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10  
11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF SANTA CLARA  
13

14 In re the Marriage of:  
15 EKATERINA STRULYOV,  
16  
17 Petitioner,

18 vs.

19 EUGENE STRULYOV,  
20  
21 Respondent.

Case No.: 19FL001660

**PETITIONER'S TRIAL BRIEF ON  
REMAND**

**Trial: 2/27/2024  
1:30 p.m.  
Dept 72  
MSC: 2/13/2024  
8:45 a.m.**

22 Petitioner, Ekaterina Strulyov, hereby provides her trial brief on the issues on remand  
23 following the Sixth District Court of Appeal's limited reversal and remand.

24  
25 **I. ISSUES FOR TRIAL**

26 It is important to delineate what is, and what is not, at issue before this Court given the  
27 appellate court's instructions on remand and the language of the Opinion.

28 When the appellate court has reversed and remanded with instructions, those instructions  
set forth in the remittitur must be followed. (*Ayyad v. Sprint Spectrum, L.P.* (2012) 210  
Cal.App.4th 851, 859.) "The issues the trial court may address in the remand proceedings are  
therefore limited to those specified in the reviewing court's directions, and if the reviewing court  
does not direct the trial court to take a particular action or make a particular determination, the trial  
court is not authorized to do so." (*Id.* at pp. 859-860.) "In short, when an appellate court remands

1 a matter with directions governing the proceedings on remand, “those directions are binding on  
2 the trial court and *must* be followed. Any material variance from the directions is unauthorized and  
3 void.” (*Ayyad, supra* at p. 860, citing *Butler v. Superior Court* (2002) 104 Cal.App.4th 979, 982.)

4 Based on the appellate court’s opinion and instructions on remand, the following are the  
5 issues for trial on remand and the law governing them.

6  
7 **A. The Google Stocks Were an Omitted Asset Under Family Code Section 2556**

8 The appellate court did not disturb this Court’s finding that the Google stocks were an  
9 omitted asset. That Court specifically upheld this Court’s finding that the Google stocks were an  
10 omitted asset under Family Code section 2556. (Opinion at p. 20 [“we uphold the trial court’s  
11 determination under section 2556 that the Google stocks were not adjudicated in the judgment and  
12 thus are an omitted asset.”])

13 The basis for the appellate court’s reversal was that, before dividing the omitted Google  
14 stocks equally pursuant to Family Code section 2556, this Court did not address Eugene’s  
15 contention that he had shown good cause for an unequal division of that asset. (Opinion at p. 20  
16 [“The trial court did not address the applicability of the “good cause” exception in its otherwise  
17 detailed order.”])

18 The appellate court thus remanded for the limited determination of “whether and to what  
19 extent sections 2556 and 2550 support a finding that the interests of justice require an unequal  
20 division of the Google stock.” (Opinion at p. 21.) In its conclusion, the court stated, “The matter  
21 is remanded for the limited purpose of a determination by the trial court whether the interests of  
22 justice require an unequal division of the Google stock. (Fam. Code, § 2556.)” (Opinion at p. 26.)  
23 And it reiterated that the Google stock was an omitted asset under that statute. (Ibid.) Thus, the  
24 only issue before this Court is whether Eugene can show good cause for an unequal division of the  
25 Google stock, as an omitted asset.

1 **B. On Remand, This Court Must Apply Family Code Section 2556**

2 As noted above, the matter was remanded for the limited purpose of a determination  
3 whether the interests of justice require an unequal division of the Google stock pursuant to Family  
4 Code section 2556. That section provides for an equal division of any omitted asset *unless* good  
5 cause shows that the interests of justice require an unequal division; it states, “the court shall  
6 equally divide the omitted or unadjudicated community estate asset or liability, unless the court  
7 finds upon good cause shown that the interests of justice require an unequal division of the asset  
8 or liability.” (Fam.Code §2556.) This is the statute this Court must apply in ruling on this issue  
9 of the division of Google stock on remand.

10 To the extent this Court has discretion under Family Code sections 2550 and 2556 to allow  
11 an unequal division of assets, such discretion is not typically exercised to *favor* the party who  
12 omitted the asset. (See, e.g., *In re Marriage of Rossi* (2001) 90 Cal.App.4th 34, 39 [awarding  
13 husband 100% of community lottery winnings concealed by Wife, pursuant to Family Code  
14 section 1101(g) and (h)]; see also *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1146  
15 [“Upon vacating the judgment, in whole or in part, a trial court is empowered to make  
16 an unequal distribution of the concealed assets, in the interests of justice.”]) The import of these  
17 cases is that the party who was required to seek court intervention to obtain adjudication of the  
18 omitted asset(s) may be entitled to a *greater* than equal division of assets. (See, e.g., *Rubenstein*,  
19 *supra*, 1145, fn. 8 [citing both section 2556 and 1101(h) as potential remedies for omitted assets.]  
20 Here, that party was Katia, not Eugene. The law allowing unequal division of community assets  
21 supports an award of 100% of the Google stock to Katia, not to Eugene. (See Fam.Code §1101(h).)  
22 Here, she is asking for merely the one-half allocated under section 2556.

23  
24 **C. It Is Eugene’s Burden to Prove the Interests of Justice Require an Unequal Division**

25 As the appellate court affirmed, Ekaterina met her burden of proving that the Google stock  
26 was an omitted asset; this finding and determination is not subject to dispute.

27 Section 2556 provides that “the court *shall* equally divide the omitted or unadjudicated  
28 community estate asset or liability, *unless* the court finds upon *good cause shown* that the interests

1 of justice *require* an unequal division...” (Fam.Code §2556, emphasis added.) This necessarily  
2 places the burden on Eugene, as the party seeking to avoid the equal division of the omitted asset,  
3 to show good cause for requiring a different division. By the plain language of this statute, this is  
4 a sizable burden.

5 Eugene argues that the division of stock he made without Ekaterina’s input or agreement  
6 effectuated an equal division of the community assets because he divided the value of the stock,  
7 including the value of the Google stock, equally as of April 8, 2019. This, he assets, constitutes  
8 “good cause” for the unequal division of the omitted asset. It does not, for several reasons.

9 The November 2019 Judgment of dissolution, which divided the community property, was  
10 based upon a May 2019 stipulation between the parties. Therein, the parties agreed that each of  
11 them would receive “A one-half (1/2) interest in Charles Schwab Investment account no. -6350.”  
12 (Judgment at pp. 11, 13.) This Schwab account was in Eugene’s name alone, and he had 100%  
13 control over it during and after the marriage. Eugene’s assets & debts listed “Schwab” with no  
14 account number at a value of \$205,622.38, and did not include a printout of the account itself or  
15 any of its holdings. Schwab account -6350 was the only Schwab account listed in the Judgment,  
16 which ordered that it be equally divided between the parties.

17 As this Court found, and the appellate court affirmed, that Judgment only mentions the  
18 Schwab account ending in 6350; it did not mention Google stock or any other Schwab account  
19 such as the “equity account” in which the Google stock was held. As such, that asset was not  
20 divided by the Judgment, and was omitted therefrom.

21 Eugene’s argument that he “in good faith” transferred “the value” of one-half of all stocks  
22 and that Katia knew about the stock and did not object to his transfer of stock to her does not meet  
23 this burden. Eugene had full control over the Schwab account mentioned in the Judgment and the  
24 equity account containing the Google stock, which was not. In his effort to keep for himself all of  
25 the Google stock, and indeed that entire account, Eugene paid Ekaterina an amount of money that  
26 he hoped to be able to later argue was half of the community stock. No harm, no foul, he would  
27 assert, if she later discovered this additional Google account. Eugene should not be rewarded for  
28 this underhanded behavior by finding good cause to let him keep all of the Google stock,

1 particularly as his division of the assets was not equal.

2       **What should have happened;** since Eugene had control over the Schwab and Google  
3 accounts, he should have provided actual statements to Ekaterina prior to the stipulation dividing  
4 the assets, and prior to the Judgment, so she could see what the accounts were comprised of, and  
5 so each of these accounts could be referenced therein. Then, in dividing the accounts equally, as  
6 per the judgment, he should have given Ekaterina 50% of the stocks, i.e., one-half of all the Ford  
7 stock; one-half of all the Micron stock, etc., as Ekaterina stated in her May 4, 2019 email. If the  
8 two of them came to an agreement to divide the accounts equally in some other manner, they could  
9 have done so, with each having the same information as to the stocks, their earnings, past  
10 performance, and cost basis. But per the Judgment, Eugene should have disclosed and divided  
11 each of the accounts, and each of the shares of stock equally, with each party receiving one-half  
12 of all of the stocks as of the date of the division.

13       **What actually happened:** Eugene did not provide Ekaterina with the account statements,  
14 nor did he disclose to her that there was a Schwab “equity account” in addition to -6350. Under  
15 the guise of transferring to Ekaterina her one-half of the community assets (including one-half of  
16 the \$130,000 in stocks he had sold and used to pay down the mortgage on what he asserted was  
17 his separate-property condo), Eugene transferred to Ekaterina shares of certain stocks, based on  
18 their values as of April 8, 2019, not as of the date of the division. In doing so, he only retained  
19 stock with either a zero or positive costs basis—thereby avoiding taxes and/or offsetting any other  
20 gains. And he retained for himself any increase in value in the investment accounts from April 8,  
21 2019 to July 2019, when he transferred the stock. Moreover, by not providing Ekaterina with the  
22 account statements, he avoided pesky questions such as why the Google account only contained  
23 36 shares of stock as of April 1, 2019, but had another 5 shares as of April 29, and an additional 5  
24 shares on May 30, 2019, for a total of 46 shares as of June 1, 2019. He also sidestepped any  
25 questions from her as to why all or at least some of these 10 additional shares were not community  
26 property. He also avoided paying her for 50% of these additional 10 shares of Google stock.

27       In his July 12, 2019 email to Ekaterina, Eugene stated, “At the time of the divorce filing,  
28 the total balance of my investment accounts was \$271895.58 (\$66273.20 in etrade, \$205622.38 in

1 schwab). The mediation agreement entitles you to take \$200947.79 of my money using the 50% +  
2 65K calculation.” He confirmed that he had already transferred to her \$184,296.28 in the form of  
3 stocks, and that he owed an additional \$16,651.51. He later provided a check for this sum.

4 Eugene seeks to justify this, asserting that as of April 8, 2019, he had \$161,107.95 in the  
5 Schwab -6350 account and \$43,457.40 in “Schwab equity awards” which is where the Google  
6 stock vested, for a total of \$205,620.38 as of that date. But neither the stipulation nor the Judgment  
7 mentions dividing the community investment accounts in Eugene’s name *as of April 8, 2019*; it  
8 states they will be divided 50-50. As of July 2019, the stocks had increased in value. Even the  
9 E\*Trade account was worth more: Eugene liquidated it in May 2019 at the value of \$67,425.69,  
10 of which Ekaterina received \$66,273.20.<sup>1</sup>

11 In July 2019, Ekaterina received the following shares of stock in her new Schwab account,  
12 in the total sum of \$116,668.17: AT&T, Facebook, and Gold ETF. She received these with  
13 unrealized gains totaling \$10,948.44, on which she would have to pay capital gains of at least 20%,  
14 assuming the stocks had been held for over a year. Eugene retained stock with a negative cost  
15 basis. This was quite clearly intentional on Eugene’s part. And by transferring to Ekaterina shares  
16 of stock as payment for the \$65,000 equalization payment rather than selling the stocks, paying  
17 the taxes, and paying her this amount in cash, he likewise shifted the taxes to Ekaterina, thus  
18 reducing the value of the \$65,000 payment to something less than \$65,000.

19 The Judgment does not mention values; it requires an equal division of the one Schwab  
20 account listed therein, and an equal division of the E\*Trade account. Assets are to be divided  
21 using values as of the date of trial. (Fam.Code §2552.) “[A]bsent a written agreement of the  
22 parties or their oral stipulation in open court, the court shall divide the community estate of the  
23 parties equally at the time of judgment, or at a later time if it expressly reserves jurisdiction to do  
24 so, and that for purposes of making the division it shall value the assets and liabilities as near as  
25 practicable to the time of trial.” (*In re Marriage of Reuling* (1994) 23 Cal.App.4th 1428, 1435.)

26 Although the stipulation was signed May 28, 2019, Eugene did not transfer any of the  
27 E\*Trade assets until June 2019, and did not transfer any of the Schwab assets to Ekaterina until

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28 <sup>1</sup> / Although it appears she received the entire \$67,628.11, this was to pay off the \$200,947.79 Eugene asserted she  
was owed, which included only \$66,273.20 as the value from E\*Trade.

1 July 2019. As of this time, the accounts had increased in value. But Eugene used the values as of  
2 April 8, 2019, which were considerably lower. Based on the plain language of the stipulation and  
3 the Judgment, there was no valid basis for using the figures. The only reason for Eugene to have  
4 used the April 8, 2019 figures was to enable him to benefit from the increase in value between that  
5 date and the date of the transfer, which is not a *valid* basis for doing so. It is, rather, a breach of  
6 fiduciary duty. It resulted in the unequal division of community assets in Eugene’s favor.

7 Nor did Eugene divide the Google stock—or even the value of the Google stock—equally.  
8 At the time of the division, Eugene had 46 shares of Google stock, not the 36 he had as of April 8,  
9 2019. In its underlying FOAH, this Court stated, “Based upon Petitioner's Exhibit 9, it appears as  
10 though there were 36 shares on April 1, 2019. Accordingly, Katia should receive 18 shares.<sup>2</sup> In the  
11 event either party disputes the number of shares, the Court will entertain a RFO.” (FOAH at p.  
12 24, fn. 5.) Rather than engage in even more litigation, and consistent with her ongoing desire to  
13 simply be done with these matters, Ekaterina did not file an RFO; she accepted one-half of 36  
14 shares, for a total of 18. This was thus already an unequal division of the Google stock—in  
15 Eugene’s favor.

16  
17 **D. Eugene’s Breach of Fiduciary Duty in the Division of Stocks Negates any Showing of  
18 Good Cause for an Unequal Division of Google Stock**

19 In its detailed ruling, this Court determined that Eugene had not breached his fiduciary duty  
20 to Ekaterina with respect to the condo. However, it did not make any determination as to whether  
21 the failure to divide the Google stock was a breach. That issue was not raised in the prior trial.  
22 Here, it is being raised.

23 Eugene’s failure to divide the investment accounts 50-50 as of the date of division was not  
24 an oversight on his part. It is consistent with his pattern and practice of secreting an advantage—  
25 no matter how small—over Ekaterina, in breach of his fiduciary duty. Eugene neglected to divide  
26 or disclose his HSA account, his Roth IRA, or his vacation pay. Ekaterina had to file papers and  
27 litigate these issues after the MSA was signed and Eugene purported to divide the assets in order

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<sup>2</sup> / Subsequent to this decision, the Google stock enjoyed a 20-1 stock split and the 36 shares became 720, of which Ekaterina was entitled to 360 based on this ruling.

1 to obtain payment of her community interest in these assets. These issues were resolved prior to  
2 the underlying trial in which this Court found the Google stock was an omitted asset, although the  
3 issue of the vacation pay was resolved right before trial. These omissions and breaches of the  
4 fiduciary duty of disclosure were intentional on Eugene's part.

5 Family Code section 721, dealing with breaches of fiduciary duties, provides, in relevant  
6 part,

7 This confidential relationship imposes a duty of the highest good faith and fair  
8 dealing on each spouse, and neither shall take any unfair advantage of the other.  
9 This confidential relationship is a fiduciary relationship subject to the same rights  
10 and duties of nonmarital business partners, as provided in Sections 16403, 16404,  
11 and 16503 of the Corporations Code, including, but not limited to, the following:

12 ....¶...

13 (3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived  
14 from any transaction by one spouse without the consent of the other spouse that  
15 concerns the community property.

16 (Fam.Code §721(b)(3).)

17 This fiduciary duty continues until the assets are divided. (Fam.Code §1100(e).) ["Each  
18 spouse shall act with respect to the other spouse in the management and control of the community  
19 assets and liabilities in accordance with the general rules governing fiduciary relationships which  
20 control the actions of persons having relationships of personal confidence as specified in Section  
21 721, until such time as the assets and liabilities have been divided by the parties or by a court."]

22 In achieving the advantage of (1) avoiding capital gains taxes on the shares he retained  
23 while burdening Ekaterina with such taxes on the shares he transferred to her; (2) retaining for  
24 himself 100% of the increased value of the Schwab -6350 account from April 8, 2019 to July 2019;  
25 and (3) retaining for himself 100% of the Google stock he received between April 8, 2019 and the  
26 July 2019 transfer of stock from the -6350 account, Eugene breached his fiduciary duty to her.  
27 Even assuming the first two of the above were "only" a few thousand dollars each, it was an  
28 advantage Eugene took knowingly and without disclosing to Ekaterina. As for Eugene's retaining  
of 100% of the additional 10 shares of Google stock, this was a breach because even if he believed  
that stock was his separate property as having been provided to his account after separation, under



1 the law it likely was not. It is doubtful that Eugene’s receipt of vested Google stock on April 29,  
2 2019 was based solely on work he performed over the prior 3 weeks. By not disclosing these  
3 shares and the later May 2019 receipt of shares, he failed to account for his receipt of these arguably  
4 community funds, and thus breached his fiduciary duty. This should be taken into account when  
5 evaluating “good cause” for an unequal division of the omitted asset in Eugene’s favor.  
6

7 **II. REQUESTED OUTCOME**

8 Ekaterina requests this Court evaluate the evidence regarding Eugene’s unilateral transfer  
9 of certain stocks to Ekaterina, using a lower valuation than the accounts were worth as of the date  
10 of the transfers, and failure to even disclose the additional Google stock or provide copies of the  
11 investment account statements, and affirm its division of the Google stock at 50-50, with Ekaterina  
12 receiving one-half of the 36 shares as of July 2019, including any subsequent stock splits.  
13

14 Dated: January 24, 2024

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