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Case #19FL001660
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8 Attorney for Respondent Eugene Strulyov

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SANTA CLARA

11 In re the marriage of:

Case No.: 19FL001660

12 EKATERINA STRULYOV

RESPONDENT'S TRIAL BRIEF

13
14 Petitioner,
15 and,

DATE: 3/8/2020
TIME: 9:00 AM
DEPT: 74

16 EUGENE STRULYOV,

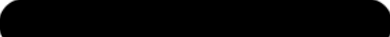
APJ: Hon. Brooke A. Blecher

17 Respondent.
18

19 _____ /
20
21 STATISTICAL INFORMATION / RELEVANT DATES

22 Petitioner: Ekaterina Strulyov, represented by Golnesa Monazamfar, Esq.

23 Respondent: Eugene Strulyov, represented by Dale N. Chen, Esq.

24 Minor child: 

25 10/29/2010: Date of marriage

26 4/8/2019: Date of separation

27 4/2019: Divorce petitioner filed

28 5/28/19: Mediated marital settlement agreement executed

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11/18/19: Judgement filed
4/21/20: Stipulation/order modifying child support, spousal support, and private school tuition filed
8/17/20: Respondent filed RFO to set aside the stip/order
3/8/21: Petitioner filed RFO for omitted assets etc.

At issue for trial are the two RFO's described. Above.

BACKGROUND

The parties married in 2010. Petitioner filed for divorce April 30, 2019. The parties reached a mediated settlement agreement one month later, on May 28, 2019. At the time of the mediation, Petitioner represented that she would be living alone in the apartment that Responded helped her find in a good school district and for which co-signed the lease. However, in less than a week after the MSA was signed, Petitioner instead moved in with her boyfriend who is wealthy with high income. She then began harassing Respondent for the payment of private school tuition. In February – March 2020 the parties negotiated a stipulation and order for modification of the judgment, filed April 21, 2020.

RESPONDENT'S MOTION TO SET ASIDE THE STIPULATION FILED 4/21/20

The stipulation included termination of Petitioner's spousal support in exchange for Respondent agreeing to pay for private school. Respondent then discovered that Petitioner had concealed material information for the stipulated modification, namely that she had started a new job in January 2020 with wages 256% more than her prior income when the MSA was executed eight months earlier in May 2019 and when the judgment was filed two months earlier in November 2019. The parties relied on guideline spousal and child support to calculate spousal and child support for the MSA/judgment. The support printout attached to the judgment stated her income as \$4,389.00. For the April 2020 stipulation and order modifying support, she tacitly allowed that same income to be stated in the support printout attached to the stipulation/order without informing Respondent of her

Document received by the CA 6th District Court of Appeal.

1 256% increase in wages to \$11,250.00 per month. Therefore, Petitioner's deceit intentionally
2 induced Respondent to agree to pay tuition in consideration for not paying the \$1,860.00 per month
3 in spousal support. Based on Petitioner's new income, however, no spousal support was due in the
4 first place if the parties were to follow the same principal used in the MSA/judgment, i.e. using
5 guideline spousal support. Respondent's trial exhibits include support printouts to show the
6 comparison between Petitioner's misrepresented income and true income.

7 **Child's Educational Expenses:** Paragraph 3(H) of the agreement attached to the judgment
8 stated the following:

9 "EDUCATIONAL EXPENSES: Father and Mother will each be responsible for payment of
10 one-half (1/2) of all educational costs incurred on behalf of SOFIA (through high school graduation
11 for SOFIA)."

12 Nothing was stated about private school tuition, choice of schools, discretion, or consent.

13 The stipulation/order filed 4/21/20, however, was specific on these points, obligating
14 Respondent to pay private school tuition. Securing the stipulation for tuition with specific language
15 to supplant the ambiguous language in the MSA/judgment was her sole objective. She obviously
16 knew the consideration was fraudulent for termination of spousal support given her undisclosed
17 increased income.

18 Respondent filed a motion to set aside the order on August 17, 2021. A long cause hearing is
19 set for Dec. 8 and 10, 2021.

20 Respondent's set-aside motion seeks the following relief:

- 21 1. Vacate the April 21, 2020 Stipulation and Order based on fraud by concealment.
- 22 2. Order Petitioner to reimburse Respondent for all monies paid for private school tuition.
- 23 3. Re-calculate child support retroactive to March 1, 2020 based on Petitioner's true income.
- 24 4. Termination of spousal support effective March 1, 2020.
- 25 5. Vacate the spousal support provisions of the November 18, 2019 Judgment and recalculate
26 taking into account Petitioner's co-habitation [Family Code §4323]; based on fraud by
27 concealment.

- 1 6. Vacate the child support provisions of the November 18, 2019 Judgment based on mistake
2 and recalculate support taking into account Respondent's true rental income.
3 7. An order that Petitioner and Respondent notify the other within 14 days of any changes to
4 income.
5 8. An order for attorney fees and costs pursuant to Family Code §271, to include \$5,000 paid
6 by Respondent to Mathew Rudy, and all fees paid to the Law Office of Joseph
7
8

9 **PETITIONER'S RFO FOR ADJUDICATION OF OMITTED ASSETS ETC.**

10 Petitioner claims Respondent's Google stocks were not disclosed and divided.
11

12 **THE GOOGLE STOCKS WERE DISCLOSED AND DIVIDED**

13 Petitioner claims that respondent did not disclose all of his Google stocks. Respondent did,
14 however, disclose this asset as explained in respondent's declaration filed herewith. His FL 142
15 listed Schwab in item 11 with a value of \$205,620.38. That was the total of the two Schwab accounts
16 listed in his April 8, 2019 email settlement proposal on April 8, 2019, to wit Schwab brokerage
17 account \$161,107.95 and Schwab equity awards (which contained his google RSU stock) \$43,459.40.
18 Respondent had not yet received his Schwab equity awards account statement at the time of the
19 4/8/19 email. The next statement issued for the period ending 6/30/2019 which showed a balance of
20 \$49,721.86. Therefore, contrary to Petitioner's assertion, Respondent complied with California
21 Family code section 2105 (d) preliminary disclosures.

22 The parties were assisted in the dissolution by a mediator, David Magnuson. The parties used
23 respondent's settlement proposal in his April 8, 2019 email for the property division set forth in the
24 mediated settlement agreement. The stipulated settlement was drafted by the mediator. That
25 agreement was signed by the parties May 28, 2019. Informative are paragraph 5 through 6 of
26 Respondent's settlement proposal in his email of April 8, 2019 (Attached hereto as Exh B). They
27 state the following:
28

1 "5. Cash and investments:

2 5.1. e-trade brokerage: \$66273.20

3 5.2. Schwab brokerage: \$161107.95

4 5.3. **Schwab equity awards: \$43457.40 (Google stock vests here).**

5 5.4. Partners FCU checking account: on the advice of my lawyer, I transferred \$20k into this
6 account. He told me horror stories about how spouses drain joint accounts making the other spouse
7 unable to pay the lawyer or any other bills. So I stashed away some emergency cash. But I'm not
8 trying to hide it -- this is still part of community property.

9 Total: \$271k. And yes, you will take half of this. (actually more, see below).

10 We also have ~67k in the Chase checking account, but ~33k in taxes due and ~20k credit card
11 balance. I'll have to see what the exact amount is once all the payments go through. My paychecks
12 continue to be deposited into this account.

13 6. Mortgage. Last year I expected a recession, so I sold a lot of stocks and bought mostly
14 bonds and gold (that's why we have the tax bill). But I also dumped \$130k into the mortgage. This
15 had the effect of taking \$130k away from common property, so you can claim half of that money. I
16 will give you \$65k out of my portion of cash & investments. So the \$271k will be divided as follows
17 you get \$200.

18 I get \$71k

19 + we each get half of what remains in the joint checking account once this agreement
20 becomes final."

21
22 Following execution of the mediated settlement agreement on 5/28/19, Respondent was
23 consummating the property settlement. On 7/12/2019 (Attached hereto as Exh D), Respondent sent
24 the following email to Petitioner:

25 "TL;DR: I fulfilled my obligations. Now it's time you fulfill yours. At the time of the divorce
26 filing, the total balance of my investment accounts was \$271895.58 (\$66273.20 in etrade,
27 \$205622.38 in schwab). The mediation agreement entitles you to take \$200947.79 of my money
28

1 using the 50% + 65K calculation. You have already received all of my holdings in the following
2 assets:

3 VCAIX 67628.11

4 FB 38802.00

5 IAU 67225.00

6 T 10641.17

7 For a total of 184296.28. That leaves a balance of 16651.51 which we can settle in cash if you
8 want. However, I think that it would be more than fair to just call it even, considering that the car that
9 I bought for you is worth far more than my bike & trailer. You are, of course, aware that you have the
10 upper hand in this matter and can force me to give you this money if you so choose, so let me know
11 what you want to do.

12 That only leaves the retirement accounts pending.

13 eTrade Roth IRA: as I have already informed you, I sent them the paperwork but they require
14 divorce decree to release the money. There is nothing more I can do at this time.

15 Vanguard 401k: being discussed in a separate thread; you are aware of what's happening and
16 the ball is in your court.

17 So, I fulfilled my obligation. Now I need you to sign the title documents. As explained above,
18 I'll give you the check for \$16651.51 if you so choose.

19 Eugene.”

20
21 On 9/25/2019, Respondent sent the following email to Petitioner confirming consummation of
22 the property division and equalizer payment to Petitioner (Attached hereto as Exh C):

23 “ Katia,

24 I already transferred ALL non-retirement funds that were due you as per the mediation
25 agreement. Refer back to my July 12 email. Specifically you received the following stock/ETF
26 transfers:

27 VCAIX 67628.11

28 FB 38802.00

1 IAU 67225.00

2 T 10641.17

3 For a total of 184296.28. I gave you a check for the remaining amount of 16651.51.

4 The only accounts that are left to settle are retirement accounts:

5 - 50% of e-trade Roth IRA. As explained multiple times previously, I submitted the

6 distribution form to e-trade but they require the divorce decree from the court to release the money to
7 you.

8 - 401k account: being handled by Elizabeth A. Strasen

9 I don't owe you anything else.

10 Eugene”

11 The executed mediated settlement agreement was attached to the judgment and filed
12 11/18/2019 by the mediator. The result of the foregoing was an equal division of community property
13 and included division of the Google stock that Petitioner claims was omitted and not adjudicated.

14
15 **ANY OMISSION OF THE VACATION PAYOUT WAS INADVERTENT; NOT**
16 **INTENTIONAL**

17 Petitioner claims that Respondent's vacation pay was omitted from the property division. The
18 Google vacation payout was reflected in the paycheck stub for payday 6-17-19, the day he quit his
19 Google job. The gross amount was \$7,047.64. The net amount was \$6,630.58 and deposited to the
20 Partner FCU account on 6/22/19. This was after Respondent served his FL142 and signed the
21 mediated settlement agreement on 5/28/2019. Respondent was not represented by an attorney and
22 was not versed in the niceties of his complicated paycheck stubs. He was unaware of the
23 accumulated vacation pay or whether it was a community asset. There was no intentional omission
24 of disclosure. The amount in controversy is half the gross vacation pay, to wit, \$3,523.50.

25
26 **THE TARZANA CONDO IS RESPONDENT'S SEPARATE PROPERTY**

27 Petitioner claims she made a mistake when she agreed to transfer her interest in the Tarzana
28 condominium to Respondent. Respondent purchased the condominium before marriage. As such, it

1 was his separate property. During the marriage, the condominium was always a rental property. The
2 parties never resided there. Respondent paid all rental property expenses, including the mortgage,
3 from the rent revenue. Cash flow was always positive. Respondent refinanced the mortgage in 2012,
4 during the marriage without a cash-out. Petitioner's name was included on the refinance loan
5 because Petitioner threatened divorce if this was not done. While adding Petitioner's name to the
6 mortgage might have made it easier, Respondent's income was 3x hers and he most likely would still
7 qualify without her. Respondent did not intend to give Petitioner an interest in the condominium. Her
8 name was not added to title as part of the refinance.

9 In 2017, Petitioner pressured Respondent to be added to title. She again threatened to divorce
10 if he did not add her name. Petitioner was recovering from injuries suffered in a motorcycle accident
11 and was susceptible to her overbearing threats. Bowing under duress to Petitioner's demands and
12 threats that amounted to harassment, Respondent added her name by deed recorded 11/28/2017. Yet,
13 a mere 15 months later, Petitioner filed for divorce. The parties commenced mediation with Mr.
14 David Magnuson. However, Petitioner admitted that she had been consulting with divorce attorneys
15 since at least 2018 and possibly earlier. Obviously, Petitioner was planning to divorce when she
16 fraudulently induced Respondent to add her name. Her incessant threats were merely a stratagem to
17 gain a property advantage in the divorce. Petitioner took advantage of respondent's medical
18 condition and the parties' confidential relationship in unduly influencing Respondent to add her
19 name. One month after Petitioner filed for divorce, the parties executed the mediated settlement
20 agreement. Petitioner conceded her overreach and relinquished her interest in Respondent's separate
21 property rental.

22 The parties' divorce proceeding from start to settlement was one month. Paragraph 18 of the
23 stipulated settlement, signed under penalty of perjury, states,

24 **“Further, the parties acknowledge that this Stipulated Judgment and each**
25 **party's signing thereof has not been procured by coercion, duress, menace, fraud,**
26 **or undue influence in any manner by the other party or any person**
27 **whomsoever.”**

28 Assuming arguendo that petitioner's allegations to support her claim of duress are true, that
Respondent said, “she has no interest in the real property because it is “my condo” that it was

1 purchased “long before marriage” and that “it was never yours to begin with...”, then the statements
2 to that effect would be truthful. The condominium was separate property because it was purchased
3 before marriage. It remained separate property after the marriage because all expenses of the
4 condominium including mortgage payments were paid from the rents which are also respondent’s
5 separate property, except for the \$130,000 lump sum to pay down the mortgage.

6 The pay-down was \$70,000 on February 27, 2018, and \$60,000 on March 22, 2018, for a total
7 of \$130,000. Of that amount, Respondent reimbursed Petitioner one half, or \$65,000.00. This was
8 transparent in Petitioner’s settlement related emails that are included in Respondent’s trial exhibits,
9 i.e., the emails of 4/8/2019, 7/12/2019, and 9/25/2019, as well attached to his responsive declaration
10 to petitioner’s omitted assets motion.

11 Petitioner and respondent held joint title to this property as husband and wife – community
12 property at the time of those lump sum payments. As for the few months her name was on title from
13 November 28, 2017 to May 2019 at which time, she agreed to relinquish title as part of the
14 settlement, she agreed de facto that her name should never have been added to the title in the first
15 place. If the issue were so important to petitioner, she could have readily consulted with an attorney.
16 In fact, she most likely did. Petitioner admits in her motion to disqualify respondent’s prior counsel
17 that she was consulting with divorce attorneys as early as 2018. Her claim that she relied on
18 representations from respondent concerning her property rights is expedient and disingenuous.

19 Rather than file a response to Respondent’s motion to set aside orders based on fraud and
20 concealment, a motion that was filed over a year ago, she has filed the instant motion with motives of
21 subterfuge and obfuscation. She has not filed a response to respondent’s motion because she knows
22 that the allegations of fraud and concealment are true, that her income was three times more than she
23 represented and that she was cohabitating in a new relationship. These concealed facts were material
24 to the stipulated order modifying child and spousal support filed April 21, 2020. She knows she has
25 no defense to Respondent’s motion. Conversely, her motion is specious and contrived to divert
26 attention from Respondent’s motion in which he seeks redress for Petitioner’s fraud and concealment.

27 Petitioner has a master’s degree in international relations. She has work experience as a
28 property manager and as a content manager (moderator) for Facebook. Based on those credentials she

1 was fully cognizant of her rights to seek legal advice and that she should seek legal advice rather than
2 rely on any representations from respondent. She did in fact seek legal advice from a divorce attorney
3 in 2018 as disclosed by her motion to disqualify respondent's prior counsel in this action.

4 Furthermore, the settlement process in this action was not strictly between petitioner and respondent
5 since it was mediated by attorney David Magnuson. Respondent did nothing to prevent Petitioner
6 from retaining counsel for the mediated settlement.

7 Petitioner's points and authorities filed with her motion cite several cases to support her
8 argument of undue influence and duress. They are all distinguished from this case. Petitioner does
9 not allege that Respondent used any physical violence or threat to force her to agree to the mediated
10 settlement or to seek counsel.

11 Respondent denies that he called Petitioner a "fucking gold-digging bitch" and that "this is
12 the last offer on the table so you should accept it while it lasts or you will get nothing at all." Even if
13 he did say any part of it, petitioner regularly and frequently used that vernacular toward Respondent.
14 Furthermore, she does not allege that she was so mentally weakened to the point of being so
15 dysfunctional that she could not gather the wherewithal to seek legal advice before she signed the
16 stipulated mediation agreement, especially given her master's in international relations and work
17 experience in property management and as a content moderator for Facebook. She does not allege
18 any medical or other evidence that she is so mentally incapable that she would actually believe that
19 she would get "nothing" if she did not agree to the settlement proposal.

20 Respondent did not bait and switch any documents to coax Petitioner to agree to the mediated
21 settlement. Mediator Mr. Magnuson supervised it.

22 There was no undue influence by Respondent. Respondent was not represented by legal
23 counsel in the divorce proceeding leading to the stipulated settlement, but the parties were not dealing
24 with each other strictly. Mediator David Magnuson was involved in the process. Petitioner's choice
25 not to be represented by legal counsel was of her own free will. Indeed, she is the one who proposed
26 mediation instead of litigated divorce. She signed the stipulated settlement and attested to the specific
27 provision that she was not acting under coercion, duress, menace, fraud, or undue influence in any
28 manner by the other party or any person whomsoever. Again, she makes no allegation whatsoever

1 that petitioner prevented or dissuaded her from seeking legal counsel. And again, it is highly likely
2 that she was acting with the advice of unnamed legal counsel. She admitted in her motion to
3 disqualify petitioner's prior counsel that she was consulted with a divorce attorney as early as 2018.

4 Neither party gained an advantage over the other. Petitioner had unfettered access to all
5 financial records. She does not allege that she ever asked for any records. Nonetheless, those records
6 were available to her. As stated in respondent's declaration, he kept petitioner informed of
7 investments but she was never interested in hearing it as long as she had money to spend. Petitioner
8 acknowledged in the mediated settlement agreement that she was not acting under coercion, duress,
9 menace, fraud, or undue influence in any manner by the other party or any person whomsoever.

10 The condominium was a separate property to begin with since respondent owns this property
11 prior to marriage. He never wanted to add petitioner's name to title despite her incessant demands
12 and ultimately her threat to divorce him if he did not add her to title. In 2017, her name was added to
13 title at her behest that essentially amounted to harassment, duress, coercion, and undue influence.
14 Respondent meets his burden of rebutting the presumption of undue influence in wife relinquishing
15 her title on the repeated grounds stated above.

16 17 **SALE OF STOCK**

18 The stock was sold from the community property E*TRADE account. Respondent managed
19 the investments and kept Petitioner informed, but she was not interested in hearing it so long as she
20 had money to spend. Respondent sold the stocks in February and March 2018 and made two lump
21 sum payments to pay down the mortgage: a \$70,000 payment on 02/27/2018 and a \$60,000 payment
22 on 03/22/2018 for a total of \$130,000. These transactions occurred more than a year before the
23 divorce. During those times. Petitioner's name was on the title and the mortgage loan for the rental
24 property. Respondent in the mediated settlement agreement reimbursed Petitioner for one half of the
25 \$130,000. Therefore based on these points, petitioner did not breach his fiduciary duties. He kept the
26 petitioner informed of his investments, and he did not take any unfair advantage of Respondent.
27 Therefore he did not violate family code section 721.
28

1 **SANCTIONS AND ATTORNEY'S FEES**

2 Respondent requests attorney's fees and sanctions pursuant to Family Code section 271. The
3 court may base an award of attorney's fees and costs on the extent to which the conduct of each party
4 or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where
5 possible, to reduce the cost of litigation by encouraging cooperation between the parties and
6 attorneys. FC 271(a). Petitioner's motion is without merit and only brought in retaliation to
7 Respondent's pending motion to set aside the stipulation and order filed in February 2020 in which
8 she fraudulently induced Respondent to pay the parties minor child school tuition in exchange for
9 petitioner terminating spousal support. She concealed her true income at the time of the April 2020
10 stipulated modification. She concealed her intention cohabit with her boyfriend in the divorce
11 negotiations and mediated settlement. She misrepresented that she would move to an apartment in a
12 good school district, and Respondent arranged for it, securing the apartment, and co-signing the lease.
13 But within less than a week of signing the mediated settlement (May 28, 2019), she moved in with
14 her boyfriend.

15 Petitioner's RFO is not supported by the facts. Respondent made a full disclosure of all
16 property in the course of the parties mediated settlement agreement, and Petitioner received more
17 than half of the community property. Respondent's declaration attached to his responsive declaration
18 to Petitioner's RFO, with exhibits 1 through 15 explains this in perspicuous detail. These are
19 included in Respondent's trial exhibits. It shows that he disclosed all of his Google stocks. The sale
20 of stock to paydown his Tarzana condominium mortgage was transparent. Furthermore, Petitioner
21 was reimbursed in divorce settlement, for half of the \$130,000 that went to the paydown. Similarly,
22 the Partners FCU checking in stock accounts were divided in the settlement agreement. Petitioner
23 freely and voluntarily relinquished any interest in Respondent Tarzana condominium. There was no
24 duress, coercion, undue influence, or fraud. Petitioner's motion is without merit and is brought only
25 to frustrate settlement and drive up the cost of litigation, in violation of FC 271(a). Petitioner should
26 be ordered to pay sanctions and Respondent's attorney's fees.


27 The parties respective attorneys have stipulated to file post-trial attorney's fees briefs by

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March 23, 2022 and reply briefs by April 6, 2022.

Dated: MAR 01 2022



Dale Chen, Attorney for Respondent, Eugene Strulyov

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