

DEC 07 2010

JOHN A. CLARKE, CLERK
BY: [Signature] DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

In re the Marriage of:)	Case No.: BD514309
JAMIE McCOURT,)	
Petitioner,)	STATEMENT OF DECISION
and)	RE: VALIDITY OF POST-MARITAL
FRANK McCOURT,)	AGREEMENTS
Respondent)	

RULING ON SUBMITTED MATTER

STATEMENT OF DECISION

On December 9, 2009, the Court, the Hon. Scott M. Gordon, Judge of the Superior Court, presiding, ordered pursuant to the parties' Stipulation, that the issue of the validity and enforceability of the parties' three post-nuptial agreements be severed and tried separately from, and prior to, all other issues. The three post-nuptial agreements at issue are as follows: (1) the March 31, 2004 Marital Property Agreement ("MPA")ⁱ, (2) the May 10, 2004 Charing Cross Marital Property Agreement ("First Supplemental MPA"), and (3) the October 28, 2004 Second Supplemental Marital Property Agreement ("Second Supplemental MPA").

1 Trial on the bifurcated issue of the validity and enforceability of three post-nuptial
2 agreements commenced on August 30, 2010, and ended on September 29, 2010.

3 Petitioner appeared in person and was represented by Dennis Wasser, Bruce
4 Cooperman, David Boies, James Fox Miller, Michael Kump, and Suann Maclsaac, and
5 Respondent appeared in person and was represented by Sorrell Trope, Stephen
6 Susman, Marc Seltzer, Victoria Cook, Ryan Kirkpatrick and Matthew Berry.

7 Both oral and documentary evidence was received on the bifurcated issue; the
8 matter was argued and submitted for decision, and the Court now makes the following
9 Statement of Decision. In making the findings below, the Court has considered all the
10 evidence, the testimony, the demeanor and credibility of the witnesses, the written and
11 oral arguments of counsel, the materials and authorities submitted by the parties, and
12 the pleadings, papers and other documents filed with the Court. Pursuant to Code of
13 Civil Procedure §632 and California Rules of Court 3.1590 and 3.1591, this Statement
14 of Decision is intended to explain the legal and factual basis for the decision as to each
15 of the principal controverted issues at trial. Section 632 has been interpreted to call for
16 findings as to ultimate—rather than evidentiary—facts.

17
18 It must be noted that this Statement of Decision is confined to the issues related
19 to the validity and enforceability of the parties' three post-nuptial agreements in this
20 matter. Any and all discussion, findings and holdings in this Statement of Decision are
21 limited to the instant issues related to the validity and enforceability the post-nuptial
22 agreements. The Court does not by way of this Statement of Decision explicitly or
23 implicitly make any findings related to the remaining issues in this matter. The Court
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25

1 explicitly does not make any findings with regard to the characterization of the parties'
2 property or interest in any property within this Statement of Decision.

3
4 The Court HEREBY FINDS AND CONCLUDES as follows:

5
6 **SUMMARY OF FINDINGS**

7
8 The Court has considered the evidence and arguments submitted by the parties
9 in this matter. The Court's detailed findings and discussion of the issues is found below.
10 The Court provides the following summary of findings regarding the primary issues
11 presented by the parties in the instant bifurcated proceeding:
12

13
14 The Court finds that the Marital Property Agreement [hereinafter "MPA"]
15 executed by Petitioner, Jamie McCourt and Respondent, Frank McCourt is not an
16 agreement as defined by Family Code §§721 and 1500, but a transmutation agreement
17 subject to standards articulated in Family Code Section §§850 - 852.

18 The Court finds that the MPA was not a valid transmutation as defined by Family
19 Code §850.

20 The Court finds that there is no evidence within the MPA, or within the testimony
21 of the witnesses in this matter, of any waiver of the parties' rights of equitable
22 distribution as described in Massachusetts law.

23 The Court finds that there was no mutual assent or meeting of the minds
24 between Petitioner and Respondent when they executed the agreement on March 31,
25

1 2004. The Court further finds that there was no mutual assent or meeting of the minds
2 regarding the content of the version of the MPA Petitioner and Respondent signed on
3 March 31, 2004 in Massachusetts and the version Respondent signed on April 14, 2004
4 in California.

5 The Court finds that the conditional terms of the MPA do not make the
6 agreement invalid.

7 The Court finds that the MPA was created at the behest of the Petitioner. The
8 Court further finds that the MPA did not bestow an unfair advantage on the Respondent.
9 The Court finds that the execution of the MPA was not a result undue influence exerted
10 on Petitioner. Further, the Court finds that the Respondent introduced a sufficient
11 quantum of evidence to rebut any applicable presumption of undue influence.
12

13 The Court finds that the material provisions of the MPA are to be interpreted as a
14 single whole. The Court finds that "the consummation of [a] bargain" between Petitioner
15 and Respondent was dependent upon inclusion of Paragraph 4 of the MPA and thus all
16 material provisions of the MPA are inextricably intertwined. As a result, portions of the
17 MPA cannot be severed from an otherwise unenforceable transmutation.

18 The Court does not find that the MPA is invalid based on a theory of constructive
19 fraud.

20 The Court finds that the MPA did not constitute a valid waiver of the parties'
21 respective interests as described in *Pereira v. Pereira* (1909) 156 Cal. 1 and *Van Camp*
22 *v. Van Camp* (1921) 53 Cal. App. 17.
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1 The Court finds that the Marital Property Agreement is not a valid and
2 enforceable agreement. The Court orders that the Marital Property Agreement is set
3 aside.

4 The Court rules that the First Supplemental Marital Property Agreement and the
5 Second Supplemental Marital Property Agreement are set aside.

6 The Court does not find sufficient evidence to support Respondent's contention
7 that Petitioner is barred from challenging the validity of the MPA on the basis of the
8 doctrines of laches, ratification, and estoppel.

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10
11 **SUMMARY OF FACTS**

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13 On October 27, 2009 Jamie McCourt [hereinafter "Petitioner"] filed a petition for
14 dissolution of the parties' marriage. On October 27, 2009, Frank McCourt [hereinafter
15 "Respondent"] filed a motion to bifurcate the issues of validity and enforceability of three
16 post marital agreement in this matter [hereinafter "MPA"].¹ On December 3, 2009, the
17 parties stipulated to bifurcate for separate trial the issues regarding the validity of the
18 MPA.

19 Petitioner and Respondent married on November 3, 1979, and separated July 7,
20 2009. The parties have no minor children. A Stipulated Judgment regarding Marital
21 Status has been entered.

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25 ¹ The three post marital agreements involved in this matter include: Document entitled "Marital Property Agreement," dated March 31, 2004; a document entitled "Charing Cross Marital Property Agreement," dated May 4, 2004 ("Charing Cross Agreement"); a document entitled "Second Supplementary Marital Property Agreement" dated October 28, 2004 ("Second Supplementary Agreement").

1 Both parties are 1975 graduates of Georgetown University. Petitioner attended
2 law school at the University of Maryland, where she obtained a J.D. degree in 1978.
3 Petitioner later completed studies and received an M.S. degree from the Sloan School
4 of Business at M.I.T. After they were married, the parties established residence in
5 Massachusetts and remained there until 2004, when they moved to California. The
6 evidence produced at trial indicates that both parties are very sophisticated and
7 intelligent individuals.

8 After their marriage, Respondent worked on real estate related matters in the
9 Boston, Massachusetts area. Petitioner practiced Family law for a period of time² prior
10 to becoming general counsel for the McCourt Company. The evidence produced at trial
11 shows that the Petitioner is a legally and financially sophisticated woman with a law
12 degree and an advanced business degree from the Massachusetts Institute of
13 Technology.
14

15 The parties amassed a substantial marital estate, including significant residential
16 and commercial real estate holdings. During the time they resided in Massachusetts,
17 the parties put title to their residences solely in Petitioner's name and title to their
18 business interests solely in Respondent's name. The parties understood that under
19 Massachusetts law this practice insulated the residences from claims by business
20 creditors but preserved for each of them an equitable distribution interest in all of their
21 marital assets regardless of who held title. The parties never entered into any pre-
22 marital or post-marital agreements under Massachusetts law.
23
24

25 ² Petitioner testified that she practiced Family Law for approximately five years. It was customarily her practice to prepare MSA agreements, however evidence shows that Petitioner also worked on post nuptial agreements.

1 In 2003, the parties pursued the opportunity to purchase the Los Angeles
2 Dodgers franchise, which was then owned by News Corp. The Dodger franchise
3 included the Los Angeles Dodgers, Dodger Stadium and the 276 acres of Chavez
4 Ravine property which surround the stadium [hereinafter "Dodgers"].³

5 In October of 2003, an agreement was reached to purchase the Dodgers from
6 News Corp. The agreement was approved by Major League Baseball (MLB) in January
7 2004, and the Dodger acquisition formally closed on or about February 13, 2004.

8 In anticipation of moving from Massachusetts to California in conjunction with the
9 purchase of the Dodgers, Petitioner and Respondent signed three copies of the MPA on
10 March 31, 2004. The three copies signed in Massachusetts are referred to as the
11 "Massachusetts version of the MPA."⁴ Three additional copies signed by Petitioner on
12 March 31, 2004. Respondent signed these three copies of the MPA on April 14, 2004 in
13 California. The three copies signed by Respondent in California are referred to as the
14 "California Version" of the MPA.⁵ The Massachusetts version and California version are
15 virtually identical except for the text of a schedule attached to each of the MPA's
16 described as "Exhibit A."⁶

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20 ³ It must be noted that the parties are at odds with regard to many issues related to the acquisition of the
Dodgers and associated assets. Nothing in this Statement of Decision reflects a ruling with regard to the
issue of characterization of these assets.

21 ⁴ See Court Exhibits 1-3.

22 ⁵ See Court Exhibit 7-9.

23 ⁶ The two different versions of Exhibit A of the MPA are worded as follows:

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25
Exhibit A ("MASSUCHESTS VERSION")
Frank's Separate Property Assets

1. Bank Accounts- all accounts currently listed solely in Frank's name.
2. Stocks, Bonds, Mutual Funds – all securities and securities accounts currently listed solely in Frank's name inclusive of the following: Frank's stock interest in the McCourt –Broderick Limited Partnership ("MBLP") including all real estate and other assets owned directly or through

1 The exhibits attached to the Massachusetts versions of the MPA *included* as
2 Respondent's separate property: his stock interest in the McCourt Company, Inc., as
3 well as all real estate and other assets owned directly or through subsidiary entities by
4 McCourt Broderick Limited Partnership which include (1) the Seaport Property; (2) Los
5 Angeles Dodgers; and (3) land located in Chavez Ravine. The exhibits attached to the
6 California version of the MPA *excluded* as Respondent's separate property his stock
7 interest in the McCourt Company and his interest as a limited partner of the McCourt
8 Broderick Limited Partnership. The California versions of the MPA further described the
9 exclusion of property as: "including within this exclusion" (1) Seaport; (2) Los Angeles
10 Dodgers; and (3) Chavez Ravine.

11
12 subsidiary entities by MBLP including without limitation (1) approximately 25 acres of land in
13 Seaport District of Boston, Massachusetts; (2) all assets of the Los Angeles Dodgers baseball
14 team owned by Los Angeles Dodgers LLC and (3) 276 acres of land located in Chavez Ravine,
Los Angeles, California.

- 15 3. Personal Property- personal jewelry and clothing and boats and vehicles as to which Frank is the
record owner.
- 16 4. Liabilities- all liabilities as to which Frank is the maker and as to which Jamie is not the maker.

17
18 **Exhibit A ("CALIFORNIA VERSION")**
Frank's Separate Property Assets

- 19 1. Bank Accounts- all accounts currently listed solely in Frank's name.
- 20 2. Stocks, Bonds, Mutual Funds – all securities and securities accounts currently listed solely in
21 Frank's name exclusive of the following: Frank's stock interest in the McCourt –Broderick Limited
22 Partnership ("MBLP") including within this exclusion all real estate and other assets owned
23 directly or through subsidiary entities by MBLP including without limitation (1) approximately 25
24 acres of land in Seaport District of Boston, Massachusetts; (2) all assets of the Los Angeles
25 Dodgers baseball team owned by Los Angeles Dodgers LLC and (3) 276 acres of land located in
Chavez Ravine, Los Angeles, California.
3. Personal Property- personal jewelry and clothing and boats and vehicles as to which Frank is the
record owner.
4. Liabilities- all liabilities as to which Frank is the maker and as to which Jamie is not the maker.

1 The different versions and drafts of Exhibit A attached to the MPA are significant
2 to note. Evidence produced at the trial indicates that the first draft of the MPA was
3 prepared on March 22, 2004. This draft included Exhibit A as a blank form attached to
4 the MPA.⁷

5 The second draft of the MPA, sometimes referred to as the "Internal Draft" during
6 the trial, was prepared on either March 24th or 25th. The Exhibit A included in this draft
7 did not use the terms "inclusive" or "exclusive," however, the Dodgers were listed as
8 Respondent's separate property.⁸

9 On March 29, 2004, the third draft was prepared. The Exhibit A attached to this
10 draft excluded the Dodgers from the description of Respondent's separate property.⁹

11 The fourth draft of the MPA was created on March 30, 2004. The Exhibit A
12 attached to this version of the MPA used the term "exclusive" when describing the
13 Dodgers in relation to Respondent's separate assets.¹⁰

14 Later on March 30, 2004, a fifth draft of the MPA was prepared. This was the
15 only draft not prepared on the law firm's word processing system. In this version of the
16 MPA, Exhibit A used the word "inclusive" to describe the Dodger assets as being
17 Respondent's separate property.¹¹

22 ⁷ Petitioner's Exhibit 45.

23 ⁸ Respondent's Exhibit 1434.

24 ⁹ Petitioner's Exhibit 53.

25 ¹⁰ Petitioner's Exhibit 55.

¹¹ Petitioner's Exhibit 10.

It must be noted that this 5th draft of the MPA was the first draft to use the word "inclusive" to describe the Dodger assets in relation to the Respondent's assets. Neither party was furnished a copy of this 5th draft until the time of execution of the MPA at the parties' home on March 31, 2004. It is also important to note, that other than the executed copies of this version of the MPA, no other copies of this draft exist.

1 At the time the MPA's were drafted and executed, the Petitioner and Respondent
2 were jointly represented by Lawrence Silverstein [hereinafter "Silverstein"]¹² of Bingham
3 McCutchen LLP [hereinafter Bingham"]. Silverstein was assisted in drafting the MPA's
4 by Reynolds Cafferata [hereinafter "Cafferata"] who was a partner in the estate planning
5 department of Bingham in Los Angeles. Cafferata was primarily involved in drafting the
6 MPA.

7 Silverstein was present when the parties signed the Massachusetts version of
8 the MPA on March 31, 2004; Silverstein was also present when Respondent signed the
9 California version on April 14, 2004. Silverstein notarized all signed copies.

10 Petitioner testified that Silverstein was initially hired in 2001 to do estate work for the
11 parties. Petitioner testified she believed that Silverstein and the Bingham firm were
12 representing both of the parties in the acquisition of the Dodgers¹³ as well as other
13 estate planning and personal finance matters.
14

15 Petitioner testified that during the acquisition of the Dodgers, she spoke to
16 Silverstein about buying a home in California. She told him that it was important to her
17 to keep the homes safe from business creditors.¹⁴ She further testified that it had been
18 the parties' practice while living in Massachusetts to keep the business assets titled in
19 the Respondent's name and personal assets titled in the Petitioner's name in order to
20 protect personal assets from the reach of creditors.
21

22 _____
23 ¹² Within this Statement of Decision, the Court refers to witnesses by their last names. This is meant only
24 for clarity.

25 ¹³ Petitioner's testified that she met with Silverstein on many occasions regarding the acquisition of the
Dodgers.

¹⁴ Petitioner testified that in 2001 the parties were sued by a contractor for work on the Cottage Street
residence and that during the course of this litigation an issue arose involving the manner in which the
parties titled their property. She testified that there were allegations of fraudulent transfer involving the
titing of properties.

1 The Petitioner testified that Silverstein told her that in order to protect the homes
2 in the same manner in which they were protected in Massachusetts, the parties would
3 need to enter into an agreement. Petitioner testified that the MPA which was
4 subsequently drafted was intended to protect the homes from business risks, but it was
5 her understanding that entering into the agreement would not change her rights in any
6 of the property in the event of dissolution of the marriage. Although Petitioner wanted to
7 protect the homes from business creditors and risky transactions, she testified that the
8 Dodgers were a less risky transaction than other ventures that Respondent had been
9 involved in and that she was not adverse to becoming an owner of the team.

10 Petitioner testified that she was not told that by signing the MPA, she would be
11 giving up her then existing rights, if any, in the Dodgers or her marital rights with regard
12 to the "equitable division" of the assets in the event of dissolution of the marriage.
13 Petitioner testified she understood that separately titled property in Massachusetts was
14 subject to equitable distribution. She also testified that she believed that the MPA would
15 not affect her rights of equitable distribution of the property. Petitioner further testified
16 that despite the fact that their assets were separately titled, the parties lived their lives in
17 a manner whereby all of the property whether separately titled or not, was "theirs."
18

19 Evidence produced at the trial shows that prior to the execution of the
20 agreement; she met with or talked with Silverstein about the MPA on February 13,
21 2004, March 3, 2004, March 22, 2004, and March 29, 2004. Petitioner testified that she
22 does not remember what was discussed at the meeting held on February 13, 2004.
23 She further testified that she does not remember if she spoke with or met with
24 Silverstein at all on March 3, 2004. Petitioner testified that although she had an agenda
25

1 for the conversation which took place on March 22, 2004, she does not remember what
2 was discussed.

3 On March 31, 2004, Silverstein brought six original copies of the MPA to the
4 parties' residence in Massachusetts. Petitioner testified that prior to March 31, 2004 she
5 had not seen a complete copy of the MPA with the exhibits attached. Petitioner also
6 testified that she did not completely and fully read a draft of the agreement, and that she
7 does not remember seeing the cover letter to the MPA prepared by Silverstein before
8 she signed the agreement.¹⁵

9 Both Petitioner and Respondent signed three copies of the MPA in
10 Massachusetts on March 31, 2004. Petitioner signed three additional copies of the
11 MPA at this meeting. Petitioner testified that she did not read the agreement at that time
12 because she trusted Silverstein and Respondent. She testified that she often signed
13 documents put in front of her without reading them because she trusted the people who
14 were advising and assisting her.

15
16 Petitioner testified that Respondent did not coerce her into signing the
17 documents. She signed the MPA freely based on what she was told by Silverstein.

18 In California on April 14, 2004, Respondent signed the three MPA's he had not
19 previously signed in Massachusetts (which had already been signed by the Petitioner).¹⁶
20 Evidence produced at the trial shows that there were in fact different copies of Exhibit A
21 attached to the MPA at different times. Petitioner testified that she does not remember
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¹⁵ Silverstein testified (discussed below) that he discussed the MPA with the parties along with the cover letter.

¹⁶ Silverstein testified that he instructed the parties to sign two sets of original MPA's, one set in California and one set in Massachusetts to avoid what he described as a "nexus issue."

1 what was contained within the Exhibits to the MPA's when she signed the respective
2 agreements.

3 Petitioner testified that she does not understand what a transmutation is, she
4 does not understand what a Family Code §2640 waiver is, and does not understand the
5 effect of Family Code §721 on a transaction similar to the issues at bar, or in terms of
6 California Family Law, what fiduciary duty means.

7 Petitioner testified that she is not sure what constitutes adequate disclosure of
8 assets under California law. Further, she does not understand the Family Code §852(b)
9 recording requirement language and that she does not fully understand the California
10 Family Law concept of quasi-community property.¹⁷ She testified that although she has
11 notes from her conversation with Reynolds Cafferata, she does not fully understand the
12 California Family Law concepts described in her notes.

13
14 Petitioner notes that the Massachusetts version of Exhibit A titled
15 "[Respondent's] Separate Property Assets and Liabilities" includes the Los Angeles
16 Dodgers as the Respondent's separate property.¹⁸ Unlike the Massachusetts version,
17 the California version of Exhibit A titled "[Respondent's] Separate Property Assets and
18

19 ¹⁷ Family Code §125 provides:

20 "Quasi-community property" means all real or personal property, wherever situated, acquired before or
21 after the operative date of this code in any of the following ways:

22 (a) By either spouse while domiciled elsewhere which would have been community property if the
23 spouse who acquired the property had been domiciled in this state at the time of its acquisition.

(b) In exchange for real or personal property, wherever situated, which would have been community
24 property if the spouse who acquired the property so exchanged had been domiciled in this state at the
25 time of its acquisition.

It should be noted that the concept of quasi-community property makes no attempt to alter property rights
merely upon crossing the boundary into California. It does not purport to disturb vested rights 'of a citizen
of another state, who chances to transfer his domicile to this state, bringing his property with him. . .'
Addison v. Addison (1965) 62 Cal.2d 558, 566.

¹⁸ See Exhibit 10.

1 Liabilities” excludes the Los Angeles Dodgers from the list of Respondent’s separate
2 property assets. Petitioner argues that at some point the MPA signed in California by
3 Respondent, which contained a version of Exhibit A that excludes the Dodgers from
4 Respondent’s separate property, was unstapled, removed and replaced with the version
5 of Exhibit A that includes the Los Angeles Dodgers as Respondent’s separate property,
6 and stapled back together. The Petitioner testified that she did not know of the switch in
7 the documents until discovery was undertaken in this litigation.¹⁹

8 It is Petitioner’s position that the Court should not find that any of the signed
9 original MPA’s is a valid agreement between the parties because of the patent
10 inconsistency regarding a material term contained in different versions of the signed
11 original MPA’s. Petitioner points to the inconsistencies between the two versions of
12 Exhibit A attached to the MPA’s: the Massachusetts version including the Dodgers as
13 Respondent’s separate property and the California version excluding the Dodgers from
14 Respondents separate property.
15

16 The Petitioner argues that, in the event the Court chooses to adopt the
17 “Massachusetts” version of the MPA as the agreement between the parties, there are
18 four reasons why that agreement should be found to be invalid and unenforceable:

- 19 1. It was the product of undue influence.
- 20 2. It was the product of a unilateral mistake or a mistake on both parts.
- 21 3. Respondent participated in constructive fraud to invalidate the Massachusetts
22 MPA thus breaching his fiduciary duty.

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25 ¹⁹ In his deposition Silverstein does not recall switching the documents. Silverstein does state that based on logical and practical evidence, the documents must have been switched.

1 4. The agreement contains a conditional transmutation and such transmutations are
2 prohibited.

3 The Respondent testified that he acquired the Dodgers in February of 2004.
4 Respondent testified that he purchased the Dodgers for \$421 million from an affiliate of
5 Fox Entertainment Group,²⁰ and that he is the sole owner of the Los Angeles Dodgers
6 and the affiliated assets.

7 Respondent testified that the source of the funds used in the acquisition of the
8 Dodgers was \$125 million derived from financing his separate property asset, a
9 commercial property called Seaport.²¹ Respondent argues that the risk associated with
10 the purchase of the Dodgers was evidenced by the EBITDA²² losses of approximately of
11 \$50 million a year suffered by the Dodgers for the three years preceding the acquisition.
12

13 ²³

14 Respondent signed \$119 million in personal guarantees and agreed to personally
15 indemnify MLB for all losses MLB stemming from the Dodgers.²⁴ According to
16 Respondent, Petitioner refused to accept any risk of loss associated with the acquisition
17 of the Dodgers.²⁵

18 Respondent testified that prior to the execution of the MPA, Petitioner and
19 Respondent lived in Massachusetts and had a long standing practice of placing their
20 residences in Petitioner's name and any businesses in Respondent's name.
21

22 _____
²⁰ Id. at 6.

23 ²¹ Respondent alleges that the property was purchased through Respondent's business before marriage.

24 ²² Earnings before interest, taxes, depreciation, and amortization.

25 ²³ The losses were as follows: \$29 million in 2000, \$46 million in 2001, \$47 million in 2002, and \$55 million in 2003.

²⁴ The Respondent testified that this was required by the lenders involved in the acquisition of the Dodger assets.

²⁵ Id. at 2.

1 Respondent testified that it was important to Petitioner to protect the residences from
2 creditors and she wished to preserve that protection after the move to California.

3 Respondent asserts that the Petitioner was the driving force behind the execution of the
4 MPA by the parties.

5 Respondent testified that Petitioner wanted the MPA to be drafted and executed
6 by the parties. Respondent testified that he acquiesced to his wife's wishes relative to
7 the MPA because she said that she wanted to protect herself from a financial risk
8 associated with Respondent's ownership of the Dodgers.²⁶ Respondent testified that he
9 never considered signing an MPA that would protect the residences from creditors while
10 at the same time preserving Petitioner's right to an interest in the Dodgers upon the
11 event of dissolution of the marriage.

12 Respondent testified that on March 3, 2004, a meeting which lasted several
13 hours took place with the Petitioner and Silverstein in Respondent's office in Vero
14 Beach, Florida. Respondent testified that topics other than the MPA were covered
15 during the meeting and the MPA was discussed for approximately twenty minutes.
16 Respondent testified that during this meeting, the MPA was described to him as a
17 "transmutation agreement." Respondent does not remember whether Silverstein was on
18 the phone or in person at the meeting.

19 Respondent testified that again on March 23, 2004, both parties were together in
20 Respondent's office in Vero Beach and Silverstein was on the phone during the
21 meeting. Respondent testified that during the conversation, he received a copy of the
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25 _____
²⁶ Id. at 2.

1 MPA that had been sent by Silverstein. However, Respondent does not recall whether
2 Silverstein sent the copy of the MPA while they were meeting or prior to the meeting.

3 On March 30, 2004, drafts of the MPA and the attached Exhibits were distributed.
4 Karen Letendre [hereinafter "Letendre"], Silverstein's secretary, sent a draft of the MPA
5 to Jeff Ingram [hereinafter "Ingram"], an employee of Respondent, and copy to
6 Silverstein. Exhibit A attached to this draft excluded the Dodgers from Respondent's
7 separate property.²⁷ Respondent testified that he has no recollection of reviewing the
8 document.

9 On March 30, 2004, a second draft of the MPA was sent to Tracy Magee
10 [hereinafter "Magee"], a former employee of the McCourt Company and a copy was
11 sent to Silverstein.²⁸ Exhibit A attached to this draft excluded the Dodgers from
12 Respondent's separate property.²⁹ Respondent testified that he has no recollection of
13 reviewing this document. On March 30, 2004, a third draft was sent to Magee with
14 copies sent to Silverstein and Ingram. The email that was sent with this copy of the
15 MPA stated "here is the revised version." Exhibit A attached to this draft excluded the
16 Dodgers from Respondent's separate property.³⁰ Respondent testified that he has no
17 recollection of reviewing this document.
18

19 Although Respondent testified that he had no recollection of reviewing the drafts
20 of the MPA sent to him by Silverstein on March 30, 2004, Respondent testified that he
21 had a meeting with Mr. Silverstein later that day where reviewed the MPA and the
22 attached Exhibits.
23

24 ²⁷ See Petitioner's Trial Exhibit 53.

25 ²⁸ At the time the email was sent, Magee had the title of "office manager."

²⁹ See Petitioner's Trial Exhibit 54.

³⁰ See Petitioner's Trial Exhibit 55.

1 Respondent testified that as originally drafted, the MPA was going to be signed in
2 California. However, Silverstein subsequently informed Respondent that the MPA would
3 be signed in Massachusetts. Respondent first became aware of the “nexus”³¹ issue on
4 March 31, 2004. Respondent testified that he was not told why there was a “nexus”
5 issue involved in executed the MPA, but was told by Silverstein that they were going to
6 sign multiple agreements in the two states in order to be “super cautious.”

7 Respondent argues that from March 31, 2004, until 2008, the validity of the MPA
8 and the manner of division of property had not been questioned by Petitioner.

9 Respondent points to the following in support of this contention:

- 10 a. Petitioner ratified and reaffirmed the MPA twice in writing by signing
11 supplemental marital property agreements, and accepted benefits therefrom.
12
13 b. Petitioner represented that she is the sole owner of all residential real estate
14 excluding the property in Cabo San Lucas.
15
16 c. Petitioner did not object to certifications made by lenders and Major League
17 Baseball that Respondent is the sole owner of the Dodgers.
18
19 d. Petitioner signed a “Statement of Ownership and Affiliation” in which she certified
20 that Respondent is the sole owner of the Dodgers.
21
22 e. In December 2007, Petitioner received reassurances from her estate planning
23 counsel that the MPA was valid.³²

24 //

25 ³¹ During the course of the trial there was a great deal of discussion regarding the “nexus issue.” Although never fully explained by the testimony offered at trial, it appears that Silverstein advised the parties that any challenges regarding the validity of the MPA signed in Massachusetts could be cured by having one of the parties sign additional original versions of the MPA in California. No authority to support this contention or theory was ever produced by either party or any witness during the course of the trial.

³² Id. at 3.

1 Respondent argues that Petitioner proposed that the parties sign a new MPA in
2 mid-2008. Respondent alleges that the new MPA would have converted the parties
3 separate property into community property. Respondent declined to modify the original
4 2004 MPA.

5 Respondent argues that both Petitioner and Respondent knowingly and
6 voluntarily executed the MPA, which was reaffirmed twice thereafter as a result of the
7 execution of the supplemental marital property agreements and that the MPA divides
8 the property as the parties had intended. Respondent argues that (1) three copies of the
9 MPA were signed by Petitioner and Respondent on March 31, 2004 in Massachusetts;
10 (2) three additional copies were signed at the same time by Petitioner; and (3) three
11 copies were signed by Respondent in California on April 14, 2004.³³ Respondent further
12 argues that an earlier and incorrect draft of Exhibit A had been erroneously attached to
13 the three additional copies of the original MPA which were signed by Petitioner on
14 March 31, 2004 as well as the three copies of the MPA signed by Respondent in
15 California.³⁴

17 Leah M. Bishop [hereinafter "Bishop"], an estate planning attorney and a partner
18 at Loeb &Loeb, LLP, testified to the following:

19 Bishop met with Petitioner and Respondent on December 12, 2007, when they
20 discussed estate planning matters. Shortly after that meeting Bishop reviewed the MPA
21 for compliance with California law. In an email she explained that she believed that the
22 MPA was "sufficient to accomplish [the parties'] goals of ensuring that the residential
23 properties are [Petitioner's] separate property and that the other assets are
24

25 ³³ Id. at. 11.

³⁴ Id.

