did not even look at the exhibits which are what set forth the parties’ separate property.

5 (10) The last three drafts of the MPA, including the one prepared right after  
6 Silverstein spoke with Jamie on March 29 about what was to be included in the separate property  
7 exhibits and the one prepared after noon on March 30, the day before it was signed by Jamie,  
8 contained the Exhibit A which made clear that the Dodger assets were excluded from Frank’s  
9 separate property – and neither Silverstein nor Frank ever told Jamie that there had been any  
10 change to the MPA or its exhibits the day before she signed it.

11 **III. THIS MOTION IN LIMINE SHOULD BE GRANTED**

12 The last three drafts of the MPA before any version was signed each provided that the  
13 Dodger assets were not the separate property of either party, and the California version of the  
14 MPA when it was signed and notarized on April 14, and before it was fraudulently altered,  
15 provided that the Dodger assets were excluded from Frank’s separate property, preserving Jamie’s  
16 marital property rights in and to the Dodger assets. This formulation was consistent with what  
17 everyone agrees was the purpose of the MPA. There is simply no basis for Frank’s argument that  
18 the Exhibit A that excluded the Dodger assets from his separate property was a “clerical error” or  
19 “typographical error.” Of course, even if it had been such an “error,” he and Silverstein could not  
20 properly “correct” it by covertly and unilaterally altering the California version of the MPA after it  
21 was signed and notarized.

22 The critical point, however, is that the evidence demonstrates that the Exhibit A attached to  
23 each of the last three drafts of the MPA and included in the California version of the MPA signed  
24 by Frank on April 14 most closely reflects what the parties actually intended. That is what Jamie  
25 has always said, including in writing prior to the time she contemplated divorce. That is what  
26 Frank himself told Leah Bishop in June 2008. That is the only result consistent with the agreed  
27 purpose of the MPA to preserve, as much as possible, the status quo when the parties moved to  
28 California. And, that is the only result consistent with Silverstein’s conclusion that there was no

1 actual conflict between her and Frank in connection with the MPA, and Silverstein's failure to  
2 ever discuss any alternatives with Jamie — if Jamie were giving up her rights to the Dodger assets  
3 to achieve protection for the family residences, it would have been essential for Silverstein to  
4 discuss alternative ways to achieve that protection without giving up those rights, however, since  
5 in the MPA as drafted, Jamie was not giving up her rights, there was no need for Silverstein to  
6 discuss alternatives.

7 **IV. CONCLUSION**

8 Petitioner's Trial Exhibits 1-3 are now admittedly three of the original agreements signed  
9 by the parties. We believe that they also, for the reasons discussed, more closely reflects the intent  
10 of the parties in 2004. Accordingly, they should be admitted into evidence over whatever  
11 objection Frank continues to assert.

12  
13 DATED: August 18, 2010

Respectfully submitted,

14 WASSER, COOPERMAN & CARTER, P.C.  
15 KINSELLA WEITZMAN ISER KUMP &  
16 ALDISERT LLP

17  
18 By: Dennis Wasser *scm*  
19 Dennis M. Wasser  
20 Attorneys for Petitioner Jamie McCourt  
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in  
4 the County of Los Angeles, State of California. My business address is 808 Wilshire Boulevard, 3rd Floor,  
5 Santa Monica, California 90401

6 On August 19, 2010, I served the following document(s) **PETITIONER'S NOTICE OF  
7 MOTION AND MOTION *IN LIMINE* TO ADMIT INTO EVIDENCE PETITIONER'S  
8 TRIAL EXHIBITS 1, 2 AND 3 – THE UNALTERED VERSIONS OF MARITAL  
9 PROPERTY AGREEMENT EXECUTED BY RESPONDENT IN CALIFORNIA ON  
10 APRIL 14, 2004; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT  
11 THEREOF** on the interested parties in this action as follows:


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24  **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the  
25 addresses listed above or on the attached Service List and placed the envelope for collection and mailing,  
26 following our ordinary business practices. I am readily familiar with Kinsella Weitzman Iser Kump &  
27 Aldisert's practice for collecting and processing correspondence for mailing. On the same day that the  
28 correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with  
the United States Postal Service, in a sealed envelope with postage fully prepaid.

**BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on an agreement of the parties to accept  
service by e-mail or electronic transmission, I caused the document(s) to be sent from e-mail address  
[choffman@kwikalaw.com](mailto:choffman@kwikalaw.com) to the persons at the e-mail addresses listed above. I did not receive, within a  
reasonable time after the transmission, receive any electronic message or other indication that the  
transmission was unsuccessful. The above document(s) shall be deemed as personally served.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
and correct. Executed on August 19, 2010, at Santa Monica, California.

25  
26   
Candace E. Hoffman