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**ORDER OF THE SUPREME COURT OF GEORGIA  
DENYING PETITION FOR CERTIORARI  
(MARCH 13, 2020)**

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**SUPREME COURT OF GEORGIA**

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**ZHIHENG SHENG**

v.

**DANIEL MICHAEL SNYDER**

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**Case No. S19C1629**

**Court of Appeals Case No. A19A0517**

**Before: MELTON, C.J., NAHMIAS, P.J., and  
BLACKWELL, BOGGS, PETERSON, WARREN,  
BETHEL and ELLINGTON, JJ.**

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The Honorable Supreme Court met pursuant to adjournment.

The following order was passed.

The Supreme Court today denied the petition for certiorari in this case.

Melton, C.J., Nahmias, P.J., and Blackwell, Boggs, Peterson, Warren, Bethel and Ellington, JJ., concur.

**OPINION OF THE  
COURT OF APPEALS OF GEORGIA  
(JUNE 21, 2019)**

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**IN THE COURT OF APPEALS OF GEORGIA**

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**SHENG**

v.

**SNYDER**

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**A19A0517**

**Fifth Division**

Before: McMILLIAN J., McFADDEN, P.J., GOSS, J.

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**MCMILLIAN, Judge.**

In this case, the following circumstances exist and are dispositive of the appeal:

- (1) The evidence supports the judgment;
- (2) No reversible error of law appears, and an opinion would have no precedential value;
- (3) The judgment of the court below adequately explains the decision; and
- (4) The issues are controlled adversely to the appellant for the reasons and authority given in the appellee's brief.

The judgment of the court below therefore is affirmed in accordance with Court of Appeals Rule 36.

Judgment affirmed. McFadden, P.J., and Goss, J., concur.

**ORDER OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
(APRIL 26, 2018)**

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IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA

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DANIEL MICHAEL SNYDER  
as Executor of the Estate of James P. Snyder,

*Plaintiff,*

v.

ZHIHENG SHENG,

*Defendant.*

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Civil Action File No. 2017CV285151

Before: Henry M. NEWKIRK,  
Judge, Superior Court of Fulton County.

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This matter came before the Court for oral argument on March 22, 2018 on the Plaintiff's Motion for Summary Judgment filed on February 8, 2018. After consideration of the record, all relevant factual evidence referenced by the parties, the briefs, the applicable law, and the oral argument from counsel at the hearing on March 22, 2018, the Court finds and concludes as follows:

## I. Background

This action was initially filed on January 23, 2017. In his Complaint, the Plaintiff sought access to the residence owned by the Decedent in order to undertake his obligations as the Executor of the Estate. An Order granting access to the residence was entered by this Court on August 30, 2017. A hearing to determine ownership of certain tangible personal property located inside the residence was held on September 22, 2017. Counsel for the Plaintiff stated in *judicio* on March 22, 2018, that the issues regarding access to the residence, trespass, and conversion were resolved by the Court's Orders entered August 30, 2017 and November 30, 2017.

The Defendant filed an answer and counterclaim on February 27, 2017, seeking declaratory judgment as to the Defendant's residuary interest in the Estate, entitlement to the Retirement Account (specifically referring to the account ending in #1326), and a declaratory judgment as to the rights and responsibilities of the parties under the law and the Prenuptial Agreement. The Plaintiff filed an amended Complaint on April 25, 2017, seeking relief based upon various state law contract claims and Defendant's breach of the Prenuptial Agreement.

The Plaintiff subsequently filed a motion for summary judgment on February 8, 2018, requesting summary judgment be issued on the Plaintiff's breach of contract claim and destruction of personality claim. The Plaintiff alleged that the Defendant breached the Prenuptial Agreement when (1) she claimed the proceeds of the Decedent's Retirement Account and failed to compensate the Estate for the value of the Retirement Account and (2) when she requested a declaratory

judgment from the Court finding that she was entitled to the Retirement Account and a 1/3 residuary interest in the Decedent's estate. The Plaintiff's Motion for Summary Judgment also requests that the Court issue a summary judgment on the destruction of personality claim for the Defendant's destruction of four pieces of artwork belonging to the Estate.

## II. The Prenuptial Agreement

The Defendant and the Decedent entered into an Antenuptial Agreement (the "Prenuptial Agreement") on January 20, 2010 in anticipation of their marriage. In the Prenuptial Agreement, the parties formalized their duties and obligations to each other as to their respective rights in the property or the estate of the other in the event of dissolution of the marriage or death of either party. In relevant part, the Prenuptial Agreement provides as follows:

Paragraph 3: Assets as Separate Property of the Spouses, "Each of the parties agrees that the property identified as Exhibits A and B and described hereafter shall remain the separate property of the other party. All property, whether real or personal, choses in possession and in action, and any and all claims, demands, actions, and causes of action, belonging to the other party at the commencement of their marriage, including all such property acquired by each of them in their separate names while living together as Husband and Wife . . ."

Paragraph 4: Separately Acquired Property. "Any property, whether real or personal . . . acquired by either party in his or her individ-

ual capacity after the marriage, shall be the separate property of the individual acquiring the property and neither party shall make any claim to or demand on such separately acquired property of the other, . . . nor shall either party make any such claim or demand on the heirs, executors, or administration of the other party, and such property shall be free of all rights that the other might acquire by reason of said marriage or of any consequence thereof.”

Paragraph 6: Release of Marital Property Rights. “The parties hereby waive and release any and all right, title, and interest that each may acquire by operation of law, upon solemnization of the marriage, to that property specified as the separate property of the other spouse in Exhibits A and B . . .”

Paragraph 7: Release of Rights of Inheritance. “Each party clearly understands that if the other party should predecease him/her, his/her statutory interest in the estate of the other party could be a substantial amount . . . Each of the parties forever waives, releases, and relinquishes any right or claim of any kind, character, or nature whatsoever that either may have or shall have in and to the estate, property, assets, or other effects of the other under any present or future law of the State of Georgia or any other state or of the United States or foreign jurisdiction . . .”

Paragraph 10: Disposition of Property to Spouse. “Notwithstanding any other provision of this Agreement, either party may, by

appropriate written instrument only, transfer, convey, devise or bequeath any property to the other . . .”

Paragraph 11: Waiver or Release of Rights in General. “. . . each of the parties forever waives, releases and relinquishes to the other, and to the heirs, executors, administrators, devisees, legatees, and assigns of the other, all rights, interest, or claims of inheritance, and to a distributive share in the estate of the other (in event of intestacy) either as widow, widower, heir, survivor, distributee, or next of kin in and all of the estate of the other . . . and all other claims whatsoever which may in any manner arise or accrue by virtue of the marriage of the parties under any present or future law (whether statutory or common law) of the State of Georgia or of any other state or of the United States or foreign jurisdiction, and further waives and releases any and all marital property rights whatsoever in the property of the other.”

### **III. Undisputed Material Facts**

After review of the record evidence, the Court finds the following material facts are undisputed:

1. James P. Snyder (the “Decedent”) and Zhiheng Sheng entered into an antenuptial agreement (the “Prenuptial Agreement”) on January 20, 2010 and were married on January 30, 2010.
2. The Prenuptial Agreement states that the separate assets of the parties shall remain the separate property of the original owner and any property separ-

ately acquired during the marriage shall remain the separate property of the parties (absent express written documentation in either a lawfully executed Will or an “appropriate written instrument only” granting rights by one spouse to the other spouse that were otherwise waived under the Prenuptial Agreement).

3. The Prenuptial Agreement states in Paragraph 4 that “neither party shall make any claim to or demand on such separately acquired property of the other, nor shall either party make any such claim or demand on the heirs, executors, or administrators of the other party, and such property shall be free of all rights that the other might acquire by reason of said marriage or any consequences thereof.”

4. The Prenuptial Agreement states in Paragraph 6 that the “parties hereby waive and release any and all right, title and interest that each may acquire by operation of law, upon solemnization of the marriage, to that property specified as the separate property of the other spouse, in Exhibits A and B . . .”

5. The Prenuptial Agreement (in Paragraphs 7 and 11) releases any rights of inheritance from the other party or the other party’s estate that arise or were created as a result of the marriage.

6. Exhibit B of the Prenuptial Agreement identifies the Decedent’s “Emory Pension Vanguard #1326” (the “Retirement Account”) as his separate asset.

7. The Retirement Account listed on Exhibit B is the same account that was distributed to the Defendant by Vanguard.

8. The Prenuptial Agreement was never modified by the parties.

9. When she executed the Prenuptial Agreement, the listing of the Retirement Account on Exhibit B informed Defendant that the Decedent maintained a retirement account at Emory.

10. The Decedent departed this life on January 16, 2016.

11. The Retirement Account was governed by the Employee Retirement Income Security Act of 1974 (ERISA).

12. At no time after the marriage did the Defendant execute a valid ERISA spousal waiver.

13. On April 8, 2016, in response to the Defendant's claim Vanguard distributed \$193,213.42, representing the full balance of the Retirement Account at that time, to the Defendant.

14. Vanguard paid the proceeds of the Retirement Account to the Defendant under the provisions of ERISA.

15. Following the Decedent's death, the Defendant did not execute a disclaimer to the Retirement Account which would have allowed Vanguard to pay the plan benefits to the Decedent's Estate or the Decedent's children.

16. The Defendant has not turned over the proceeds of the Retirement Account to the Decedent's Estate.

17. The Defendant has failed to deliver the Retirement Account or an amount of money equivalent to the value of the Retirement Account to the Decedent's Estate.

18. The Defendant requested a declaratory judgment finding that she is entitled to the Retirement Account and a one-third (1/3) share of the residue of the Decedent's Estate.

19. Following the Decedents' death, the Defendant destroyed four paintings that belonged to the Estate.

20. Ms. Sheng never paid the Estate for the value of the destroyed paintings.

#### **IV. Standard for Motion for Summary Judgment**

On a motion for summary judgment under O.C.G.A. § 9-11-56, the moving party has the burden of demonstrating that there is no issue of material fact as to all of the essential elements of his or her claim. In determining whether the movant has carried this burden, the Court must view the evidence and all factual inferences in the light most favorable to the nonmovant. O.C.G.A. § 9-11-56(c); *Lau's Corp. v. Haskins*, 261 Ga. 491 (1991).

#### **V. The Court's Findings**

##### **A. ERISA Issues**

The Defendant asserts that the Plaintiff's breach of contract claim with regard to the Retirement Account was preempted under the provisions of ERISA; however, there is no dispute between the parties that Defendant was entitled under the provisions of ERISA to the Retirement Account as the spouse of the Decedent. The Supreme Court of Georgia has held, however, that ERISA does not preempt a state law cause of action for breach of contract to recoup benefits paid under ERISA because such claims are not in

conflict with ERISA's objectives. *Appleton v. Alcorn*, 291 Ga. 107, 728 S.E.2d 549, 12 FCDR 1761 (Ga., 2012). Therefore, the Defendant's defense that her entitlement to the Retirement Account under the provisions of ERISA superseded her contractual obligations under state law is misplaced. In this case, ERISA has no controlling effect as to the parties' obligations under the Prenuptial Agreement. Although the Defendant was entitled to the Retirement Account under Federal law, she cannot escape her contractual obligation to compensate the Estate for the value of the Retirement Account under the terms of the Prenuptial Agreement after her acceptance of the Retirement Account.

### **B. Enforceable Prenuptial Agreement**

The Prenuptial Agreement is binding and enforceable as written. In Georgia, three factors are to be considered in deciding the validity of a prenuptial agreement: "(1) Was the agreement obtained through fraud, duress or mistake, or through misrepresentation or nondisclosure of material facts? (2) Is the agreement unconscionable? (3) Have the facts and circumstances changed since the agreement was executed, so as to make its enforcement unfair and unreasonable?" *Scherer v. Scherer*, 249 Ga. 635 (3), 292 S.E.2d 662 (1982).

The Defendant alleges that she was under duress when she entered into the Prenuptial Agreement because she had relocated to the United States on a fiancé visa which would expire within a short period of time after her arrival in the United States. The Court finds that there is no evidence of duress. By her own testimony and her disclosed assets attached to the Prenuptial Agreement as Exhibit A, the Defendant

had significant assets and could have returned to China had she not been comfortable signing the Prenuptial Agreement. Further, the Defendant's testimony reflects her intent to return China shortly after the marriage to continue operating her English school in China; therefore, the assertion that the Defendant was under a strict timeline to marry the Decedent is not supported by the evidence.

The Defendant did not assert that the Prenuptial Agreement was unconscionable or that the facts and circumstances changed so as to make the Prenuptial Agreement unfair or unreasonable. The Court is not aware of any such grounds for finding the Prenuptial Agreement to be unenforceable.

### **C. No Ambiguity**

The terms of the Prenuptial Agreement clearly and unambiguously state the intentions of the parties; therefore, no parol evidence is admissible to explain or modify the clear meaning of the terms in the agreement and it is unnecessary for Court to look outside the four corners of the Prenuptial Agreement to determine the parties' intent. The Prenuptial Agreement clearly provides, in relevant part, that the parties "waived" interests in each other's assets and estates. There is nothing ambiguous about the language in these paragraphs. Rather, a simple reading of the contract terms shows the specific intentions of the parties. As such, the Court must look only to the four corners of the agreement and should ascertain the intentions of the parties from the clear meaning of the language used therein. *Verret v. ABB Power T&D Company, Inc.*, 515 S.E.2nd 435, 237 Ga. App. 492 (Ga. App. 1999). Therefore, the Defendant's execution of the Prenuptial Agree-

ment constitutes her knowing waiver of any and all claims of a right to obtain and/or retain the Retirement Account. The Defendant admitted that she understood the Prenuptial Agreement to mean that she waived any interest in the Retirement Account. Nonetheless, she did, in fact, claim the Retirement Account and failed to compensate the Estate for the value of the Retirement Account.

#### **D. Breach**

“Parties to a contract are presumed to have read their provisions and to have understood the contents. One who can read, must read, for he is bound by his contracts.” *O’Brien Family Trust v. Glen Falls Ins. Co.*, 218 Ga. App. 379 (1995).

Defendant was represented by counsel to negotiate the Prenuptial Agreement. She has a college degree in English and business. Both parties were assisted by counsel and each party entered into the Prenuptial Agreement with significant assets. It is clear from the agreement that they knew what they were waiving; the Defendant understood the Prenuptial Agreement and yet she claimed and retained the Retirement Account and sought to be entitled to a one-third (1/3) share of the Decedent’s residuary estate.

The Court finds that the Prenuptial Agreement is valid and enforceable under Georgia law and the Defendant clearly and effectively waived all right, title and interest in the Retirement Account and any claim to the residuary of the Decedent’s Estate. The language of the waivers in the Prenuptial Agreement is clear and enforceable. Because this case is a matter of pure contract law is not governed by ERISA, the broad waivers of the Prenuptial Agreement are

enforceable. When the Defendant (a) pursued the Retirement Account, despite her unambiguous waiver, (b) refused to disclaim the Retirement Account, and (c) refused to pay to the Estate the value of the benefits received from the Retirement Account she materially breached the terms of the Prenuptial Agreement. When the Defendant further filed action for Declaratory Judgment, seeking a court order awarding her the Retirement Account and finding she was entitled to a 1/3 share of the residue of the Decedent's Estate, despite her unambiguous waiver, she materially breached the terms of the Agreement.

#### **E. Damages**

As a result of Defendant's breach and supporting evidence before the Court, the Court finds that the Plaintiff has suffered damages for which the Plaintiff is entitled to recover damages from the Defendant, as follows; (1) the Estate has been deprived of the funds constituting the value of the Retirement Account since the date of the Decedent's death. As such the Plaintiff has incurred damages an amount equal to the sum of (A) \$193,213.42 received by Defendant on April 8, 2016, plus (B) any subsequent earnings or appreciation in such funds from and after such date.

#### **F. Personality**

Defendant admitted her destruction of paintings described by Defendant as "Aming's [sic.] paintings" in her deposition. Defendant knew that Aming Sun was the painter that made the paintings. Defendant has not denied such destruction but asserted ambiguity as to ownership of the paintings. The Court finds that the paintings were assets of the Decedent's Estate and

that Defendant is liable to Plaintiff for the damages caused by her destruction of the paintings, in an amount to be proven by Plaintiff.

## **VI. Conclusions**

ACCORDINGLY, IT IS ORDERED AND ADJUDGED that the Court hereby GRANTS Plaintiff's Motion for Summary Judgment.

IT IS FURTHER ORDERED, that Defendant shall pay Plaintiff the sum of (a) One Hundred Ninety Thousand Two Hundred Thirteen and 32/100 Dollars (\$193,213.32) plus (b) the earnings and appreciation in the funds held by the Retirement Account since Defendant's receipt of same as though the Retirement Account had remained invested as it was on the date Defendant obtained the Retirement Account. Such payment shall be made no later than ten (10) days after the date of this Order.

IT IS FURTHER ORDERED that the parties shall attempt to reach a resolution on the value of the destroyed paintings and shall report the same to the Court within sixty (60) days of this Order. If the parties are unable to reach a resolution on the value of the paintings a hearing on damages shall be conducted on July 2nd, 2018. @10:00AM.

SO ORDERED this 26th day of April, 2018.

/s/ Judge Henry M. Newkirk

Superior Court of Fulton County

Order Prepared by:

/s/

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## RELEVANT STATUTORY PROVISIONS

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### **29 U.S.C. § 1001(b)**

#### **(a) Findings**

The Congress finds that—

- (1) single-employer defined benefit pension plans have a substantial impact on interstate commerce and are affected with a national interest;
- (2) the continued well-being and retirement income security of millions of workers, retirees, and their dependents are directly affected by such plans;
- (3) the existence of a sound termination insurance system is fundamental to the retirement income security of participants and beneficiaries of such plans; and
- (4) the current termination insurance system in some instances encourages employers to terminate pension plans, evade their obligations to pay benefits, and shift unfunded pension liabilities onto the termination insurance system and the other premium-payers.

#### **(b) Additional Findings**

The Congress further finds that modification of the current termination insurance system and an increase in the insurance premium for single-employer defined benefit pension plans—

- (1) is desirable to increase the likelihood that full benefits will be paid to participants and beneficiaries of such plans;

- (2) is desirable to provide for the transfer of liabilities to the termination insurance system only in cases of severe hardship;
- (3) is necessary to maintain the premium costs of such system at a reasonable level; and
- (4) is necessary to finance properly current funding deficiencies and future obligations of the single-employer pension plan termination insurance system.

[ . . . ]

**(c) Declaration of Policy**

It is hereby declared to be the policy of this title—

- (1) to foster and facilitate interstate commerce;
- (2) to encourage the maintenance and growth of single-employer defined benefit pension plans;
- (3) to increase the likelihood that participants and beneficiaries under single-employer defined benefit pension plans will receive their full benefits;
- (4) to provide for the transfer of unfunded pension liabilities onto the single-employer pension plan termination insurance system only in cases of severe hardship;
- (5) to maintain the premium costs of such system at a reasonable level; and
- (6) to assure the prudent financing of current funding deficiencies and future obligations of the single-employer pension plan termination insurance system by increasing termination insurance premiums.

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**29 U.S.C. § 1001(c)**

**(c) Protection of Interstate Commerce, the Federal Taxing Power, and Beneficiaries by Vesting of accrued Benefits, Setting Minimum Standards of Funding, Requiring Termination Insurance**

It is hereby further declared to be the policy of this chapter to protect interstate commerce, the Federal taxing power, and the interests of participants in private pension plans and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service, to meet minimum standards of funding, and by requiring plan termination insurance.

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**29 U.S.C. § 1055 (a)**

**(a) Required Contents for Applicable Plans**

Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

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**29 U.S.C. § 1055 (c)(2)**

**(c) Plans Meeting Requirements of Section**

(1) A plan meets the requirements of this section only if—

- (A) under the plan, each participant—
  - (i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),
  - (ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and
  - (iii) may revoke any such election at any time during the applicable election period, and
- (B) the plan meets the requirements of paragraphs (2), (3), and (4).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

- (A)
  - (i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such

election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

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## **29 U.S.C. § 1144**

### **(a) Supersedure; Effective Date**

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

### **(b) Construction and Application**

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)

(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) shall not apply to any generally applicable criminal law of a State.

(5)

(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Pre-paid Health Care Act (Haw. Rev. Stat. §§ 393–1 through 393–51).

(B) Nothing in subparagraph (A) shall be construed to exempt from subsection (a)—

- (i) any State tax law relating to employee benefit plans, or
- (ii) any amendment of the Hawaii Prepaid Health Care Act enacted after September 2, 1974, to the extent it provides for more than the effective administration of such Act as in effect on such date.

(C) Notwithstanding subparagraph (A), parts 1 and 4 of this subtitle, and the preceding sections of this part to the extent they govern matters which are governed by the provisions of such parts 1 and 4, shall supersede the Hawaii Prepaid Health Care Act (as in effect on or after January 14, 1983), but the Secretary may enter into cooperative arrangements under this paragraph and section 1136 of this title with officials of the State of Hawaii to assist them in effectuating the policies of provisions of such Act which are superseded by such parts 1 and 4 and the preceding sections of this part.

(6)

(A) Notwithstanding any other provision of this section—

- (i) in the case of an employee welfare benefit plan which is a multiple employer welfare arrangement and is fully insured (or which is a multiple employer welfare arrangement subject to an exemption under subparagraph (B)), any law of any State which regulates insurance may apply to such arrangement to the extent that such law provides—

- (I) standards, requiring the maintenance of specified levels of reserves and specified levels of contributions, which any such plan, or any trust established under such a plan, must meet in order to be considered under such law able to pay benefits in full when due, and
- (II) provisions to enforce such standards, and

- (ii) in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement, in addition to this subchapter, any law of any State which regulates insurance may apply to the extent not inconsistent with the preceding sections of this subchapter.

- (B) The Secretary may, under regulations which may be prescribed by the Secretary, exempt from subparagraph (A)(ii), individually or by class, multiple employer welfare arrangements which are not fully insured. Any such exemption may be granted with respect to any arrangement or class of arrangements only if such arrangement or each arrangement which is a member of such class meets the requirements of section 1002(1) and section 1003 of this title necessary to be considered an employee welfare benefit plan to which this subchapter applies.
- (C) Nothing in subparagraph (A) shall affect the manner or extent to which the provisions of this subchapter apply to an employee welfare benefit plan which is not a multiple employer welfare arrangement and which is a plan, fund, or pro-

gram participating in, subscribing to, or otherwise using a multiple employer welfare arrangement to fund or administer benefits to such plan's participants and beneficiaries.

(D) For purposes of this paragraph, a multiple employer welfare arrangement shall be considered fully insured only if the terms of the arrangement provide for benefits the amount of all of which the Secretary determines are guaranteed under a contract, or policy of insurance, issued by an insurance company, insurance service, or insurance organization, qualified to conduct business in a State.

(7) Subsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title), qualified medical child support orders (within the meaning of section 1169(a)(2)(A) of this title), and the provisions of law referred to in section 1169(a)(2)(B)(ii) of this title to the extent they apply to qualified medical child support orders.

(8) Subsection (a) of this section shall not be construed to preclude any State cause of action—

(A) with respect to which the State exercises its acquired rights under section 1169(b)(3) of this title with respect to a group health plan (as defined in section 1167(1) of this title), or

(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] which would not have been payable if such acquired rights had been executed before pay-

ment with respect to such items or services by the group health plan.

(9) For additional provisions relating to group health plans, see section 1191 of this title.

**(c) Definitions**

For purposes of this section:

(1) The term “State law” includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term “State” includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

**(d) Alteration, Amendment, Modification, Invalidation, Impairment, or Supersedure of Any Law of the United States Prohibited**

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law.

**(e) Automatic Contribution Arrangements**

(1) Notwithstanding any other provision of this section, this subchapter shall supersede any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic

contribution arrangement. The Secretary may prescribe regulations which would establish minimum standards that such an arrangement would be required to satisfy in order for this subsection to apply in the case of such arrangement.

(2) For purposes of this subsection, the term “automatic contribution arrangement” means an arrangement—

(A) under which a participant may elect to have the plan sponsor make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which a participant is treated as having elected to have the plan sponsor make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) under which such contributions are invested in accordance with regulations prescribed by the Secretary under section 1104(c)(5) of this title.

(3)

(A) The plan administrator of an automatic contribution arrangement shall, within a reasonable period before such plan year, provide to each participant to whom the arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which—

- (i) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and
- (ii) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

(B) A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to a participant unless—

- (i) the notice includes an explanation of the participant's right under the arrangement not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),
- (ii) the participant has a reasonable period of time, after receipt of the notice described in clause (i) and before the first elective contribution is made, to make such election, and
- (iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant.

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**GA 9-11-56**  
**Summary Judgment**

**(a) For Claimant**

A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 30

days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

**(b) For Defending Party**

A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

**(c) Motion and Proceedings Thereon**

The motion shall be served at least 30 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law; but nothing in this Code section shall be construed as denying to any party the right to trial by jury where there are substantial issues of fact to be determined. A summary judgment may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damage.

**(d) Case Not Fully Adjudicated on Motion**

If on motion under this Code section judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing

of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

**(e) Form of Affidavits; Further Testimony;  
Defense Required**

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in the evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. All affidavits shall be filed with the court and copies thereof shall be served on the opposing parties. When a motion for summary judgment is made and supported as provided in this Code section, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Code section, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

**(f) When Affidavits Are Unavailable**

Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavits facts essential to justify his opposition, the court may refuse the application for judgment, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had, or may make such other order as is just.

**(g) Affidavits Made in Bad Faith**

Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Code section are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party may be adjudged guilty of contempt.

**(h) Appeal**

An order granting summary judgment on any issue or as to any party shall be subject to review by appeal. An order denying summary judgment shall be subject to review by direct appeal in accordance with subsection (b) of Code Section 5-6-34.

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GA 19-3-60—

**Definition; marriage as valuable consideration**

(a) As used in this article, the term "antenuptial agreement" means a contract entered into prior to a

marriage that determines property rights or contemplates a future settlement to one spouse as to a future resolution of issues, including, but not limited to, year's support, spousal support, and equitable division of property.

(b) Marriage is a valuable consideration; and a spouse stands, as to property of the other spouse settled upon a spouse by marriage contract, as do other purchasers for value, provided that by the contract a spouse shall not incapacitate himself or herself from paying his or her existing just debts.

**ANTENUPTIAL AGREEMENT  
BETWEEN SNYDER AND SHENG  
(JANUARY 20, 2010)**

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**STATE OF GEORGIA  
COUNTY OF FULTON**

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This Antenuptial Agreement made this 20th day of January, 2010, by and between JAMES P. SNYDER, of Fulton County, Georgia (hereinafter referred to as "Husband"), and ZHIHENG SHENG, of Fulton County, Georgia (hereinafter referred to as "Wife"),

**WITNESSETH:**

THAT WHEREAS, Husband and Wife intend and plan to be married to each other on or about the 30th day of January, 2010; and

WHEREAS, each owns substantial assets consisting of both personal and/or real property; and

WHEREAS, each has acquired substantially all of his or her separate property independently of and without the joinder, help, or assistance of the other; and

WHEREAS, the parties have agreed that each is economically independent of the other; and

WHEREAS, until there is a formal ceremonial marriage between themselves, the parties do not consider themselves married; and

WHEREAS, each desires to keep all of his or her separate property, whether now owned or hereafter acquired, free from any claim of the other by virtue

of the forthcoming marriage; and WHEREAS, each has made a full and fair disclosure to the other of his or her financial worth; and

WHEREAS, the parties, contemplating a long and lasting marriage to be terminated only by the death of one of the parties, also recognize that their marriage might be terminated by way of divorce or dissolution during the lifetime of both parties; and

WHEREAS, it is the intent and earnest desire of both parties to this Agreement that, in such an event, they avoid altogether any and all disputes and/or controversies with respect to the disposition of any such assets; and

WHEREAS, each desires to make certain agreements with respect to their respective properties and their rights and obligations after the solemnization of their marriage, and to set forth the same in writing;

NOW, THEREFORE, the parties hereto, for and in consideration of the contemplated marriage of the parties hereto and of the mutual covenants and agreements herein contained, hereby mutually agree and covenant as follows:

### **1. Assets of the Parties:**

The Wife owns the property listed in Exhibit A (which Exhibit is hereby incorporated by reference). The Husband owns the property listed in Exhibit B (which Exhibit is hereby incorporated by reference). While neither party represents his or her respective Exhibit to be a precise delineation of his or her assets, it constitutes a reasonable approximation of such assets. Each party represents to the other that he or she has fully disclosed to the other his or her finan-

cial situation thereby, subject only to the qualification that these Exhibits were prepared informally, with and without reference to documentation.

**2. Children by Prior Marriages:**

- A. The Husband has the following named children by previous marriages, all of whom are emancipated adults: Melissa Dubin Snyder, (d/o/b 12-8-74) Jennifer Ashmall-Liversidge, (d/o/b 9-28-65) and Forrest Daniel Snyder, (d/o/b 7-26-91 ).
- B. The Wife has the following named child from a previous marriage: Zhengi Liang, (d/o/b 7-3-93).
- C. The parties agree that Wife's income, investments or other financial assets shall not be used or considered for the purposes of support, financial assistance, or any other form of income for Husband's children for any reason.

The parties agree that Husband's income, investments or other financial assets shall not be used or considered for the purposes of support, financial assistance, or any other form of income for Wife's Child for any reason, except as may be required pursuant to United States Immigration requirements related to Wife's and Wife's child's applications for immigration.

**3. Assets as Separate Property of the Spouses**

Each of the parties agrees that the property identified as Exhibits A and B and described hereafter shall remain the separate property of the other party:

All property, whether real or personal, choses in possession and in action, and any and all claims, demands, actions, and causes of action, belonging to the other party at the commence-

ment of their marriage, including all such property acquired by each of them in their separate names while living together as Husband and Wife; all property acquired by the other party out of the proceeds or income from property owned at the commencement of marriage, or attributable to appreciation in value of said property, whether the enhancement is due to market conditions or to the services, skills, or efforts of either one or both of the parties; and all property hereafter acquired by the other party by gift, devise, bequest, or inheritance.

**4. Separately Acquired Property:**

Any property, whether real or personal, choses in possession and in action, and any and all claims, demands, actions, and causes of action, acquired by either party in his or her individual capacity after the marriage, shall be the separate property of the individual acquiring the property and neither party shall make any claim to or demand on such separately acquired property of the other, nor shall either party make any such claim or demand on the heirs, executors, or administrators of the other party, and such property shall be free of all rights that the other might acquire by reason of said marriage or of any consequences thereof.

**5. Jointly-Acquired Property:**

James P. Snyder and Zhiheng Sheng agree that throughout the course of their marriage they will remain cognizant of title to property. The parties agree that the joint property of their marriage will be

property which they affirmatively designate as joint property at the time of acquisition or thereafter by memorandum or other written instrument (“Joint Property”). The interest of each in Joint Property shall be a one-half (1/2) undivided interest, unless the instrument creating the joint interest states a different division of interest.

**6. Release of Marital Property Rights:**

The parties hereby waive and release any and all right, title, and interest that each may acquire by operation of law, upon solemnization of the marriage, to that property specified as the separate property of the other spouse, in Exhibits A and B, and in Paragraphs 1, 2, 3 and 4 of this Agreement, and that property is recognized as the separate property of the other spouse.

**7. Release of Rights of Inheritance:**

Each of the parties desires to accord to the other the absolute and unrestricted privilege and power to dispose of any and all property on death which may belong to him or her at such time. Each party clearly understands that if the other party should predecease him/her, his/her statutory interest in the estate of the other party could be a substantial amount.

Each of the parties forever waives, releases, and relinquishes any right or claim of any kind, character, or nature whatsoever that either may have or shall have in and to the estate, property, assets, or other effects of the other under any present or future law of the State of Georgia or any other state or of the United States or foreign jurisdiction, except as otherwise specifically provided for in this agreement or

any subsequent agreement executed by the parties, and each of the parties forever waives, releases, and relinquishes any right or claim that he or she now has or may have or shall have, pursuant to the laws of the State of Georgia, or pursuant to any present or future law of any state or of the United States or foreign jurisdiction to elect to take in contravention of the terms of any last will of the other, including any last will now executed or which may be executed hereafter, or any disposition of property made by the other during his or her lifetime or otherwise.

Each of the parties shall refrain from any action or proceeding that may tend to avoid or nullify to any extent or in any particular the terms of any such last will of the other. However, that this paragraph shall not be construed to defeat any right to inheritance under the express provisions of a will lawfully executed by either party.

#### **8. Prior Debts:**

The debts contracted by Husband or Wife prior to their marriage are to be paid by the party who shall have contracted the same, and the property of the other party shall not in any respect be liable for the payment thereof.

#### **9. Alimony Waiver:**

If the parties separate from one another at any time following their marriage, for any reason, it is their mutual desire that each shall maintain and support himself or herself separately and independently from the other. Accordingly, each party releases and discharges the other, absolutely and forever, for the rest of his or her life, from any and all claims and demands

for alimony and support, either temporarily or permanently.

**10. Disposition of Property to Spouse:**

Notwithstanding any other provision of this Agreement, either party may, by appropriate written instrument only, transfer, convey, devise, or bequeath any property to the other, or nominate the other as Executor of his or her estate. Neither party intends by this Agreement to limit or restrict in any way the right to receive any such transfer, conveyance, devise, or bequest from the other, or to act as such Executor if so nominated.

**11. Waiver or Release of Rights in General:**

Except as otherwise provided, each of the parties forever waives, releases and relinquishes to the other, and to the heirs, executors, administrators, devisees, legatees, and assigns of the other, all rights, interest, or claims of inheritance, and to a distributive share in the estate of the other (in event of intestacy) either as widow, widower, heir, survivor, distributee, or next of kin in and to all of the estate of the other, whether now owned or hereafter acquired, and all other claims whatsoever which may in any manner arise or accrue by virtue of the marriage of the parties under any present or future law (whether statutory or common law) of the State of Georgia or of any other state or of the United States or foreign jurisdiction, and further waives and releases any and all marital property rights whatsoever in the property of the other party.

**12. Interpretation:**

No provision in this Agreement is to be interpreted for or against any party because that party or that party's legal representative drafted the provision.

**13. Representations of Parties by Counsel:**

The parties hereto stipulate that they are entering into this Agreement freely and voluntarily; that they have ascertained and weighed all the facts and circumstances likely to influence their judgment; that their rights in the property described in this Agreement and in Exhibits A and B attached hereto have been fully explained to them; that they have had full opportunity to seek and obtain legal advice independently of each other; that they, and each of them, were informed of the advisability of being represented by separate legal counsel of their choice in the preparation of this agreement; that this agreement is not the result of any duress or undue influence; that Randie Siegel has prepared this agreement as attorney for James P. Snyder and that Scott M. Kaye is acting as counsel for Zhiheng Sheng in this matter; that they have read this agreement and have had its contents explained to them; and that they fully understand the terms, provisions, and legal consequences of this agreement.

**14. Mediation:**

The parties hereto agree that in the event a dispute arises in connection with the terms of this Agreement they will submit the dispute to a qualified mediator acceptable to both parties in an attempt to arrive at a mutually acceptable resolution of any such dispute in a cooperative and informal manner.

Any such mediation session may be attended by representatives of the parties with full settlement authority and by each party's respective counsel and experts if they so desire. The parties hereto agree to follow the recommendation of the mediator regarding the agenda most likely to resolve the dispute. However, the parties acknowledge that the mediation process is a compromise negotiation. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by either of the parties, their agents, employees, experts or attorneys, or by the mediator, who is the parties' joint agent, for purposes of these compromise negotiations are confidential. Such offers, promises, conduct, and statements will not be disclosed to third parties and are privileged and inadmissible for any purpose, including impeachment, under Rule 408 of the Federal Rules of Evidence and any applicable federal or state statute, rule or common law provisions. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or not discoverable as a result of its use in the mediation.

The parties agree not to call the mediator as a witness or as an expert in any subsequent litigation or arbitration involving the parties and relating in any way to the dispute which is the subject of the mediation. The parties agree that the mediator will be disqualified as a witness or as an expert in any subsequent proceeding relating to the dispute which is the subject of the mediation.

## **15. Captions:**

Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference

only and in no way define, limit, extend, or describe the scope of this Agreement or of any provision hereof.

**16. Applicable Law:**

This Agreement is to be construed, interpreted, and enforced in accordance with the laws of the State of Georgia, even if subsequent to their contemplated marriage they establish residence in some other State of the Union, including a community property State.

**17. Severability:**

In the event any of the provisions of this Agreement are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be construed so as to render the same valid to the extent of the scope or breadth permitted by law.

**18. Scope of Agreement:**

The provisions contained in this Agreement represent the entire understanding between prospective Husband and prospective Wife pertaining to their respective property and marital property rights. The parties agree that, at the request of the other, they will execute and deliver whatever additional agreements or releases which may be required in order to effectuate the intention of this Agreement, and shall execute and deliver such documentation in order that good title to any property of either party may be transferred and conveyed free of any claim of the other party.

**19. Amendment, Modification, Rescission:**

This Agreement may be modified, amended, or rescinded at any time after the solemnization of the marriage between the parties only by a written agreement between them signed by the party sought to be charged therewith.

**20. Effective Date of Agreement:**

This Agreement shall become effective upon solemnization of the marriage between the parties, and shall be null and void if the marriage fails to occur for any reason.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate on the day and at the place first above indicated.

/s/ James P. Snyder

Sworn to and subscribed before me on this the 20th day of January 2010.

/s/ David B. Keith

Notary Public

Dekalb County, GA

My Commission Expires June 13, 2013

Randie Siegel as Counsel for Husband

/s/ Zhiheng Sheng

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Sworn to and subscribed before me on this the  
20th day of January 2010.

/s/ David B. Keith

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Notary Public  
Dekalb County, GA  
My Commission Expires June 13, 2013  
Scott Kaye as counsel for wife

**EXHIBIT “A”**

Assets and Liabilities:		
1	No. 6 Jinpo Road, Haikon City, China	\$ 155,000.00 USD
2	No. 111-1 Hong Cheng Road, Haidon City, China	\$ 35,000.00 USD
3	No. 66 He Ping Road, Haikon City, China	\$ 50,000.00 USD
4	Xian Ling Road, Yu Hang District, Hangzhou City, China Equity Purchase Price 700,000.00 RMB Mortgage 500,000.00 RMB China Yuan Renminbi=RMB	\$ 40,000.00 USD
5	2007 Toyota TV7160G	\$ 100,000- 150,000.00 RMB
6	Private English Tutoring School, Haikon City, China	
	Gross annual Revenue	\$ 300,000 RMB
	Grass annual Costs estimate	\$ 150,000 RMB
7	Agricultural Bank of China Accounts (2)	
	1. Misc. Checking/Savings/ Credit Card \$ minimal	\$ minimal
	2. Funds/Stock Accounts \$150-200,000 RMB	\$ 150,000- 200,000 RMB
8	Furniture and Furnishings	\$ 80,000.00 RMB

## EXHIBIT "B"

ASSETS:	VALUED AT
Real Property: 1086 Rosedale Drive, Atlanta, Ga. 30306	\$ 490,000.00 USD
Personal Property: 2008 Mini Cooper	\$ 17,000.00 USD
Furniture and Fixtures	\$ 25,000.00 USD
Wachovia Crown Classic #_6460	\$ 59,470.00 USD
Wachovia Regular Check # 5125	\$ 462.00 USD
Wachovia Cash Invoice # 2662	\$ 255.00 USD
Wachovia Personal Sav._# 2458	\$ 0.00 USD
Wachovia Free Student # 4074	\$ 1.16 USD
Wachovia Zhiheng # 9581	\$ 1,308.00 USD
Fidelity Rollover IRA-1 # 6896	\$ 422,406.00 USD
Fidelity Rollover IRA-2 # 2550	\$ 748,160.00 USD
Fidelity Indiv. Acct. # 8020	\$ 246,522.00 USD
Emory Pension Vanguard # 1326	\$ 97,039.25 USD
<b>TOTAL ASSETS:</b>	<b>\$ 2,107,623.41 USD</b>
LIABILITIES:	
Secured: mortgage with CitiMortgage securing 1086 Rosedale Drive, Atlanta	\$ 197,933.74 USD
<b>TOTAL LIABILITIES</b>	<b>\$ 197,933.74 USD</b>
<b>NET WORTH</b>	<b>\$ 1,909,689.67 USD</b>