

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

ZACHERY RESNICOFF, as Personal
Representative of the ESTATE OF
RICHARD MICHAEL RESNICOFF,
Deceased.

CASE NO: 2015 CA 23

Plaintiff,
vs.

LUCILLE HORTON,
Defendant.

**MOTION TO AMEND ANSWER AND AFFIRMATIVE DEFENSES AND TO BRING
COUNTERCLAIM**

COMES NOW the Defendant, LUCILLE HORTON, and moves this Court for leave to file her Amended Answer, Affirmative Defenses, and Counterclaim. In support thereof, Defendant states:

1. On or about April 29, 2015, Defendant, through prior defense counsel, filed her *Defendant's Answer and Affirmative Defenses to Plaintiff's Complaint* in this matter.
2. The undersigned, as well as the firm of Chiumento Selis Dwyer, P.L. is now serving as successor counsel for LUCILLE HORTON. Having now been retained, it has become apparent that *Defendant's Answer and Affirmative Defenses to Plaintiff's Complaint* should be amended to plead additional affirmative defenses as well as counterclaims, some compulsory.
3. LUCILLE HORTON's proposed *Amended Answer, Affirmative Defenses, and Counterclaim* are attached hereto as Exhibit "A".

4. "In ruling on a motion for leave to amend, 'all doubts should be resolved in favor of allowing an amendment, and the refusal to do so generally constitutes an abuse of discretion unless it clearly appears that allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile.'" Quality Roof Services, Inc. v. Intervest Nat. Bank, 21 So. 3d 883, 885 (Fla. 4th DCA 2009), quoting Cason v. Fla. Parole Comm'n, 819 So.2d 1012, 1013 (Fla. 1st DCA 2002).

WHEREFORE, Defendant, LUCILLE HORTON, prays this Court will enter its Order granting leave to file the attached Amended Answer, Affirmative Defenses, and Counterclaim, attached hereto, along with such further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 2015 a true and accurate copy of the foregoing has been furnished via Florida Courts E-Filing Portal to John W. Zielinski, Esq. (john@nejamelaw.com, civilservice@nejamelaw.com).

CHIUMENTO SELIS DWYER, PL

By: /s/ - Ronald A. Hertel
RONALD A. HERTEL, ESQ.
Florida Bar No: 41144
145 City Place, Suite 301
Palm Coast, FL 32164
Tel: (386) 445-8900
Fax: (386) 445-6702
Email: rhertel@palmcoastlaw.com
karolyn@palmcoastlaw.com
Attorney for Lucille Horton

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Plaintiff,
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LUCILLE HORTON,
Defendant.

_____ /

AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

COMES NOW the Defendant, LUCILLE HORTON, by and through her undersigned counsel, and serves her Amended Answer, Affirmative Defenses, and Counterclaim, as follows:

Answer

1. Admit purports his action to be within the jurisdictional limits of this Court; however, Deny Plaintiff's entitlement to relief within the jurisdictional limits of this Court.
2. Without knowledge; therefore, Denied.
3. Admitted.
4. Admitted.
5. Admitted.
6. Without knowledge; therefore, Denied.
7. Without knowledge; therefore, Denied.
8. Admitted.
9. Denied.

10. Denied.

Count I – Wrongful Death

11. Defendant realleges and re-avers paragraphs 1 through 10 as though fully set forth herein.

12. Without knowledge as to Plaintiff's reasons for bring this claim; therefore, Denied. Deny any negligence on Defendant's part.

13. Calls for a legal conclusion; therefore, no response is required. To the extent a further response may be required, Denied.

14. Denied.

15. Admit Richard Michael Resnicoff died on January 12, 2013. The remaining allegations of paragraph 15 are Denied.

16. Denied. Further deny Plaintiff's right to recover against Defendant.

17. Deny that any negligence on Defendant's part caused the death of Richard Michael Resnicoff. As to the remaining allegations of paragraph 17, without knowledge, therefore, Denied.

WHEREFORE, Defendant, LUCILLE HORTON, prays this Court will deny Plaintiff's sought relief, and award her prevailing party attorney's fees in equal amounts from Plaintiff and Plaintiff's attorney(s), in accordance with Fla.Stat. 776.085.

Alternative Count II – Wrongful Death as a Result of Battery

18. Defendant realleges and re-avers paragraphs 1 through 10 as though fully set forth herein.

19. Without knowledge as to Plaintiff's reasons for bring this claim; therefore, Denied. Deny any commission of battery by the Defendant.

20. Deny making knowing and/or intentional contact with Richard Michael Resnicoff. Without knowledge as to what “caused or was a substantial contributing cause” of the decedent’s death.

21. Admit Richard Michael Resnicoff died on January 12, 2013. The remaining allegations of paragraph 21 are Denied.

22. Denied. Further deny Plaintiff’s right to recover against Defendant.

23. Deny that any act on Defendant’s part caused the death of Richard Michael Resnicoff. As to the remaining allegations of paragraph 17, without knowledge, therefore, Denied.

WHEREFORE, Defendant, LUCILLE HORTON, prays this Court will deny Plaintiff’s sought relief, and award her prevailing party attorney’s fees in equal amounts from Plaintiff and Plaintiff’s attorney(s), in accordance with Fla.Stat. 776.085.

Affirmative Defenses

First Affirmative Defense

Self-Defense – Decedent, Richard Michael Resnicoff, was physically, verbally, and emotionally abusive to the Defendant in the course of their marriage. Specifically, on the date of the accident, decedent intentionally caused physical harm to the Defendant on multiple occasions, and decedent was attempting to stop the Defendant from fleeing the decedent’s ongoing, imminent use of unlawful force against her when she drove her car from her residence. If decedent, in fact, died as a result of falling from the trunk of Defendant’s car, Defendant’s actions were justified in that she was fleeing from being further injured by decedent.

Second Affirmative Defense

Felony – Pursuant to Fla.Stat. 776.085, the Plaintiff herein cannot recover since he was committing or attempting to commit a forcible felony, namely, battery upon a person 65 or older (see, Fla.Stat. 784.08(2)(c)), at the time he was allegedly killed by the Defendant.

Third Affirmative Defense

Comparative Negligence/Implied Assumption of Risk - The decedent was negligent in jumping onto the trunk of Defendant's car while she was attempting to flee from his further use of violent force against her, and his negligence bars recovery; or, in the alternative, the decedent impliedly assumed the obvious risk of jumping onto the trunk of the Defendant's car while she was attempting to flee from his further use of violent force against her; or, in the alternative, the decedent was negligent, and his negligence was a contributing cause of the accident and that any award to Plaintiff must be reduced in accordance with the principles of comparative negligence.

Fourth Affirmative Defense

Intervening Cause – The decedent's actions, in jumping onto the trunk of Defendant's car while she was attempting to flee from his further use of violent force against her, was not foreseeable by her. Furthermore, his injuries were completely independent of, and not in any way set in motion by, the Defendant's alleged negligent acts.

Fifth Affirmative Defense

Collateral Sources – Plaintiff has collected or received collateral sources as defined by the applicable Florida Statutes, and the verdict rendered in this cause, if any, should be reduced by the amount of the collateral sources paid to the Plaintiff.

Sixth Affirmative Defense

Comparative Fault – Defendant is only responsible for the specific percentage of fault assessed against her pursuant to applicable Florida law.

Seventh Affirmative Defense

Setoff – Defendant has filed counterclaims in the instant case which, if recovery is granted therein, would reduce Plaintiff's award, if any, in the instant action.

Eighth Affirmative Defense

Statute of Limitation – Plaintiff has failed to comply with the applicable Statute of Limitations. Therefore, the claim is barred.

Ninth Affirmative Defense

Failure to Mitigate Damages – Plaintiff, in administering the decedent's estate, has failed to mitigate his damages, wherefore his recovery should be barred or reduced.

Tenth Affirmative Defense

Failure to State a Cause of Action – Plaintiff has failed to state a cause of action upon which relief may be granted.

Eleventh Affirmative Defense

Rights, Reductions and Setoff – Defendant is entitled to all rights, reductions, and set-offs afforded under Florida law, including but not limited to Florida Statutes 627.736, 627.7372 and 768.76.

Counterclaim

COMES NOW the Counter-plaintiff, LUCILLE HORTON, by and through the undersigned counsel, and sues Counter-defendant, ZACHERY RESNICOFF, as Personal Representative of the ESTATE OF RICHARD MICHAEL RESNICOFF, as follows:

1. This is an action for damages that exceeds \$15,000.00, exclusive of interest, costs and attorney's fees.

2. Counter-plaintiff, LUCILLE HORTON, was a resident of Flagler County, Florida at all times material hereto.

3. Decedent, Richard Michael Resnicoff, was a resident of Flagler County, Florida upon the date of his death. He is represented herein by Counter-defendant, ZACHARY RESNICOFF, as Personal Representative of THE ESTATE OF RICHARD MICHAEL RESNICOFF.

4. The real property at issue here (the "Subject Property"), namely, 7 Jasmine Drive, Palm Coast, Florida, is located in Flagler County, Florida and legally described as:

Lot 6, Village G-1 at Grand Haven, according to the map thereof, as recorded in Map Book 32, Page 29, of the Public Records of Flagler County, Florida.

5. Venue is proper in Flagler County, Florida.

Count I – Assault

Counter-plaintiff realleges and re-avers paragraphs 1 through 5 hereto as though fully set forth herein.

6. On January 11 and January 12, 2013, decedent, Richard Resnicoff made several intentional, unlawful offers of corporal injury by force to LUCILLE HORTON,

including, but not limited to, “I’m going to get violent with you if you don’t get in the bedroom.”

7. Richard Resnicoff had carried out numerous acts of violence against LUCILLE HORTON prior to January 11, 2013.

8. On January 11 and 12, 2013, decedent, Richard Resnicoff, made other intentional, unlawful offers of corporal injury to LUCILLE HORTON, that if she attempted to leave the her bedroom, or made any effort to acquire food or water, or any attempt to leave the premises, he would “get violent”.

9. On said dates, LUCILLE HORTON attempted to escape from the Subject Property, her home with decedent, Richard Resnicoff, in her car; however, Richard Resnicoff forcibly took her keys from LUCILLE HORTON, while in her car, before she could pull out of the driveway.

10. LUCILLE HORTON escaped to a neighbor’s house for several hours, in an attempt to wait out Richard Resnicoff, so she could obtain her spare keys to drive away in her car.

11. Believing Richard Resnicoff had left the Subject Property, LUCILLE HORTON returned home to retrieve her spare keys and her car. Unexpectedly, Richard Resnicoff was home and violently threw LUCILLE HORTON into a pillar inside the home. She was ultimately able to retrieve her spare keys and flee the home.

12. These circumstances, created by Richard Resnicoff, caused a reasonable fear of imminent peril in LUCILLE HORTON.

WHEREFORE, Counter-Plaintiff, LUCILLE HORTON, prays this Court will enter judgment for damages against Counter-defendant, ZACHERY RESNICOFF, as Personal

Representative of THE ESTATE OF RICHARD MICHAEL RESNICOFF, along with such further relief as the Court deems just and proper.

Count II – Battery

Counter-plaintiff realleges and re-avers paragraphs 1 through 11 hereto as though fully set forth herein.

13. As better described in paragraphs 6 through 11 hereto, on January 11 and 12, 2013, decedent, Richard Resnicoff, intentionally inflicted harmful or offensive contact upon LUCILLE HORTON as well as the apprehension that such harmful or offensive contact was imminent.

WHEREFORE, Counter-Plaintiff, LUCILLE HORTON, prays this Court will enter judgment for damages against Counter-defendant, ZACHERY RESNICOFF, as Personal Representative of THE ESTATE OF RICHARD MICHAEL RESNICOFF, along with such further relief as the Court deems just and proper.

Count III – Breach of Contract

Counter-plaintiff realleges and re-avers paragraphs 1 through 5 hereto as though fully set forth herein.

14. Counter-plaintiff, LUCILLE HORTON, and decedent, Richard Resnicoff entered into a Prenuptial Agreement prior to their marriage, a true and correct copy of which is attached hereto as Exhibit “A”.

15. The Prenuptial Agreement contained a subsection titled “PROVISIONS REGARDING ANTICIPATED SECOND HOME” which described the respective equities of the parties to a home in Flagler County, Florida ultimately to be purchased in Richard Resnicoff’s name alone, and after LUCILLE HORTON and Richard Resnicoff’s marriage.

16. On or about August 25, 2009, Richard Resnicoff purchased the “anticipated second home” which is the Subject Property, better described in paragraph 4 hereto.

17. The Prenuptial Agreement provides, among its “PROVISIONS REGARDING ANTICIPATED SECOND HOME”, that “(2) ... if either party dies ... Richard or his estate shall pay Lucille ... her share of equity in the second home residence ... as follows: ... (b)(ii) Lucille or her estate’s share of the equity in the residence shall be calculated to be 2.5% of the equity for each year of marriage.”

18. Counter-plaintiff and Richard Resnicoff were married for approximately 3.56 years.

19. As such, Counter-plaintiff’s share of equity in the Subject Property equals 7.5%.ⁱ

20. The Prenuptial Agreement states that, “Richard or his estate shall pay Lucille...her share of equity in the second home residence.”

21. Since the triggering event in the Prenuptial Agreement was the death of Richard Resnicoff, paragraph 4 of the “PROVISIONS REGARDING ANTICIPATED SECOND HOME” applies, which states, “the term ‘equity’ shall be defined to mean the fair market value as determined by an independent, certified appraiser less the balances on all liens less the usual costs of sale, including realtors’ commissions.”

22. Counter-Defendant, ZACHARY RESNICOFF, as Personal Representative of THE ESTATE OF RICHARD MICHAEL RESNICOFF, has breached the Prenuptial Agreement by failing and/or refusing to pay to LUCILLE HORTON for the equity in the Subject Property.

WHEREFORE, Counter-Plaintiff, LUCILLE HORTON, prays this Court will enter judgment for damages against Counter-defendant, ZACHERY RESNICOFF, as Personal Representative of THE ESTATE OF RICHARD MICHAEL RESNICOFF, along with such further relief as the Court deems just and proper.

Alternative Count IV – Equitable Lien

Counter-plaintiff realleges and re-avers paragraphs 1 through 6 hereto and 14 through 19 as though fully set forth herein.

23. At the time of Richard Resnicoff's death, the Subject Property was the constitutionally protected homestead of Richard Resnicoff, which could cause it to pass directly to his son, ZACK RESNICOFF, outside of THE ESTATE OF RICHARD MICHAEL RESNICOFF. Title still remains in the name of Richard Resnicoff.

24. The Prenuptial Agreement constitutes an obligation contracted for the purchase of the Subject Property; therefore, it exempts the Subject Property from the homestead protections granted under Florida Constitution, Art. X, Sec. 4. Therefore, the Subject Property is rightfully part of THE ESTATE OF RICHARD MICHAEL RESNICOFF.

25. THE ESTATE OF RICHARD MICHAEL RESNICOFF would be unjustly enriched if it were permitted to retain the benefits of the Subject Property without compensating Counter-plaintiff for her equitable ownership of same pursuant to the Prenuptial Agreement.

26. Plaintiff does not have an adequate remedy at law.

WHEREFORE, Counter-Plaintiff, LUCILLE HORTON, prays this Court will enter judgment against Counter-defendant, ZACHERY RESNICOFF, as Personal Representative of THE ESTATE OF RICHARD MICHAEL RESNICOFF, impressing an

equitable lien against the Property in an amount determined from the Prenuptial Agreement, foreclosing against the Property, and such further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 2015 a true and accurate copy of the foregoing has been furnished via Florida Courts E-Filing Portal to John W. Zielinski, Esq. (john@nejamelaw.com, civilservice@nejamelaw.com).

CHIUMENTO SELIS DWYER, PL

By: _____ /s/ - Ronald A. Hertel
RONALD A. HERTEL, ESQ.
Florida Bar No: 41144
145 City Place, Suite 301
Palm Coast, FL 32164
Tel: (386) 445-8900
Fax: (386) 445-6702
Email: rhertel@palmcoastlaw.com
karolyn@palmcoastlaw.com
Attorney for Lucille Horton

ⁱ Paragraph 2(b)(ii) states, in part, “upon the third anniversary, [Lucille’s interest] shall be 5%; upon the fourth anniversary, it shall be 7.5%.” However, the preceding sentence states, “If the ‘length of marriage’ is **more than** one year, then Lucille or her estate’s share of the equity in the residence shall be calculated to be 2.5% of the equity **for each year of marriage.**” [Emphasis added]. For both of these clauses to make sense, thus avoiding the *knock out rule*, the Court must find an interpretation here whereby both clauses could coincide simultaneously. The clearest choice is for the Court here is to find that upon the day following any anniversary, Lucille’s interest would then increase by 2.5% (not to exceed 50%). Since Lucille and Richard were married for **more than** three years, her equitable interest would be 7.5%. This way, the clauses would coincide whereby “[Lucille’s] share of the equity in the residence shall be calculated to be 2.5% of the equity for each year of marriage, and “upon the fourth anniversary, [Lucille’s interest] shall be 7.5%.”

PRENUPTIAL AGREEMENT

This pre-marital agreement is made on this 10th day of April, 2009, between Lucille Horton [hereinafter referred to as "Lucille"] and Richard Resnicoff [hereinafter referred to as "Richard"].

Whereas the parties intend to marry under the laws of the State of New Jersey and wish to set forth in advance of their marriage the rights and privileges that each will have in the property of the other in the event of death, divorce, or other circumstance which results in the termination of their marriage;

Whereas each party has acquired assets independently of and without the help or assistance of the other;

Whereas the parties have made to each other a full and complete disclosure of their assets and other relevant financial information or his or her financial worth and income; as set forth in Exhibits A and B to this agreement;

Whereas both parties have had the opportunity to be represented by independent counsel of their own choosing, and whereas both parties have received a full and complete explanation of their legal rights, the consequences of entering into this pre-marital agreement, and the rights they would possess were it not for their voluntary entry into this agreement;

Whereas each party represents that it is his or her specific intent to be legally bound by this agreement and they are each entering into this agreement in reliance upon this representation;

Whereas both parties acknowledge that they have read and understand this agreement, have not been subjected to any form of coercion, duress, or pressure, and believe this agreement to be fair and to represent their intentions with regard to their assets and to any estate that shall result from their marriage;

Now therefore, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties hereby agree as follows:

SEPARATE PROPERTY

1. Other than real property that is anticipated to be acquired for the purpose of the parties having a second/retirement home, possibly in the State of Florida [hereinafter "second home"], any property which either party presently owns or has an interest in and any property which either party may acquire before or during the contemplated marriage, shall be deemed "Separate Property" of the owner. The following property shall constitute "Separate Property":

- i. All property, whether real or personal, acquired by a party before marriage;
- ii. Property acquired at any time before or during the marriage by either party through bequest, devise or descent;

EXHIBIT "A"

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- iii. Property placed into trust of which either party is the beneficiary or property placed into accounts by a third party in the name of that party at any time whether before or during the marriage;
- iv. Property acquired by gift except for gifts in honor of the marriage or made jointly to the parties;
- v. Property acquired in exchange for separate property or property acquired with all or part of the sale proceeds of the Separate Property, with the exception of the second home expected to be acquired in the near future;
- vi. Dividends, interest or other income derived from or other distributions upon Separate Property and any property acquired with the aforesaid dividends, interest or other income;
- vii. All increases in value as to Separate Property, whether or not such appreciation is due in whole or in part or not at all to contributions, services or efforts of either party whether the owner of the Separate Property or not;
- viii. All property belonging to Lucille as reflected in Exhibit A shall remain Separate Property and all property belonging to Richard as reflected in Exhibit B shall remain Separate Property, together with appreciation, growth, income, sale proceeds and property purchased with, exchanged or converted from Separate Property with the exception of the second home; and
- ix. Profits, salary and other income resulting from employment after the date of the marriage shall be deemed Joint Property.

2. Other than as set forth in the section below entitled "Provisions Regarding Second Home" all Separate Property shall remain the sole property of the party who owns or acquires such property free and clear from any claim of the other party, including but not limited to claims of equitable distribution. For purposes of this Agreement the term "property" is defined as follows: Property means any interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income, earnings and appreciation, whether tangible or intangible. Each party shall separately retain all of his or her rights in his or her Separate Property, as enumerated in Exhibits A and B to this agreement, free and clear of any claim of the other party, without regard to any time or effort invested during the course of the marriage in the maintenance, management, or improvement of that separate property.

3. At all times, the parties shall enjoy the full right and authority with regard to their Separate Property as each would have had if not married, including but not limited to the right and authority to use, sell, enjoy, manage, gift and convey the separate property. Both parties agree to execute any documentation necessary to permit the other to exercise these rights, provided the act of executing the documentation does not impose upon them any legal or financial responsibility for the separate property of the other.

4. The parties agree that each shall be responsible for any tax obligations associated with their separate property.

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PROVISIONS REGARDING ANTICIPATED SECOND HOME

1. The parties each anticipate the purchase, by Richard, of a second home with proceeds heretofore designated as Separate Property. The parties intend to reside part-time in the home, though title to the residence shall remain in the name of Richard, alone.
2. If the property is thereafter sold, if a divorce complaint is filed by either party, if it becomes necessary that either party have long-term care, or if either party dies [hereinafter referred to as "a triggering event"], the Richard or his estate shall pay Lucille or her estate her share of equity in the second home residence as set forth in the formula below. The formula which shall apply is as follows:
 - a. Richard's equity in the property as of the date of purchase shall be 100%.
 - b. Lucille's share of the equity in the property shall be determined based upon the "length of the marriage" at the time of the triggering event. "Length of the marriage" is defined herein to be the number of years of the marriage starting with the date of the marriage and ending with the date of the sale of the residence, the date on which a divorce complaint is filed by either party, the date upon which either party necessitates long term care or the date of death of either party.
 - i. If the "length of the marriage" is less than one year, then Lucille or her estate shall not receive any of the equity in the residence.
 - ii. If the "length of the marriage" is more than one year, then Lucille or her estate's share of the equity in the residence shall be calculated to be 2.5% of the equity for each year of marriage, up to a maximum of 50% equity. For example, upon the second anniversary of the marriage, Lucille or her estate's interest in the property shall be 2.5%, upon the third anniversary, it shall be 5%; upon the fourth anniversary, it shall be 7.5% and so on until the twenty-first anniversary of the marriage, at which time Lucille or her estate's interest in the equity of the second home shall be 50%. At no time shall Lucille's share of equity in the property exceed 50%.
3. In the event of the sale of the marital residence, the term "equity" is defined to mean the gross proceeds less the balances on all liens less the usual costs of sale, including realtors' commissions. However, any liens which are taken against the residence by Richard alone for Richard's separate purposes shall not affect Lucille's share in the equity of the property pursuant to the formula above.
4. In the event that the residence is not being sold, the term "equity" shall be defined to mean the fair market value as determined by an independent, certified appraiser less the balances on all liens less the usual costs of sale, including realtors' commissions. However, any liens which are taken against the residence by Richard alone for Richard's separate purposes shall not affect Lucille's share in the equity of the property pursuant to the formula above.

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JOINT PROPERTY

1. Any property acquired by the parties or either of them after the marriage shall be deemed "Joint Property" unless such property is Separate Property as defined above.
2. All Joint Property shall be subject to distribution pursuant to the laws of the jurisdiction in which the parties are then residing upon the termination of their marriage.
3. In the event that either party uses Separate Property to make a contribution toward the acquisition of property that would meet the definition of Joint Property, the parties agree that, with the exception of the anticipated second home, should such joint property be sold or disposed of, or upon dissolution of the marriage, from the proceeds of the sale that party shall receive back his or her original investment in said property made with Separate Property and any increase in value of the joint property, over and above the original investment of each party shall be treated as Joint Property.
4. Gifts in honor of marriage or made to both parties jointly shall be deemed Joint Property.

DEBTS

1. Premarital debts of either party shall be the sole responsibility of the party who incurred the debt. Post-marital debts, to the extent that the same are related to Separate Property, shall be the responsibility of the owner of the Separate Property and shall be paid from such party's separate income or separate funds. Each party shall indemnify and hold harmless the other for liability thereon.
2. Post-marital debts not related to Separate Property shall be considered joint debts and shall be subject to distribution pursuant to the laws of the jurisdiction in which the parties are then residing at the termination of the marriage, in accordance with relevant factors under said laws.
3. The parties acknowledge that long term care expenses may at some point become a debt or obligation of one or both of them. Richard has opted not to purchase insurance to guarantee the payment of long term care costs. The parties understand and agree that it shall be the sole responsibility and obligation of Richard and/or his estate to bear any and all costs related to long-term care. Richard and/or Richard's estate shall indemnify and hold Lucille or her estate harmless with regard to any such debts or expenses.
4. In the event that Richard or his estate incurs costs or expenses related to long-term care, and if, as a result of said debt, Lucille's share of equity in the anticipated second home becomes diminished or reduced, the parties agree that Richard or his estate shall pay said share to Lucille from any other available asset.

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WAIVER, RELEASES, MISCELLANEOUS PROVISIONS

1. The parties agree that neither shall contest the validity or provisions of any will, account, trust agreement, or other instrument executed by the other which disposes of his or her separate property or which creates any interest therein in another. With the exception of the Provisions Regarding the Anticipated Second Home, to the extent that such an action would create any right or interest in the separate property of the other, both parties hereby waive any right in the property of the other, whether created by statute or common law, including but not limited to any right to elect against the will of the other, or to take an intestate share of the other's property. The wife hereby waives any dower interest in the husband's separate property, and the husband hereby waives any curtesy interest in the wife's separate property.
2. In the event of separation or divorce, the parties shall have no right against each other for division of property existing of this date.
3. Both parties acknowledge that they possess sufficient education and job skills to adequately provide for their own support, and hereby waive any claim to spousal support (alimony).
4. The parties acknowledge that the Provisions regarding the Anticipated Second Home have arisen in part because of the benefit to which Richard shall inure as a result of his marriage to Lucille in the form of health insurance benefits provided by the State of New Jersey as a result of her former employment as a public school teacher. The parties recognize that the availability of said benefits is not guaranteed and, in the event that the same becomes unavailable, agree to re-evaluate the aforementioned provision based upon the change in circumstances.
5. Without regard to the location of any property affected by this agreement, this agreement shall be interpreted and enforced under the laws of the State of New Jersey. In the event that any portion of this agreement shall be held invalid or unenforceable, it is the intent of the parties that all provisions of this agreement be regarded as separable, and that all remaining provisions remain in full force and effect. It is further the desire of the parties that all provisions of this agreement be considered as evidence of their intentions by any court, arbitrator, mediator, or other authority which seeks to divide their estate, and that their intentions be respected whatever the legal status of this agreement or any of its terms.
6. Both parties acknowledge that each has been given the opportunity to retain counsel of his or her choosing. Lucille has been represented by Annmarie Jensen, Esquire and Richard has chosen to waive his right to independent legal counsel. Richard understands that he has this right and is waiving the same as a result of his full understanding and agreement with the terms herein.
7. The parties acknowledge that each has recently prepared a Last Will & Testament related to the distribution of each's estate in the event of death and intend for the same to remain

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in full force and effect insofar as the same is not in contravention to the terms of this Agreement. In the event of a discrepancy between the Will and this Agreement, the parties intend for this Agreement to control to the extent necessary to fulfill its terms. In all other respects, the Will shall govern.

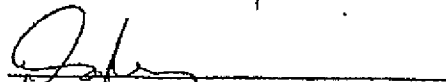
8. This Agreement and the exhibits attached hereto contain the entire agreement of the parties. This Agreement may only be amended by a written document duly executed by both parties.

Signed this tenth day of June, 2009


LUCILLE HORTON


RICHARD RESNICOFF

Subscribed, sworn, and acknowledged before me,
Annmarie Jensen, Esquire, a notary public, by
Lucille Horton and Richard Resnicoff, this
10th day of June, 2009.


Annmarie Jensen, Esquire
Attorney at Law, State of New Jersey

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Assets and Property of Lucille Horton

As of May 2009

ING DIRECT: Savings-\$39,815.00

Investments:

ALL State-\$55,652.00

Allianze-\$63,895.00

Property: 1302 Arrowwood ct, Marlton, NJ-\$200,000

(mortgage-\$31,680.00)

TK Bank-checking-\$5,000.00(approximate average balance)

Pension(monthly)-\$3,361.00

Social Security(monthly)-\$1860.00

2003 Mazda 6-\$5,850.00

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Assets of Richard Resnicoff

As of May 2009

ING Direct \$ 60,000

Fidelity Investments

Individual Account \$ 554,455

IRA Account \$ 308,605

PCN Bank Checking \$ 2000 Average Balance

Two bags of junk silver coins \$ 1000-2000 (guesstimate)

AFM Pension (monthly) \$ 433

2000 Nissan Maxima

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