

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 1281cv00345

ROSANNE SLINEY

vs.

DOMENIC A. PREVITE, JR.

**ORDER ON DEFENDANT'S POST-TRIAL MOTIONS AND PLAINTIFF'S MOTION  
FOR ATTACHMENT AND INJUNCTION**

The plaintiff, Rosanne Sliney, brought this action for assault, battery and intentional and negligent infliction of emotional distress arising out of alleged sexual abuse by her uncle, the defendant Domenic Previte, from 1968 to 1976 when Sliney was aged five to fourteen years old. In order for the jury to reach her claims, Sliney first had to surpass two alleged contracts by which Sliney allegedly released her claims against Previte, the first in 1988 and the second in 1991. Before trial, Previte moved to bifurcate the issues for trial, proposing that the jury first hear only the contract issues—whether the parties had agreed to resolve Sliney’s claims and whether those agreements were enforceable—without hearing evidence of the underlying sexual abuse that led to those agreements (which evidence, Previte argued, would prejudice his contract case). I determined that bifurcating the contract issues from the underlying sexual abuse, *in the circumstances of this case*, would not be possible, and secondarily, that bifurcation would be very inefficient. Here, the sexual abuse facts were inextricably linked to certain of the contract issues. Among other things: i) a principle defense to both contracts was whether Sliney was competent, which turned on her psychological state at the time of contract, including medical records and expert opinion on that topic, all of which featured prominently the alleged sexual

abuse, as Sliney was recovering memories near the time of the contracts and suffering trauma related to that process; and ii) a principle defense to the 1988 contract was Previte's material breach of that contract, namely, Previte had promised to pay for Sliney's psychological counseling but the intensity of her treatment increased and Previte thought the costs were too high. Whether Sliney's counseling related to the sexual abuse by Previte was therefore a *contract* issue, which in turn made relevant the magnitude, scope and duration of Previte's abuse of Sliney. There were other inevitable intersections between the sexual abuse and contract issues, but these reasons alone made bifurcation unfeasible. The jury thus heard the contract issues and Sliney's tort claims together, instructed that they could reach Sliney's claims only if they determined that neither the 1988 or 1991 release was effective.

After nine days of trial, on May 6, 2019 the jury returned its verdict, finding that:

- Sliney and Previte reached an agreement including a release of claims in 1988;
- But that Previte materially breached the 1988 contract so that Sliney was excused from her 1988 release of claims;
- Sliney and Previte reached an agreement including a release of claims in 1991, however, that agreement was the result of economic duress and therefore not effective; and then, reaching Sliney's claims, that
- Previte was liable for assault, battery, intentional and negligent infliction of emotional distress; and
- Sliney was entitled to damages in the amount of \$867,000.

Jury Verdict Questionnaire (May 6, 2019).

### **1. Previte's Post-Trial Motions**

Previte has moved to set aside the verdict, particularly with respect to economic duress as to the 1991 contract, to enter judgment consistent with the 1991 contract and schedule an assessment of damages, or in the alternative, to grant a new trial, this time bifurcated.

It is accurate that Sliney's case to avoid the 1988 and 1991 contracts focused foremost on Previte's material breach of the 1988 contract and Sliney's lack of competency to contract in 1991. However, with respect to both contracts, Sliney offered evidence on each of three contract defenses—competence, economic duress, and material breach. At the jury instructions conference, which occurred after distribution of draft jury instructions including all three defenses as to both contracts, the court *sua sponte* raised with counsel whether the economic duress defense applied to the 1991 contract, as the court perceived the defense was mostly advanced as to the 1988 contract. Sliney's counsel identified evidence surrounding the 1991 contract—Sliney's financial straits due to unemployment and routine hospitalizations, her acute need for psychological counseling, and Previte's failure to pay for counseling despite his 1988 promise to do so—that supported presenting the question of economic duress to the jury. When counsel asked for Previte's position, counsel stated: "I don't care." Previte did not object to the inclusion of the economic duress defense as to the 1991 contract or generally, nor did Previte move for a directed verdict on that issue. The court on its own considered whether evidence justified placing the defense before the jury, and after Sliney's argument, agreed that it did.

After the verdict, and viewing the evidence in a light most favorable to Sliney, I have determined there was evidence to support economic duress. Briefly, the jury heard evidence that Sliney was a "financial disaster" at the time period near the 1988 and 1991 contracts, in large part because of her routine psychological hospitalizations, which sometimes lasted weeks. The jury also heard from numerous sources how critical Sliney's counseling and other psychological treatments were; her treatment at that time was "life or death," often focused principally on keeping Sliney alive, helping her to overcome her suicidal thoughts. By 1991, however, Previte had long stopped paying Sliney's counseling bills because the bills had become more expensive

as her treatment became more intensive, and he did not understand why Sliney was not getting better. In light of Sliney's financial distress, which the jury could fairly attribute to Previte's wrongful actions (both the underlying sexual abuse and his breach of his 1988 promise to pay for counseling), the importance of her psychological treatments, and Previte's decision to stop paying for those essential services, the evidence supports the jury's verdict that the 1991 contract—the focus of which was to recover money to pay for Sliney's treatment—was due to economic duress.

Accordingly, Previte's motion for judgment notwithstanding the verdict is **denied**, as is his motion to enter judgment consistent with the 1991 contract.

Previte's motion for new trial is focused largely on the same issue together with the court's denial of Previte's motion to bifurcate the trial. For the reasons discussed at the outset of this order, the court carefully considered the bifurcation motion and determined it was impossible in the circumstances of this case to separate the contract issues from the sexual abuse issues. The court instead sought to remind the jury at the outset of trial and in jury instructions, the importance of considering independently the issues of formation and enforceability of the alleged contracts, on the one hand, and Sliney's tort claims, on the other. Previte's motion for new trial is **denied**.

## **2. Sliney's Motion for Attachment and Preliminary Injunction**

Sliney recovered a significant verdict against Previte. With interest, the judgment exceeds \$1.6 million. Sliney requests to attach real property and enjoin Previte from transferring or encumbering any property he may own, control or have an interest in.

The judgment entitles Sliney to an attachment, and the court will **allow** the motion for attachment in the amount of \$1,600,000 as to any real property owned by Domenic Previte.

The challenge for plaintiffs post-judgment, however, is that Previte in recent years has transferred real property from himself to his wife, Ann Marie Previte, or to Trusts for which Ann Marie is Trustee. Domenic Previte is the sole defendant in this action. Plaintiff may eventually be able to reach property held by Ann Marie or in trust, by way of fraudulent conveyance or otherwise. But I am not persuaded that Mass. R. Civ. P. 71 allows me to attach, based on the current record and the judgment against Domenic Previte, property held by Ann Marie, who is not a defendant. At this juncture based on the current information on ownership of the relevant real property, the attachment applies only to property held by Domenic Previte.

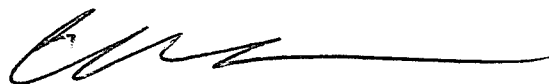
I agree with Sliney that my authority is broader with respect to a post-judgment injunction to preserve assets that Previte has or may have an interest in, or control. By injunction, the court can restrict Previte's actions, whether direct or indirect, and also can reach those persons that work or participate with Previte, provided they have actual notice of my order. To restrict Previte's ability to transfer, sell or encumber any assets that he has an interest in, so that they may be preserved to satisfy Sliney's judgment, it is **ordered** that:

Domenic Previte is enjoined from:

- a. selling, transferring, mortgaging, alienating, or encumbering all real property owned by him, or standing in his name, individually, jointly, by tenancy in the entirety, and/or as trustee, or over which he exercises control, directly or indirectly;
- b. working or participating with any other person, including Ann Marie Previte, or any Trust of which Ann Marie Previte or Domenic Previte is trustee, to sell, transfer, mortgage, alienate, or encumber any real property owned by Domenic Previte, or standing in his name, individually, jointly, by tenancy in the entirety, and/or as trustee, or over which he exercises control, directly or indirectly.
- c. This order applies to any person, including Ann Marie Previte, who receives notice of this order and thereafter works or participates with Domenic Previte in any manner to sell, transfer, mortgage, alienate, or encumber (i) any real property owned by Domenic Previte, or standing in his name, individually, jointly, by tenancy in the entirety, and/or as trustee, or over which he exercises control, directly or indirectly, or

(ii) any real property for the purpose of avoiding, defrauding or concealing assets from any judgment creditor, including Rosanne Sliney.

**So ordered.**



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Christopher K. Barry-Smith  
Justice of the Superior Court

DATE: May 28, 2019

Entered: 5/30/19