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TO: Andrew Washington

FROM: Applicant

Date: July 25, 2023

RE: In re Marriage of Burke

Dear Wendy,

You have asked our office whether we would recommend that you accept Harlan's counsel's offer, and we recommend that you do. You have also provided us with questions that you would like answered before proceeding with this offer and we have provided answers to those questions below. Please let us know if you would like any other further information and we would be happy to discuss this matter with you.

1. Are Harlan's DigitalAudio Shares community property or separate property?

Under Columbia Family Code, Section 760 it is established that property that either spouse acquires during marriage belongs to the marital community and at dissolution, community property is awarded to each spouse in an equal 50 percent share. Id. Section 2550. Furthermore, property that either spouse acquired before marriage belongs to that spouse and is their separate property. Id. Section 770. Finally, any proceeds of property that either spouse acquired before marriage also belongs to that spouse and the proceeds are also their separate property, even if they do acquire the proceeds during marriage and dissolution the separate property is confirmed in its entirety to the owning spouse. Id.

The property in question that is being disputed is DigitalAudio shares which are now worth \$200 million. Harlan Burke began working at DigitalAudio in 1986 and worked day and night in order to have a successful start-up it was not until 1989 that Harlan Burke (Mr. Burke) married you, Ms. Wendy. Thus, under the Columbia Family Code it is firmly established that because DigitalAudio shares were acquired and started by Mr. Burke before the course of your marriage it will be deemed as Mr. Harlan's separate property before marriage and at dissolution. However, there is a possibility that you will be able to prevail under a theory of providing effort to the spouse's separate property during the course of your marriage.

For these reasons, DigitalAudio is Mr. Burke's separate property because it was acquired for and started before marriage.

2. Did the community devote more than minimal effort involving Harlan's DigitalAudio shares during marriage so as to acquire an interest in any increase in value, during marriage, of the shares resulting in community property?

The court of Columbia has held that marriage is an egalitarian partnership and whenever the community devotes more than minimal effort involving a spouse's separate property during marriage, the community acquires an interest in any increase in value, during marriage, of the separate, and that interest is community property. In re Marriage of Dekker. Furthermore, the court has held in the case of In Re Marriage of Rand that the plaintiff, Linda, did not receive half the community property at dissolution because there were two separate periods of time during the marriage that were shown and the first period indicated that the increase in the value of the defendant, Charles', shares were due to the community efforts but Charles' hard work was the predominant cause of the increase and not Linda's. During the second period it was shown that the increase in shares was due to factors other than community efforts, i.e., market forces were the predominant cause of the increase.

During the course of your marriage with Mr. Burke you stated that you have added value to DigitalAudio in the early days of your marriage by helping Mr. Burke in shipping some hardware and software materials. Furthermore, after you had children you decided to stay home to care for four children full time, which we understand is just as much of hard work as running a digital startup. Unlike the plaintiff in the case of In Re Marriage of Rand, you Ms. Wendy have contributed more to the community property than she did by not only working through the early days of your marriage with Mr. Burke within the startup but also by caring for the kids and the house. Although, Mr. Burke will try and argue that he has offered over the course of the years to hire housekeepers, nannies, drivers, and whatever other household staff you might need so you could pursue any career that you wanted you understood the importance of raising your four kids yourself as Mr. Burke was constantly at work.

However, even though you devoted more than minimal effort by not only working during the early days of your marriage and raising the children at home while tending to the household. The increase in DigitalAudio shares can be shown to be the predominant cause of Mr. Burke's efforts because Mr. Burke was always working and using his skills as a computer scientist and electrical engineer that attracted many others to DigitalAudio which helped increase its share. Finally, although Mr. Burke's efforts were significant there were not the sole reason why DigitalAudio's shares increase as others at DigitalAudio developed, updated, and sustained ProAudio which was a company that increased the shares of DigitalAudio.

For these reasons, the community did devote more than minimal effort in increasing the value in DigitalAudio and can acquire an interest in any increase in value during marriage.

3. How should the family court apportion the \$200 million increase in value, during marriage, of Harlan's DigitalAudio shares?

Under Pereria v. Pereria the court has held that increase in value, during marriage, of one spouse's property is principally due to community effort and this approach requires the family court to apportion the increase in value mainly to the community estate. Whereas under Van Camp v. Van Camp, the court has held that an increase in value, during marriage, of one spouse's separate property is principally due to factors other than community efforts and this approach requires the court to apportion the increase in value mainly to the estate of the owning spouse.

Under the *Pereria* approach it can be shown that Mr. Burke's effort were a predominate reason in the increase of shares for DigitalAudio because not only did Mr. Burke work day and night at DigitalAudio

but then also updated SoundAudio which helped increase the shares of DigitalAudio. Furthermore, it is stated that DigitalAudio would have gone out of business if it were not for Mr. Burke's efforts in developing ProAudio. Finally under this approach, although Ms. Wendy, you have helped sustain life and added minimal effort in the business Mr. Burke's hard work is the predominate reason that DigitalAudio has increased in shares so it will be given to his community efforts. Lastly under the *Van Camp* approach DigitalAudio did not increase due to factors other than community efforts because in 2009 the market was coming to an end and Mr. Burke put in the effort to bring DigitalAudio along with other companies back to life.

For these reasons, the family court should apportion the \$200 million increase in value during marriage as community property because it was due to his efforts during the course of his marriage that DigitalAudio had an increase in shares.

Conclusion

Ms. Wendy it is for these reasons we think it is best that you do not accept Mr. Burke's deal of accepting \$50 million instead because you are entitled to receive half. As substantial justice does not require the court to evenly divide the entire increase in value during marriage as one spouse's separate property, the court will only evenly divide the portion of your increase is principally due to community efforts and here the community efforts were made during the course of marriage so you are entitled to your half.

Sincerely,

Andrew Washington

The Washington Law Group

Question #3 Final Word Count = 1268

END OF EXAM