129155

IN THE SUPREME COURT OF ILLINOIS

IN RE THE MARRIAGE OF:

MASUD M. ARJMAND,

Petitioner,

and

MUNEEZA R. ARJMAND, N/K/A MUNEEZA R. RAHMAN,

Respondent.

MASUD M. ARJMAND,

Plaintiff-Appellant,

v.

MORGAN STANLEY SMITH BARNEY, LLC; MORGAN STANLEY & CO., LLC; MORGAN STANLEY & CO., INC., MORGAN STANLEY INVESTMENT MANAGEMENT, INC., BRYAN ESTES; AND STOGSDILL LAW FIRM, PC,

Defendants-Appellees.

On Review of the Opinion of the Appellate Court of Illinois, Second Judicial District, Appellate Case Number 2-21-0285 There Heard on Appeal from the Decision of the Circuit Court of Cook County Case Number 09 D 1168, Honorable Timothy McJoynt, Presiding

---

BRIEF FOR DEFENDANTS-APPELLEES MORGAN STANLEY SMITH BARNEY, LLC, MORGAN STANLEY & CO., LLC, MORGAN STANLEY & CO., INC., AND MORGAN STANLEY INVESTMENT MANAGEMENT, INC.,

---

Robert Radasevich (#6180383)
Joshua H. Burday (#6320376)
Andrew T. Hamilton (#6342013)
Neal Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
rradasevich@nge.com
jburday@nge.com
ahamilton@nge.com

Counsel for Morgan Stanley Smith Barney, LLC; Morgan Stanley & Co., LLC; Morgan Stanley & Co., Inc.; and Morgan Stanley Investment Management, Inc.

ORAL ARGUMENT REQUESTED

E-FILED
5/3/2023 3:29 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

POINTS AND AUTHORITIES

NATURE OF THIS APPEAL AND THE PROCEEDINGS BELOW

The instant appeal arises out of an Order entered by the Appellate Court, Second District (the "Second District"), in which the court reversed the decision of the trial court dismissing a complaint filed by Masud Arjmand ("Arjmand" or "Appellant" or "Petitioner") against Morgan Stanley Smith Barney, LLC, Morgan Stanley & Co., LLC, Morgan Stanley & Co., Inc. and Morgan Stanley Investment Management, Inc. (collectively "Morgan Stanley") and his ex-wife's lawyers as part of his long-running divorce proceeding entitled *In re Marriage of Arjmand*, DuPage County Case No. 09-D-1168 (the "Divorce Proceeding"). In its decision, the Second District declined to consider Arjmand's attempted appeal from orders denying his petition and later motion seeking substitution of judge and denying of his motion for recusal. (Appellate Court Summary Order No. 2-21-0285 (App'x 1 to PLA)). The Second District concluded that it did not have jurisdiction to consider those orders because "[t]here is no applicable provision of the Illinois Supreme Court Rules providing for an interlocutory appeal from the trial court's orders denying the motions for substitution. The denial of a motion for substitution of judge is not a final order but, instead, is an interlocutory order that is appealable on review from a final order." *Id.*, ¶ 12.

To resolve an apparent split between the Districts, Petitioner filed a Petition for Leave to Appeal, which the Court granted.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Whether a trial court's orders: i) denying a petition for substitution of judge for cause under 735 ILCS 5/2-1001(a)(3)(iii); ii) denying a motion for

substitution of judge as of right under 735 ILCS 5/2-1001(a)(2)(ii); and iii) denying a motion for recusal under Supreme Court Rule 63(C)(1)(a) are subject to interlocutory appeal as attendant to the appeal from another order under Supreme Court Rule 304(a).

2. If so, whether the trial courts' orders i) denying Arjmand's petition for substitution of judge for cause under 735 ILCS 5/2-1001(a)(3)(iii); ii) denying Arjmand's motion for substitution of judge as of right under 735 ILCS 5/2-1001(a)(2)(ii); and iii) denying Arjmand's motion for Recusal under Supreme Court Rule 63(C)(1)(a) should be affirmed.

STATUTES AND SUPREME COURT RULES INVOLVED

SUPREME COURT RULE 3

(a) Purpose and Applicability.

(1) These procedures are adopted to provide for the orderly and timely review of proposed rules and proposed amendments to existing rules of the Supreme Court; to provide an opportunity for comments and suggestions by the public, the bench, and the bar; to aid the Supreme Court in discharging its rulemaking responsibilities; to make a public record of all such proposals; and to provide for public access to an annual report concerning such proposals.

(2) The Supreme Court reserves the prerogative of departing from the procedures of this rule. An order of the Supreme Court adopting any rule or amendment shall constitute an order modifying these procedures to the extent, if any, they have not been complied with in respect to that proposal.

SUPREME COURT RULE 63(C)(1)(a)

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding; …

SUPREME COURT RULE 304(a)

(a) Judgments As To Fewer Than All Parties or Claims — Necessity for Special Finding. If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both. Such a finding may be made at the time of the entry of the judgment or thereafter on the court's own motion or on motion of any party. The time for filing a notice of appeal shall be as provided in Rule 303. In computing the time provided in Rule 303 for filing the notice of appeal, the entry of the required finding shall be treated as the date of the entry of final judgment. In the absence of such a finding, any judgment that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before the entry of a judgment adjudicating all the claims, rights, and liabilities of all the parties.

735 ILCS 5/2-1001(a)(2)(ii)

(a) A substitution of judge in any civil action may be had in the following situations: …

(2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).

(i) Each party shall be entitled to one substitution of judge without cause as a matter of right.

(ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.

735 ILCS 5/2-1001(a)(3)(ii)

(a) A substitution of judge in any civil action may be had in the following situations: …

(3) Substitution for cause. When cause exists.

(i) Each party shall be entitled to a substitution or substitutions of judge for cause.

(ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant.

(iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as

possible by a judge other than the judge named in the petition. The judge named in the petition need not testify but may submit an affidavit if the judge wishes. If the petition is allowed, the case shall be assigned to a judge not named in the petition. If the petition is denied, the case shall be assigned back to the judge named in the petition.

STATEMENT OF FACTS[1]

A. Arjmand's Divorce Proceeding

Masud Arjmand has been embroiled in a contested divorce proceeding in the Eighteenth Judicial District in DuPage County for more than a decade in a case entitled *In re Marriage of Arjmand*, DuPage County Case No. 09-D-1168 (the "Divorce Proceeding"). On February 4, 2013, Judge Timothy McJoynt entered an order in the Divorce Proceeding (the "February 2013 Order," C 1217 — 1219 V1) granting Arjmand's motion to stay in connection with a previous appeal and including "as a condition of bond," a restriction that "neither party shall sell, transfer, convey, assign, further encumber, any real property, stock, funds held in brokerage accts, IRA's, which either party has an interest…." (C 1218 V1).

Arjmand maintained brokerage accounts at Morgan Stanley. (Sup 2 C 30, ¶ 26). In early July 2014, Morgan Stanley was informed, for the first time, of the existence of the February 2013 Order when it received a letter from Bryan Estes ("Estes") of The Stogsdill Law Firm ("Stogsdill Law" and collectively with Estes,

[1] Morgan Stanley has provided a somewhat detailed Statement of Facts to assist the Court in appreciating the context in which the current dispute arises.

the "Stogsdill Defendants"), counsel for Arjmand's estranged wife in the Divorce Proceeding, requesting compliance with the February 2013 Order by prohibiting Arjmand from making unauthorized withdrawals of funds from his Morgan Stanley accounts. (C 10565 V7, ¶ 20). Following receipt of that letter, Morgan Stanley complied with the February 2013 Order and prohibited Arjmand from making unauthorized withdrawals from his Morgan Stanley accounts. (C 10565 V7, ¶ 21).

Due to conflicting demands placed upon Morgan Stanley by the parties in the Divorce Proceeding, Morgan Stanley filed a Petition to Intervene (C 4401 V2), along with a Motion for Clarification of the February 2013 Order (C 4403 V2), for the express and limited purpose of clarifying its obligations thereunder. Morgan Stanley presented its Petition to Intervene and Motion for Clarification on May 12, 2015. Judge McJoynt tabled the petition and motion pending resolution of several appeals filed by Arjmand relating to the February 2013 Order. (C 4490 V2).

B. The Original Action Against Morgan Stanley and Other Defendants

On August 27, 2015, Arjmand, acting pro se, filed a lawsuit in the Circuit Court of Cook County (the "Original Action") against: i) Morgan Stanley and its lawyers Neal, Gerber & Eisenberg LLP ("NGE") and a partner in the firm named Brody Weichbrodt ("Weichbrodt" and collectively with Morgan Stanley and NGE, the "Morgan Stanley Defendants"); and (ii) the Stogsdill Defendants. In a 244-paragraph complaint, (the "Original Complaint," (SUP2 R 229 — 269)),

Arjmand asserted nine causes of action variously against the Morgan Stanley Defendants and the Stogsdill Defendants, all predicated on the February 2013 Order entered by Judge McJoynt in the Divorce Proceeding.

The Morgan Stanley Defendants responded to the Original Complaint by filing a combined Section 2-619.1 motion to dismiss (the "Original Motion to Dismiss," (SUP2 R 11 — 142) asserting various alternative grounds for potentially dispositive relief. The Stogsdill Defendants initially responded to the Original Complaint by filing a Motion to Transfer Venue (the "Motion to Transfer") seeking to transfer the Original Action to the Circuit Court of DuPage County based, alternatively, on improper venue or the doctrine of *forum non conveniens*. (SUP2 R 99 — 142). In their Motion to Transfer and supporting exhibits (and later filed Section 2-619 motion to dismiss, SUP2 R 310 — 380), the Stogsdill Defendants chronicled the history of Arjmand's attempts to avoid the impact of the February 2013 Order through the Divorce Proceeding and through assorted appeals to the Second District and petitions seeking relief from this Court. *Id.* Cook County trial court Judge James Snyder granted the Stogdill Defendants' Motion to Transfer and transferred the Original Action to DuPage County. (SUP2 R 168). Judge Snyder's October 15, 2015 Order tabled the Morgan Stanley Defendants' Original Motion to Dismiss and continued it for consideration after the Original Action was transferred to DuPage County. (*Id.*).

Arjmand filed a Motion to Reconsider the Order transferring the Original Action to DuPage County (SUP2 R 153), which Judge Snyder denied the day it

was presented on November 12, 2015. (SUP2 R 225). On December 11, 2015, Arjmand filed a "Notice of Petition for Appeal by Permission" in the Appellate Court, First District, from both the October 15, 2015 Order transferring the case to DuPage County and the November 12, 2105 Order denying his Motion to Reconsider. (SUP2 R 226). Arjmand also filed a Motion for Stay pending appeal. (SUP2 R 223). The Petition for Appeal by Permission was denied, rendering the Motion for Stay moot.

The Original Action was transferred to the Circuit Court of DuPage County, docketed as Case No 16 L 153, and set for initial status on May 18, 2016 before Judge Ronald Sutter. (SUP2 R 270, 298). On that date, Judge Sutter entered an order establishing a briefing schedule and setting the motions for hearing on August 17, 2016. (SUP2 R 299 — 300). The parties thereafter filed their respective responses and replies.[2] A week before the scheduled hearing, Arjmand also filed a "Motion for Leave to Supplement Response to Morgan Stanley Related Defendants' Motion to Dismiss," as well as a copy of the Supplement that he sought leave to file. (SUP2 R 521, 522).

---

[2] The Stogsdill Defendants' Section 2-619 Motion to Dismiss appears at (SUP2 R 310) and their Section 2-615 Motion to Strike Counts V, VI and IX appears at (SUP2 R 304). Plaintiff's Response to the Morgan Stanley Defendants' Motion to Dismiss appears at (SUP2 R 381). Plaintiff's Response to the Stogsdill Defendants' Section 2-619 Motion to Dismiss and his supporting exhibits appear at (SUP2 R 401). Plaintiff's Response to the Stogsdill Defendants' Section 2-615 Motion appears at (SUP2 R 413). The Morgan Stanley Defendants' Reply appears at (SUP2 R 391), and the Stogsdill Defendants' Reply appears at (SUP2 R 512).

The various motions came before Judge Sutter for argument on August 17, 2016. (SUP2 R 598 - 659). After denying Arjmand leave to file his Supplement (SUP2 R 601), after explaining that he had read the briefs, attached exhibits and the Original Complaint, and after advising the parties that he had "reviewed a good portion of the '09 divorce case" as well as relevant case law, Judge Sutter invited oral argument. (SUP2 R 601 — 602). Mr. Estes for the Stogsdill Defendants and Mr. Radasevich for the Morgan Stanley Defendants gave brief arguments explaining why their respective motions to dismiss should be granted, including that the Original Action was nothing more than "a collateral attack on an order entered by another judge in a pending case." (SUP2 R 604). Arjmand then proceeded to argue at length why he should be able to proceed with his lawsuit without ever addressing the Defendants' collateral attack argument. (SUP2 R 604 – 620). After brief rebuttal by movants' counsel, Judge Sutter gave a detailed ruling from the bench granting both motions to dismiss on Section 2-619 grounds:

> All of the defendants in the case pending before me take the position that this case should be dismissed with prejudice as an impermissible collateral attack on the jurisdiction and order entered in the divorce action by Judge McJoynt.
>
> I agree. As pointed out by the Illinois Supreme Court in a supervisory order entered in *People ex rel Kelly, Ketting* – that's K-e-t-t-i-n-g – *Furth, Inc. versus Epstein*, 61 Illinois 2d 229, review of the orders of one judge by another judge of the same court in the same case is neither consistent with the ordinary administration of justice nor with our judicial system.

> Also instructive is the appellate court opinion *In re Marriage of Isaacs*, 260 Illinois App. 3d 423 upholding a divorce court's order enjoining the husband from proceeding in a separate chancery court action regarding the disposition of a marital asset, indicating that both common sense and sound public policy dictate that matrimonial litigants should not be permitted to make a circuitous run around the divorce courts in coordinate courts.
>
> Here the plaintiff is attempting to do exactly that. The plaintiff is attempting to proceed on a contract – on contract and tort claims – against these various defendants, all arising out of Judge McJoynt's February 2013 order and subsequent proceedings on the third floor in the divorce case.
>
> I agree with defendants that this action is nothing more and nothing less than an impermissible collateral attack on Judge McJoynt's continuing jurisdiction to preside over the divorce action and to enforce the orders entered in that case.

(SUP2 R 623 — 624). Consistent with his ruling from the bench, Judge Sutter entered an Order on August 17, 2016 granting Defendants' section 2-619 motions and dismissing the Original Action with prejudice (the "With Prejudice Order"). (SUP2 R 535 — 536).

C. Arjmand's Section 2-1401 Petition

Arjmand did not appeal from the With Prejudice Order. Rather, on August 16, 2018, one day shy of two years after the entry of the With Prejudice Order and represented by new counsel, Arjmand filed a "Petition to Partially Vacate the Order Dismissing his Complaint with Prejudice" (the "Section 2-1401 Petition," (SUP2 R 540)), supported by his own Affidavit. (SUP2 R 548). Arjmand's Section 2-1401 Petition sought to remove the words "with prejudice" from the

August 17, 2016 dismissal order and replace them with "without prejudice." (SUP2 R 543). When the Section 2-1402 Petition was presented to Judge Sutter, he invited substantive arguments from counsel, rather than briefing on the Petition. (SUP2 R 666). As for the merits of the Section 2-1401 Petition, the only thing counsel for Arjmand argued was that the dismissal of the Original Complaint should not have been with prejudice as against Morgan Stanley:

> All we are asking to do, and in particular as it related to Morgan Stanley – I have it right, yes, Morgan Stanley, that the lawsuit against it should not have been dismissed with prejudice because it was not determined on the merits. That is it. No other change in the Court's ruling. Nothing else.
>
> * * *
>
> The Court can vacate the judgment and reenter the judgment but without prejudice. And we don't care if it's with prejudice as to anyone else. But I do think that Morgan Stanley is culpable, and by at least arguably, arguably that if it is with prejudice as to Morgan Stanley, then the case is over without ever having a merits decision.

(SUP2 R 667, 671). After stating on the record that he found Arjmand's Section 2-1401 Petition "frivolous, vexatious and harassing" (SUP2 R 673), Judge Sutter denied the Section 2-1401 Petition with prejudice. (SUP2 R 559).

Arjmand timely filed a notice of appeal from Judge Sutter's denial of his Section 2-1401 Petition. (SUP2 R 560). After briefing, the Second District issued an order dispensing with oral argument and taking the matter under advisement on the briefs. On July 23, 2019, the Second District entered a Rule 23 Order

affirming the lower court. *Arjmand v. Morgan Stanley Smith Barney, LLC*, 2019 IL App. (2d) 180785-U; (SUP2 R 576).

D. Complaint Filed in Divorce Proceeding

On December 23, 2019, five months after the Second District's ruling affirming denial of Arjmand's Section 2-1401 Petition, and more than five years after Arjmand filed the Original Action, Arjmand filed a nearly identical multi-count complaint (the "Divorce Complaint") as part of his Divorce Proceeding. (C 10560 — 10605 V7). In his newly filed Divorce Complaint, Arjmand asserted eight causes of action which were largely replicative of claims asserted in the Original Complaint in the long-dismissed Original Action. At the time the Divorce Complaint was filed, Morgan Stanley's Petition to Intervene and Motion for Clarification were still pending before Judge McJoynt in the Divorce Proceeding. (*see supra*, p. 6).

Morgan Stanley responded by filing a Section 2-619.1 Combined Motion to Dismiss (the "Motion to Dismiss") asserting four alternative grounds to dismiss. (C 11911 V7). First, all five claims asserted against Morgan Stanley should be dismissed with prejudice under Section 2-619(a)(4) as barred by the doctrines of *res judicata* and collateral estoppel. Second, the four claims asserted against Morgan Stanley in Counts II, IV, V and VI should be dismissed with prejudice pursuant to Section 2-619(a)(5) because they were not filed within the applicable statutes of limitations. Third, the two claims asserted against Morgan Stanley in Counts III and IV should be dismissed under Section 2-615 for failing to state claims upon which relief might be granted. Finally, any claims against

Morgan Stanley that were not otherwise dismissed with prejudice should be dismissed pursuant to 710 ILCS 5/2 and Sections 3 and 4 of the Federal Arbitration Act, 9 U.S.C. §§ 3, 4, because they are subject to binding arbitration under Arjmand's agreements with Morgan Stanley. (C 11940 — 11941 V7).

The Stogsdill Defendants also filed a Section 2-619 Motion to Involuntarily Dismiss the claims asserted against them with prejudice as barred by the doctrines of *res judicata* and collateral estoppel, for violating applicable statutes of limitations and/or for failing to state claims upon which relief can be granted. (C 12022 V7). Arjmand filed a consolidated response to both motions to dismiss. (C 13052 V8).

On November 19, 2020, at the conclusion of the *third day* of arguments, Judge McJoynt rendered his decision from the bench granting the motions to dismiss filed by Morgan Stanley and the Stogsdill Defendants and dismissing all of Arjmand's claims in the Divorce Complaint with prejudice. (C 14218 V8). The Court subsequently entered a written order on December 29, 2020, *nunc pro tunc* to November 19, 2020. (C 14218 V8). The Court ruled that all the claims in the Divorce Complaint were barred under the doctrine of *res judicata* by the final judgment entered by Judge Sutter dismissing the Original Action with prejudice. The Court also granted Morgan Stanley's request to dismiss Counts III and IV with prejudice under Section 2-615 for failing to state claims against Morgan Stanley.

Arjmand filed a Motion for Reconsideration. (C 14204 V8). The only arguments he raised concerned the dismissal of his claims based on *res judicata*, contending that Judge Sutter's dismissal of his claims with prejudice was not a decision "on the merits." Arjmand ignored the dismissal of Counts III and IV under Section 2-615 for failing to state claims, or the alternative grounds that most of his claims were subject to dismissal for having been filed after expiration of the applicable statutes of limitations, or were subject to mandatory arbitration. After briefing and argument, Judge McJoynt denied Arjmand's Motion for Reconsideration in an order dated April 28, 2021. (C 14659 — 14660 V8). Judge McJoynt's April 28, 2021 order contained an express finding pursuant to Supreme Court Rule 304(a) that there was no just reason to delay enforcement or appeal of both that order and his original November 19, 2020 dismissal order. *Id.*

Arjmand filed a timely Notice of Appeal on May 27, 2021. (C 14703 — 14704 V8). The Notice of Appeal stated that Arjmand appealed from the Order "entered on April 28, 2021, and all orders in procedural progression leading to it." (C 14703 — 17704 V8).

E. Arjmand's Third Petition for Substitution of Judge for Cause and Motion for Substitution of Judge as of Right or Recusal

On December 27, 2019, within days of filing the Divorce Complaint, Arjmand filed a 105-page "Third Petition for Substitution of Judge for Cause and Assignment to a Judge in Different Appellate District," together with a 123-page supporting Affidavit (collectively, the "Third SOJ Petition," C 10606 — 10833

V7).[3] Arjmand argued that another judge in another Appellate District should be substituted for Judge McJoynt in the underlying Divorce Proceeding, including presiding over his newly filed Divorce Complaint, based upon Judge McJoynt's allegedly prejudicial actions in consistently ruling against Arjmand since the Divorce Proceeding was reopened in 2012. Three months later in March 2021, Arjmand filed a 128-page Amended Third SOJ Petition (C 10842 — 10969 V7), together with a 133-page Amended Affidavit, (C 10970 — 11102 V7).

Arjmand's estranged wife, Muneeza R. Arjmand n/k/a Muneeza R. Rahman ("Muneeza"), the Respondent in the Divorce Proceeding, filed a response to the Amended Third SOJ Petition (C 11107 — 11117 V7), and Arjmand filed a Reply in support thereof (C 11376 — 11386 V7), along with almost 450 pages of additional exhibits. (C 11392 — 11839 V7). The fully briefed Amended Third SOJ Petition came before Judge McJoynt for hearing on February 10, 2020. After protracted arguments by Arjmand and counsel for Muneeza (SUP R C 64 — 142), Judge McJoynt concluded that:

> within this lengthy SOJ petition sufficient allegations, if accepted as true, could perhaps be proven at a hearing as actual prejudice, and the Court in its discretion is applying the *O'Brien* test.
>
> In the interest of fairness and justice, the Court finds that the SOJ complaint stated --- states a cause of action on its face. I will assign the case to another judge,

[3] Arjmand filed his first Petition for Substitution of Judge For Cause on February 3, 2014 (C 2880 — 2954 V2) and an Amended First Petition on March 24, 2014. (C 3020 — 3604 V2). Arjmand filed his Second Petition for Substitution of Judge for Cause on December 16, 2014 (C 4166 — 4228 V2) and an Amended Second Petition on December 23, 2014. (C 4238 — 4289 V2).

> an independent judge in this courthouse in this jurisdiction to rule on that pleading.

(SUP R 151). Arjmand's Amended Third SOJ Petition was then transferred to Judge Kleeman for further consideration. (C 12553 — 12554 V8).

Following transfer to Judge Kleeman, Muneeza filed another response to the Amended Third SOJ Petition (C 12567 — 12578 V8), and Arjmand filed an additional Reply in support. (C 12639 — 12649 V8). Arjmand also filed a motion to have the "facts" alleged in this Amended Third SOJ Petition "deemed admitted" (C 12845 — 12854 V8), to which Muneeza filed a response. (C 12856 — 12864 V8). After considering the various written and oral arguments of Arjmand and counsel for Muneeza, and without conducting an evidentiary hearing, Judge Kleeman denied Arjmand's Amended Third SOJ Petition on June 3, 2020. (C 12903 — 12904 V8). Arjmand filed a Motion to Reconsider (C 12983 — 12998 V8), which Judge Kleeman denied on August 25, 2020. (C 13154 V8).

Having lost on his third attempt to substitute Judge McJoynt for cause, Arjmand filed a "Motion for Substitution of Judge as of Right or Alternatively for Recusal as to MSSB Complaint" (the "SOJ as of Right or Recusal Motion") on July 6, 2020. (C 13000 — 13004 V8). Morgan Stanley and Muneeza filed separate responses (C 13017 — 13026 V8; C 13076 — 13085 V8), and the fully briefed SOJ as of Right or Recusal Motion came before Judge McJoynt for hearing on August 6, 2020. After considering the briefs and arguments of the parties, Judge McJoynt denied the motion. (C 13088 V8). Judge McJoynt reasoned that Arjmand was not entitled to SOJ as of right under 735 ILCS 5/2-

1001(a)(2) because Arjmand has filed his complaint against Morgan Stanley and his ex-wife's lawyers "within the divorce case" where the Court had made "hundreds of substantial rulings." (SUP R. 302 — 303). Judge McJoynt also found that he was not required to recuse or disqualify himself under Supreme Court Rule 63(C)(1) because Arjmand's motion was "devoid of any bases indicating that I have an interest in the outcome of the case or somehow could be biased or prejudiced." (SUP R 303).

F. Arjmand's Purported Appeal of the Orders Denying his Petition and Motion for SOJ and his Request for Recusal

As noted earlier (see *supra* p. 14), Judge McJoynt's April 28, 2021 order denying Arjmand's motion for reconsideration of the Court's earlier November 19, 2020 order dismissing the Divorce Complaint contained an express finding pursuant to Supreme Court Rule 304(a) that there was no just reason to delay enforcement or appeal of both that order and the original November 19, 2020 dismissal order. (C 14659 — 14660 V8). On May 27, 2021, Arjmand filed a timely Notice of Appeal (C 14703 — 14704 V8), which stated that Arjmand appealed from the Order "entered on April 28, 2021, and all orders in procedural progression leading to it." (*Id.*) Arjmand's opening brief on appeal to the Second District clarified that he sought to appeal from: i) the orders entered by Judge Kleeman denying Arjmand's Amended Third SOJ Petition (C 12903 — 12904 V8) and denying Arjmand's motion for reconsideration (C 13154 V8); and ii) the orders entered by Judge McJoynt denying Arjmand's SOJ as of Right or Recusal

Motion (C 13088 V8) and denying Arjmand's Motion for Reconsideration. (C 13292 V8).

The Second District reversed the dismissal of the Divorce Complaint on the basis of *res judicata*, but dismissed all of the portions of the appeal related to the petitions and motions for substitution of judge. (Appellate Court Summary Order No. 2-21-0285 ¶ 1 (App'x 1 to PLA)). The Appellate Court explained that

> [t]here is no applicable provision of the Illinois Supreme Court Rules providing for an interlocutory appeal from the trial court's orders denying the motions for substitution. The denial of a motion for substitution of judge is not a final order but, instead, is an interlocutory order that is appealable on review from a final order.

Id., ¶ 12 (citing *In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 969 (2d Dist. 2004)). The Second District went on to explain that this Court "has seen fit not to provide specifically for interlocutory appeals of *any* order disposing of a motion for substitution." *Id.* (quoting *U.S. Bank Nat'l. Ass'n. v. In Retail Fund Algonquin Commons, LLC*, 2013 IL App. (2d) 130213, ¶ 25) (emphasis in original). Thus, the Second District concluded that because there had been no final order in the Divorce Proceeding, the orders denying the motions for substitution were not properly before it. *Id.* The Second District did not separately address Arjmand's request for recusal.

Arjmand timely filed a Petition for Leave to Appeal (the "PLA") in this Court. Citing decisions from the First and Fourth District Appellate Courts that are seemingly contrary to the Second District's conclusion that it lacked jurisdiction

to consider the denials of motions for substitution of judge, Arjmand requested that this Court "resolve the split between the districts by concluding that a reviewing court may review the denial of a petition for substitution of judgment [*sic*] during an interlocutory appeal if that denial is attendant to the interlocutory order being appealed, and hold that the trial court erred in denying [his] petition for substitution of judge for cause." (PLA at 1). Arjmand's PLA did not specifically seek leave to appeal from the denial of his petition for SOJ as of right under 735 ILCS 5/2-1001(a)(2) or from the denial of his motion for recusal under Supreme Court Rule 63(C)(1). This Court granted Arjmand's PLA on January 25, 2023. *In re Marriage of Arjmand*, 201 N.E.3d 571 (Ill. 2023).

ARGUMENT

I. THE ORDERS DENYING SUBSTITUTION AND RECUSAL WERE NOT PROPERLY BEFORE THE APPELLATE COURT ON APPEAL AND WERE PROPERLY DECIDED IN ANY EVENT

A. The Second District did not have Jurisdiction to Review the Orders Denying the Amended Third SOJ Petition or Denying the Motion for SOJ as of Right or Recusal

The Second District Appellate Court did not err in concluding that it lacked jurisdiction to review the lower courts' orders on substitution and recusal. Appellate Courts may only review appeals from final judgments or where otherwise authorized by Supreme Court Rules. "The law is well established that unless specifically authorized by the rules of this court, the appellate court has no jurisdiction to review judgments, orders or decrees which are not final." *Department of Cent. Mgmt. Serv. v. American Fed. of State, County & Mun. Emps.*, 182 Ill. 2d 234, 238 (1998) (citing *Almgren v. Rush-Presbyterian-St. Luke's Med.*

Ctr, 162 Ill. 2d 205, 210 (1994)). The Illinois Constitution vests exclusive authority in this Court to provide by rule for appeals to the appellate court from other than final judgments of the circuit courts. Ill. Const. 1970, art. VI, § 6; *In re Curtis B.*, 203 Ill. 2d 53, 60 (2002).

While Rule 304(a) permits the review of "final judgments" that do not dispose of the entire case, that is true only when there the order sought to be appealed from is, indeed, a "final judgment" and where there is an express finding by the trial judge that there is no reason for delaying enforcement or appeal. Ill. Sup. Ct. R. 304(a). As the Second District explained in its decision below, the "denial of a motion for substitution of judge is not a final order but, instead, is an interlocutory order that is appealable on review from a final order." (Appellate Court Summary Order No. 2-21-0285 ¶ 12 (App'x 1 to PLA)). *See also In re Marriage of Nettleton*, 348 Ill. App. 3d 961, 969 (2d Dist. 2004); *In re Marriage of Morgan*, 2019 IL App. (3d) 180560 ¶ 14; *Inland Commercial Prop. Mgmt., Inc. v. HOB I Holding Corp.*, 2015 IL App. (1st) 141051, ¶ 24. Here, there was no Rule 304(a) finding by the circuit court judges on any of the orders denying substitution or recusal. Immediate appellate review, therefore, is not proper. *See In re Marriage of Valkiunas and Olsen*, 389 Ill. App. 3d 965, 968 (2d Dist. 2008) (the order from which petitioner appealed did not contain Rule 304(a) language and thus the notice of appeal was premature and did not confer jurisdiction on the court).

Fundamentally, however, even if the Rule 304(a) findings attendant to Judge McJoynt's November 19, 2020 dismissal order and April 28, 2020 order denying reconsideration had been explicitly or were somehow implicitly extended to Judge Kleeman's orders denying substitution for cause and Judge McJoynt's orders denying substitution as of right and recusal, the Appellate Court still would not have jurisdiction over those orders. Inclusion of Rule 304(a) language in the context of a petition or motion for substitution or a motion for recusal does not vest an appellate court with jurisdiction because the underlying orders are interlocutory, not final orders susceptible to Rule 304(a) certification. *See Johnson v. Armstrong*, 2022 IL 127942, ¶ 20 ("If the order is in fact not final, inclusion of the special finding in the trial court's order cannot confer appellate jurisdiction.") (quoting *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 24); *see also Nettleton*, 348 Ill. App. 3d at 969; *In re Marriage of Koch*, 119 Ill. App. 3d 388 (2d Dist. 1983).

Nor is appeal from the orders denying substitution and recusal available under the argument that those orders were "steps in the procedural progression leading to the final judgment specified in [Arjmand's] notice of appeal." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 23. *In re Marriage of O'Brien* involved a Rule 303 appeal from the final judgment in the case, not a limited and discretionary interlocutory appeal under Rule 304(a), which is the situation here. Limited and discretionary Rule 304(a) interlocutory appeals should not be expanded to include matters not specifically covered by Rule 304(a). *United*

States Bank National Ass'n v. In Retail Fund Algonquin Commons, LLC, 2013 IL App. (2d) 130213, ¶ 22 ("'[I]n an interlocutory appeal, the scope of review is normally limited to an examination of whether the trial court abused its discretion in granting or refusing to grant the interlocutory relief.'") (quoting *Estate of Bass v. Katten*, 375 Ill. App. 3d 62, 72 (1st Dist. 2007)); *People v. Johnson*, 208 Ill. 2d 118, 145-46 (2003) (Kilbride, J., dissenting) ("Although *Burtell* involved the appeal of a final judgment, the same rationale logically, and even more forcefully, applies to interlocutory appeals since, by definition, they have a limited scope of review. … 'An appeal under Rule 307 does not open the door to a general review of all orders entered by the trial court up to the date of the order that is appealed.' Since *Burtell* limits the appellate court's jurisdiction in appeals from even final judgments, we may not broaden that court's jurisdiction in the context of inherently narrower, interlocutory appeals.") (internal citations omitted).

B. The First and Fourth District's Holdings were Incorrectly Decided and are Distinguishable from the Present Case

Although Arjmand, in his Petition for Leave to Appeal, requests that this Court resolve a split between the "Second District and the First and Third Districts," (PLA at 3), the Third District has agreed with the Second District that "[t]he denial of a motion for substitution of judge for cause is an interlocutory order and is not final for purposes of appeal." *In re Marriage of Morgan*, 2019 IL App. (3d) 180560 ¶ 14; *Growmark, Inc. v. Sunrise AG Serv. Co.*, 2015 IL App. (3d) 140309-U, ¶ 25 ("there is no applicable provision of the Illinois Supreme Court

Rules providing for an interlocutory appeal from the trial court's order denying [a] motion to substitute judge as of right. The denial of a motion for substitution of judge is not a final order but, instead, is an interlocutory order that is appealable on review from a final order."). Presumably, Arjmand intended to request this Court to resolve what he perceives to be a split between the Second and Third Districts on the one hand, and the First and Fourth Districts on the other hand.

From the Fourth District, Arjmand cites *Sarah Bush Lincoln Health Ctr. v. Berlin*, 268 Ill. App. 3d 184 (4th Dist. 1994). *Berlin* was a Rule 307 appeal as of right from the grant of a preliminary injunction. Arjmand's appeal in the present case was a Rule 304(a) discretionary appeal from Judge McJoynt's interlocutory orders dismissing his claims against Morgan Stanley and the Stogsdill Defendants. A court has discretion whether to include a Rule 304(a) finding authorizing an appeal from an interlocutory order. *Geier v. Hamer Enters., Inc.*, 226 Ill. App. 3d 372, 382 (1st Dist. 1992) (quoting *Sears, Roebuck & Co. v. Mackey*, 351 U.S. 427, 437 (1956)). Had Judge McJoynt declined to include a Rule 304(a) finding, Arjmand could not have appealed from the dismissal order, and the dismissal order would have remained subject to revision at any time prior to entry of final judgement in the Divorce Proceeding. Ill. Sup. Ct. R. 304(a). Thus, there is a fundamental difference between an appeal as of right from an injunction under Rule 307 and a permissive appeal from an interlocutory order under Rule 304(a).

Regardless, even as to Rule 307, the Fourth District's decision in *Berlin* was not correct. In *Berlin*, the court first acknowledged that it was not following relevant, though not binding, precedents in two First District cases, *Chicago v. Airline Canteen Service*, 64 Ill. App. 3d 417 (1st Dist. 1978) and *Murges v. Bowman*, 254 Ill. App. 3d 1071 (1st Dist. 1993). *Berlin*, 268 Ill. App. 3d at 187. Then, the *Berlin* Court cited *Kurle v. Evangelical Hospital Association*, 89 Ill. App. 3d 45, 48 (2nd Dist. 1980), as support for its decision to review denial of a motion for substitution in conjunction with a Rule 307 appeal from an injunction order. *Berlin*, 268 Ill. App. 3d at 187. The *Berlin* court characterized the ruling in *Kurle* thusly: "Appellate Court for the Second District ruled that the conduct of the circuit court in holding an evidentiary hearing on a request for a preliminary injunction when no answer had been filed was error which would have been considered if it had not been waived." *Id.* The court then asked, "Is not the question of whether the judge hearing the request for interlocutory injunctive relief should have been sitting in that matter of equal significance?" *Id.*

First, the question of whether the *Kurle* trial court erred in conducting the evidentiary hearing was not before the *Kurle* appellate court, so this "ruling" was *dicta*, and should not have formed the basis for the Fourth District's deviation from its own precedents. *See Kurle*, 89 Ill. App. 3d at 48. Second, the *Kurle* court did not say it would have ruled on the viability of the hearing had the defendant not waived his objection — it said that the *trial court* could consider the evidence put forth in the evidentiary hearing because the defendant waived his objection.

Id. ("[S]ince defendant participated in the hearing, defendant has waived any objection it might have had to the hearing, and the court could properly consider the evidence adduced in deciding whether to grant the preliminary injunction.")

Third and most importantly, even if the *Kurle* trial court's order to conduct an evidentiary hearing was reviewable, it does not constitute a completely separate appeal from the appeal of the underlying injunction and, in fact, the court's decision on whether to conduct an evidentiary hearing was inextricably intertwined with the grant of the injunction. Conversely, an appeal of a decision made by another judge to deny a motion for substitution of the first judge is a matter separate and apart from the first judge's consideration of whether or not to grant injunctive relief or the process engaged in by the judge in rendering its decision. Thus, the *Berlin* court should not have used *Kurle* as a basis to deviate from the precedents in *Airline Canteen Service* and *Murges*. Here, and unsurprisingly, the Second District did not feel constrained by *Kurle* to consider an appeal from Judge Kleeman's order denying substitution when it considered the interlocutory appeal of Judge McJoynt's order dismissing the Divorce Complaint because the two were not related, and one did not lie in procedural progression of the other.

Arjmand also cites two cases from the First District that he contends support his view of the issue. They do not. First, Arjmand cites *Partipilo v. Partipilo*, 331 Ill. App. 3d 394 (1st Dist. 2002). The entirety of the *Partipilo* court's reasoning on the issues is as follows:

> Frank raises the threshold issue of whether Maria's interlocutory appeals provide this court with jurisdiction over Maria's appeal involving substitution of judge. However, under *Sarah Bush Lincoln Health Center v. Berlin,* 268 Ill. App. 3d 184, 187, 643 N.E.2d 276, 279, 205 Ill. Dec. 325 (1994), we find we can consider Maria's claim of error in substitution of judge by way of her appeal seeking injunctive relief.

Id. at 398. It is difficult to rebut the court's reasoning in *Partipilo* because there was none. It simply followed the *Berlin* court. As explained above, *Berlin* was wrongly decided. Further, like in *Berlin*, the *Partipilo* appellant sought review of an order denying a motion for substitution as a matter of right in connection with a Rule 307 appeal. *Id.* A Rule 307 appeal as of right is quite different from a Rule 304(a) discretionary appeal like Arjmand's. Thus, *Partipilo* is wholly inapplicable to the present case.

Arjmand also cites *In re Marriage of Padilla & Kowalski*, 2018 IL App. (1st) 173064-U, a Rule 23 non-precedential order. In *Padilla*, the court cited *Berlin* heavily and acknowledged the purported district split. *Id.* at ¶¶ 77-78. The court acknowledged that "[t]he law is well established that unless specifically authorized by the rules of this court, the appellate court has no jurisdiction to review judgments, orders or decrees which are not final." *Id.* at ¶ 75 (quoting *Department of Cent. Mgmt. Servs.*, 182 Ill. 2d at 238). And just like *Berlin* and *Partipilo*, the *Padilla* appellant sought review of orders denying his motions for substitution "in connection with the appeal of an order that is appealable under Rule 307(a)(1)." *Id.* Again, *Berlin* was wrongly decided for the reasons set forth above. And, as explained, a Rule 307 appeal as of right is not the same as

a Rule 304 discretionary appeal like Arjmand's. Thus *Padilla*, just like *Berlin* and *Partipilo*, is inapplicable to Arjmand's case.

All of the cases Arjmand cites to support his contention that the denials of his petition for substitution for cause and his motion for substitution as a matter of right featured appeals brought in connection with a Rule 307 appeal as of right from an injunction. He fails to cite a single case in which a court has reviewed a denial of substitution of judge in the context of a discretionary and limited Rule 304(a) interlocutory appeal. In fact, in a subsequent Rule 23 non-precedential Order from the First District, the Court quoted the Second District's decision in *In re Nettleton* and the Third District's decision in *In re Marriage of Morgan* when it reasoned that:

> "[t]he denial of a motion for substitution of judge for cause is not a final order." *Inland Commer. Prop. Mgmt. v. HOB I Holding Corp.*, 2015 IL App. (1st) 141051, ¶ 19, 31 N.E.3d 795, 391 Ill. Dec. 820 (citing *Nettleton v. Terrell (In re Nettleton)*, 348 Ill. App. 3d 961, 968-69, 811 N.E.2d 260, 285 Ill. Dec. 19 (2004)). Rather, a motion for substitution of judge is an interlocutory order that is appealable on review from a final order. *Id.*; see also *In re Marriage of Morgan*, 2019 IL App. (3d) 180560, 432 Ill. Dec. 500, 129 N.E.3d 718 ("The denial of a motion for substitution of judge for cause is an interlocutory order and is not final for purposes of appeal").

People ex rel. Foxx v. $498 U.S.C., 2019 IL App. (1st) 190144-U, ¶ 18.

Therefore, this Court should resolve the purported "split" between the Districts by siding with the Second and Third Districts and hold that Appellate Courts lack jurisdiction to consider appeals from orders denying substitution and recusal in the context of a Rule 304(a) interlocutory appeal.

C. The Court Should Decline to Utilize the Instant Appeal as a Mechanism to Amend the Supreme Court Rules to Allow Interlocutory Appeals of Orders Denying Substitution or Recusal.

The second section of the Brief *Amicus Curiae* filed by the Illinois Chapter of the American Academy of Matrimonial Lawyers (the "Academy") argues that "[d]irect, mandatory, and expeditious appeals from orders denying motions for substitution of judge should be the law in Illinois." (Amicus Br. p. 5). Recognizing that the Supreme Court Rules currently do not permit such appeals, the Academy asks the Court to bypass the standard rule-making procedures set forth in Supreme Court Rule 3 and make direct appeal of orders of orders denying substitution or recusal mandatory under either Rule 306 or Rule 307. *Id*. Morgan Stanley respectfully requests that this Court decline the invitation to deviate from the traditional rule-making process and utilize this case to implement a significant change to the Rules on the appealability of interlocutory orders.

Illinois Supreme Court Rule 3 sets forth the rule-making procedures generally used by the Court to create or amend the Supreme Court Rules. "Typically, a proposed rule or amendment to an existing rule is considered by our rules committee and involves a public hearing process for adversarial testing." *People ex rel. Berlin v. Bakalis*, 2018 IL 122435, ¶ 26. While the Court has expressly preserved its "prerogative to depart from that process and "suspend the ordinary rulemaking process … 'bypassing the rules committee and public hearing process and amending the rule in an opinion of this Court is

a power that this court exercised sparingly.'" *Id.* (quoting *In re Michael D.*, 2015 IL 119178, ¶ 27).

Here, and while the Academy has weighed in on the question of the immediate — and in its view, mandatory — interlocutory appeal from orders denying substitution or recusal, that question has not been the subject of wider debate. As was the case in *Berlin v. Bakalis*, Morgan Stanley believes that implementing the Academy's proposed rule change, or any rule change that would allow for the immediate appeal of orders on substitution or recusal, "involves complicated policy questions that would benefit from a deliberative rule-making process." *Berlin*, 2018 IL 122435, ¶ 26. Employing the traditional rule-making process would enable the rules committee to solicit input from other stakeholders and to more deliberatively consider the impact of such a rule change on a wide variety of cases, and perhaps tailor any rule change in light of cases such as this, where one litigant files repetitive requests for substitution and recusal, while simultaneously pursuing appeals and PLAs on a variety of other unrelated matters.[4]

---

[4] While trying furiously to rid himself of Judge McJoynt by filing and amending three Petitions for SOJ for cause, Arjmand was a frequent visitor to the Appellate Court and, unsuccessfully, to this Court. *See*, *In re Arjmand*, 187 N.E.3d 695 (Ill. 2022) (Petition for Leave to Appeal Denied); *In re Marriage of Arjmand*, 89 N.E.3d 755 (Ill. 2017) (Petition for Leave to Appeal Denied); *In re Marriage of Arjmand*, 2017 IL App. (2d) 160631 (appeal dismissed for lack of jurisdiction); *In re Marriage of Arjmand*, 65 N.E.3d 841 (Ill. 2016) (Petition for leave to appeal denied.); *In re Marriage of Arjmand*, 42 N.E.3d 370 (Ill. 2015) (Petition for appeal as a matter of right denied.); *In re Marriage of Arjmand*, Case No. 119145, 39 N.E.3d 1002 (Ill. 2015) (Petition for appeal as a matter of right or leave to appeal denied.); *In re Marriage of Arjmand*, Case No. 119595, 39 N.E.3d 1002 (Ill. 2015) (Petition for appeal as a matter of right denied.)

Accordingly, Morgan Stanley requests that this Court decline the Academy's invitation to announce a rule change in this opinion and circumvent the normal procedures under Rule 3.

II. THE ORDERS DENYING ARJMAND'S AMENDED THIRD SOJ PETITION AND ARJMAND'S SOJ AS OF RIGHT OR RECUSAL MOTION WERE CORRECTLY DECIDED.

If this Court rules that the orders denying substitution and recusal may be considered in connection with Arjmand's Rule 304(a) appeal, it is clear that those orders were properly decided by Judge Kleeman and Judge McJoynt and should not be reversed on appeal. "Judges, of course, are presumed impartial, and the burden of overcoming the presumption by showing prejudicial trial conduct or personal bias rests on the party making the charge. *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 31 (citing *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002)).

Here, the lower courts' rulings were clearly consistent with Illinois case law, including the very cases cited by Arjmand in his opening brief to this Court. Fundamentally, Arjmand did not set forth any factual allegations that, even if taken as true, would have warranted substitution or recusal. As such, the trial courts correctly decided the issues, and the orders on substitution and recusal should not be disturbed.

A. The Order Denying Arjmand's Amended Third SOJ Petition was Correctly Decided on the Merits.

Section 2-1001(a)(3) provides for substitution "[w]hen cause exists." 735 ILCS 5/2-1001(a)(3). "Although the statute does not define 'cause,' Illinois courts

have held that in such circumstances, actual prejudice has been required to force removal of a judge from a case, that is, either prejudicial trial conduct or personal bias." *In re Marriage of O'Brien*, 2011 IL 109039, ¶ 30 (citing *Rosewood Corp. v. Transamerica Ins. Co.*, 57 Ill. 2d 247 (1974); *In re Marriage of Kozloff*, 101 Ill. 2d 526, 532 (1984)); *see also People v. Vanc*e, 76 Ill. 2d 171, 181 (1979). With respect to alleged bias based upon a judge's conduct during the pendency of the case, this Court has oft quoted the United States Supreme Court's decision in *Liteky v. United State*s, 510 U.S. 540, 555 (1994):

> "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial source; and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible."

In re Marriage of O'Brien, 2011 IL 109039, ¶ 31 (quoting *Eychaner v. Gross*, 202 Ill. 2d 228, 281 (2002) (quoting *Liteky*, 520 U.S. at 555)).

"A reviewing court will not reverse a determination on allegations of judicial prejudice unless the finding is contrary to the manifest weight of the evidence." *Gakuba v. Kurtz*, 2015 IL App. (2d) 140252, ¶ 24 (quoting *Jacobs v. Union Pacific R.R. Co.*, 291 Ill. App. 3d 239, 244 (5th Dist. 1997)). This is a highly deferential standard of review. "A judgment is against the manifest weight of the

evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on the evidence." *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶ 70 (citing *Bazydlo v. Volant*, 164 Ill. 2d 207, 215 (1995)).

Arjmand does not dispute the holding in *O'Brien* and its progeny, as his opening brief recognizes that "generally, proof of bias should stem from conduct or event[s] occurring outside of the court proceedings," (App. Br. p. 27), and he freely admits that does not rely upon any conduct or events occurring outside of court proceedings. (App. Br. p. 29). Still, and despite these longstanding holdings, Arjmand highlights a series of adverse rulings in an attempt to demonstrate "bias." Arjmand repeatedly points to adverse rulings against him and critical comments from Judge McJoynt (App. Br. p. 29-37) which rise nowhere near the level of antagonism or hostility toward him necessary to satisfy the element of cause required by Section 5/2001(a)(3). Again, Illinois law is clear that "[a] judge's rulings alone almost never constitute a valid basis for a claim of judicial bias or partiality." *Eychaner*, 202 Ill. 2d at 280.

This Court should not lose sight of the stark reality that Arjmand is appealing from his *third* petition to substitute Judge McJoynt for cause, not counting his three separate amendments to those petitions and his multiple motions for reconsideration of his prior failed attempts. Arjmand's repetitive attempts to replace Judge McJoynt – much like his failed attempt to have *every judge* in the Second District recused from his underlying appeal to that court –

demonstrates blatant attempts at judge shopping. This Court has "long recognized that courts may take cognizance of the circumstances surrounding a motion for substitution of judge and inquire into the good faith of the motion." *In re Estate of Wilso*n, 238 Ill. 2d 519, 606 (2010). "[O]ne may not 'judge shop' until he finds one in total sympathy to his cause. Any other rule would spell the immediate demise of the adversary system." *O'Brien*, 2011 IL 109039 at ¶ 30.

Judge Kleeman properly applied the standard recognized in *O'Brien* and similar cases and found that asserting baseless, unsubstantiated and conclusory allegations of bias bases on matters occurring during the life of the case is simply not enough to overcome the steep burden Arjmand faced. (C 12903 — 12904 V8). Judge Kleeman correctly found that Arjmand's Amended SOJ Petition was patently insufficient: even if the allegations as pled were true, they would still not be grounds for substitution. *Wilson*, 238 Ill. 2d at 554. Again, Arjmand freely admits that he has never made any allegation of bias stemming from an extrajudicial source. Instead, he only points to prior rulings and remarks made by Judge McJoynt during the course of this proceeding that, as a matter of law, do not rise to the level of antagonism or hostility that would warrant substitution. (App. Br. pp. 29 — 37).

Finally, Arjmand's argument that there was a procedural defect in the rulings because no evidentiary hearing was conducted after Judge McJoynt found that Arjmand's Amended Third SOJ Petition stated a cause of action and transferred the petition to Judge Kleeman falls flat. The transfer of the Amended

Third SOJ Petition to Judge Kleeman did not automatically entitle Arjmand to an evidentiary hearing. Quite to the contrary, under Illinois law, "a petition for substitution of judge for cause *shall be heard* by 'a judge other than the judge named in the petition.'" *Jacobs v. Union Pacific R.R.*, 291 Ill. App. 3d 239, 244 (5th Dist. 1997) (emphasis added) (quoting 735 ILCS 5/2-1001(a)(3)(iii)). Moreover, Section 2-1001(a)(3)(iii) makes clear that an evidentiary hearing is not required. In fact, it expressly states that the judge named in the petition for substitution does not need to testify and only may, but is not required to, submit an affidavit. *Id.* Further, there are ample examples of appellate courts affirming rulings on substitution motions without an evidentiary hearing being conducted. *See e.g., In re Marriage of Crecos*, 2015 IL App. (1st) 132756 ¶ 21. Judge Kleeman was not required to hold any type of hearing when he determined that the allegations in Arjmand's Amended Third SOJ Petition did not meet the statute's threshold requirements and the petition was deficient on its face. *See Wilson*, 238 Ill. 2d at 554.

Quite simply, Arjmand has failed to cite to a single factual allegation that would have warranted substitution, and he cites nothing in the PLA to show that Judge Kleeman's decisions were "unreasonable, arbitrary, or not based on the evidence." *See Lawlor,* 2012 IL 112530 at ¶ 70. As such, his Amended Third SOJ Petition was properly denied.

B. The Order Denying Arjmand's Motion for Substitution of Judge as of Right was Correctly Decided

There is no support for Arjmand's request for substitution of judge as of right under 735 ILCS 5/2-1001(a)(2). "Under section 2-1001(a)(2), a party's motion for substitution as a matter of right in a civil action 'shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.'" *Palos Cmty. Hosp. v. Humana Ins. Co., Inc.*, 2021 IL 126008, ¶ 25 (quoting 735 ILCS 5/2-1001(a)(2)(ii)). Thus, a party is not entitled to substitution as a matter of right where the judge in question has ruled on any substantial issue *in the case*. *See Ramos v. Kewanee Hosp.*, 2013 IL App. (3d) 120001, ¶ 88; *In re Annex Certain Terr. to the Village of Lemont*, 2017 IL App. (1st) 170941, ¶ 16; *Niemerg v. Bonelli*, 344 Ill. App. 3d 459, 464 (5th Dist. 2003).

Here, Judge McJoynt had been presiding over Arjmand's Divorce Proceeding for the better part of a decade by the time Arjmand filed his Motion for SOJ as of Right. Over the course of those many years, Judge McJoynt made scores of substantial rulings, some of which gave rise to the very claims Arjmand has asserted against Morgan Stanley in the Divorce Complaint. In fact, Arjmand only filed his motion seeking substitution as of right *after* he filed his Amended Third SOJ Petition seeking to substitute Judge McJoynt for cause based on his allegedly biased rulings throughout the history of the case, and only *after* Judge Kleeman denied that petition. Arjmand's contention that he can seek to

substitute Judge McJoynt as of right *after* actively litigating the case for almost a decade and after scores of substantial rulings had been made is baseless.

Arjmand's argument that his long expired ability to seek substitution as of right rose like a Phoenix from the ashes because he added new parties to the case – Morgan Stanley and the Stogsdill Defendants as defendants in the Divorce Complaint – flies in the face of the express language of Section 2-1001(A)(2)(ii). The argument is tantamount to saying that if a plaintiff or defendant adds new parties (or third parties) to an existing case several years into the proceeding after scores of substantial rulings, the existing plaintiff or defendant – not the newly added parties – would have the ability to seek substitution as of right. That, obviously, is not how substitution as of right works. Section 2-1001(a)(2)(iii) specifically addresses the issue of which party or parties may move for substitution as of right where a new party appears after substantive rulings have been made:

> If any party has not entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantive issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right *by the party*."

735 ILCS 2/2-1001(a)(2)(iii) (emphasis added).

Pursuant to the cannon of *expressio unius est exclusio alterius,* by explicitly providing that prior substantive rulings are not grounds to deny a motion for substitution as of right by the newly added party, the legislature made clear that the original parties do not revive their ability to seek substitution as

of right simply by adding new parties to the case. *See Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 17 ("Under the maxim of *expressio unius est exclusio alterius*, the enumeration of an exception in a statute is considered to be an exclusion of all other exceptions."); *People ex rel. Sherman v. Cryns,* 203 Ill. 2d 264, 286 (2003) ("We have previously observed that this rule of statutory construction 'is based on logic and common sense,' as '[i]t expresses the learning of common experience that when people say one thing they do not mean something else.'") (quoting *Bridgestone/Firestone, Inc. v. Aldridge,* 179 Ill. 2d 141, 152 (1997)). This Court "should avoid [such] a construction that would defeat the statute's purpose or yield absurd or unjust results." *Bowman v. Ottney*, 2015 IL 119000, ¶ 17 (citing *Krautsack v. Anderson*, 223 Ill. 2d 541, 558 (2006)).

Lastly, Arjmand's argument that because the *claims* asserted against Morgan Stanley and the Stogsdill Defendants are newly asserted claims and because Judge McJoynt had not previously made any substantive rulings on those claims, he can seek substitution as of right finds no support, anywhere. The qualifying condition in Section 2-1001(a)(2)(ii) is that the motion for substitution as of right must be filed "before the judge to whom it is presented has ruled on any substantial issue *in the case* …" (emphasis added). As indicated above, Judge McJoynt has ruled on scores of substantial issues in Arjmand's Divorce Proceeding, including with respect to the very matters that form the basis of the Divorce Complaint. That Judge McJoynt had not yet ruled on any substantive claim in the Divorce Complaint is irrelevant. *See Bowman v. Ottney*,

2015 IL 119000, ¶ 21 ("Considering the history of section 2-1001 and the goals sought to be achieved, we conclude that section 2-1001(a)(2)(ii) must be read as referring to all proceedings between the parties in which the judge to whom the motion is presented has made substantial rulings with respect to the cause of action before the court.").

Accordingly, the order denying Arjmand's request for substitution as of right was correctly decided and should be upheld.

C. The Order Denying Arjmand's Request for Recusal under Rule 63(C)(1) was Correctly Decided.

In the alternative, Arjmand asked Judge McJoynt to recuse himself pursuant to Rule 63(C)(1), not from the entire Divorce Proceeding, but only from presiding over the Divorce Complaint. Arjmand argues to this Court that Judge McJoynt's "impartiality might reasonably be questioned" (App. Br. p. 42) when it came to the Court's consideration of the claims against Morgan Stanley and his ex-wife's lawyers in the Divorce Complaint, because of Judge McJoynt's prior rulings freezing Arjmand's assets, allowing those assets to be liquidated to pay fees owed to his ex-wife's lawyers, and then ultimately ruling that Arjmand's Accenture Founders Shares were not marital property.

Illinois Supreme Court Rule 63(C)(1) outlines when a judge "shall" disqualify himself or herself, including where a judge has a personal bias or prejudice concerning a party or where the judge's impartiality might be reasonably questioned. As discussed above, Illinois has adopted the standard for impartiality in connection with recusal proceedings that was articulated by the

United States Supreme Court in *Liteky*. 510 U.S. 540, 555. That standard does not recognize events during the course of the proceedings as a basis for showing bias or partiality unless "they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*; s*ee also Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). The "trial judge is in the best position to determine whether he or she is prejudiced against the defendant when presented with a motion for recusal." *People v. Antoine*, 335 Ill. App. 3d 562, 570 (1st Dist. 2002); *In re Joshua S.*, 2012 IL App. (2d) 120197 ¶41, and whether a judge should recuse himself or herself is a decision that rests "exclusively within the determination of the individual judge." *In re Marriage of O'Brien*, 2011 IL 109039 ¶ 45. "When reviewing a trial judge's recusal decision, [the appellate court] must determine whether the decision was an abuse of discretion." *Barth v. State Farm Fire & Cas Co.,* 228 Ill. 2d 163, 175 (2008) (citing *People v. Kliner*, 185 Ill. 2d 181, 169 (1998)).

The question is not whether Arjmand believes Judge McJoynt was not capable of being fair, but whether an "objective, disinterested, observer fully informed of the relevant facts would entertain a significant doubt that the judge in question was impartial." *Barth*, 228 Ill. 2d at 176 ("We conclude that the test stated in Rule 63(C)(1) imposes an objective, reasonable person standard."). As previously discussed, controlling cases are clear that mere adverse rulings are not sufficient to show a credible claim for bias. *Eychaner*, 202 Ill. 2d at 280 ("A judge's rulings alone almost never constitute a valid basis for a claim of judicial

bias or partiality."); *Leavell v. Dept. of Nat. Res.*, 397 Ill. App. 3d 937, 963 (5th Dist. 2010) (Plaintiff "utterly failed to show that [the Judge's] impartiality in any of the cases" might reasonably be questioned). Arjmand has alleged nothing else here.

Even assuming that Judge McJoynt ruled against Arjmand on every litigated issue in the eight years he presided over the Divorce Proceeding – which he clearly did not, having ruled that Arjmand's Accenture Founder's shares were his non-marital assets – Arjmand still would not have a basis for recusal under Supreme Court Rule 63(C)(1). *See, e.g. Eychaner*, 202 Ill. 2d at 280 ("A judge's rulings alone almost never constitute a valid basis for a claim of judicial bias or partiality."); *In re Marriage of Hartian*, 222 Ill. App. 3d 566, 569 (1st Dist. 1991) ("A party seeking a change of venue must predicate its motion on facts other than adverse rulings."). "Rather, the party making the charge of prejudice must present evidence of prejudicial trial conduct and evidence of the judge's personal bias." *Eychaner,* 202 Ill. 2d at 280. Arjmand has not, and his displeasure with Judge McJoynt's rulings is not a basis for recusal. Under these circumstances, Judge McJoynt clearly did not abuse his discretion by failing to recuse himself.

Armand's Motion for Recusal is oddly similar to the Motion for Recusal filed by the disgruntled litigant in *Bush v. Bush*, 2020 IL App. (1st) 201035-U. Both were filed only after three unsuccessful attempt to substitute the judge for cause. As was the case in *Bush*, Arjmand's motion for Judge McJoynt's "recusal based on Rule 63(C)(1) was an inappropriate attempt to circumvent those orders"

denying his multiple SOJ for cause petitions. *Id.* at ¶ 22. "To allow such a tactic would thwart the administration of justice." *Id.* Like the First District in *Bush*, the Second District here properly did not "disturb the circuit court's decision on the motion to recuse." *Id.* Judge McJoynt's clearly did not abuse his discretion in declining to recuse himself, and Armand's motion seeking recusal under Rule 63(C)(1) was properly denied.

CONCLUSION

Morgan Stanley respectfully requests that this Court hold that the Second District lacked jurisdiction to consider: i) Judge Kleeman's orders denying Arjmand's petition for substitution of judge for cause under 735 ILCS 5/2-1001(a)(3)(iii); ii) Judge McJoynt's order denying Arjmand's motion for substitution of judge as of right under 735 ILCS 5/2-1001(a)(2)(ii); and iii) Judge McJoynt's order denying Arjmand's motion for recusal under Supreme Court Rule 63(C)(1)(a). Should the Court hold that the subject orders can be appealed as attendant to Arjmand's Rule 304(a) appeal from the order dismissing the Divorce Complaint, Morgan Stanley respectfully requests that the Court affirm the subject orders.

Dated: May 3, 2023

Respectfully submitted,

Morgan Stanley Smith Barney, LLC; Morgan Stanley & Co., LLC; Morgan Stanley & Co., Inc.; and Morgan Stanley Investment Management, Inc.

By /s/ *Robert Radasevich*
One of Their Attorneys

Robert Radasevich
Joshua H. Burday
Andrew T. Hamilton
Neal Gerber & Eisenberg LLP
Two North LaSalle Street, Suite 1700
Chicago, IL 60602-3801
(312) 269-8000
rradasevich@nge.com
jburday@nge.com
ahamilton@nge.com

RULE 341(C) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 42 pages and contains 11,304 words.

/s/ Robert Radasevich
Robert Radasevich

PROOF OF FILING AND SERVICE

The undersigned, an attorney, certifies that on May 3, 2023, the **APPELLEES' BRIEF OF MORGAN STANLEY, SMITH BARNEY, LLC, MORGAN STANLEY & CO., LLC, MORGAN STANLEY & CO., INC., MORGAN STANLEY INVESTMENT, MANAGEMENT, INC.,** was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system, and a pdf copy was served by email upon the following counsel at the email addresses indicated below. Once a file-stamped copy is available from the Clerk, a paper copy will be served upon the following counsel at the postal addresses indicated below by placement in the United States mail at Two North LaSalle Street, Chicago, Illinois, 60602, in envelopes bearing sufficient first-class postage:

Bryan M Sims Sims Law Firm, Ltd 1700 Park St., Suite 206 Naperville, Illinois 60563 bsims@simslawfirm.com	Anthony Sammarco The Stogsdill Law Firm, P.C. 1776 S. Naperville Rd, B-202 Wheaton, Illinois 60189 tony@stogsdilllaw.com
Michael G. DiDomenico Lake Toback DiDomenico 333 N. Dearborn St., Suite 1720 Chicago, IL 60602 mdidomenico@laketoback.com	

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Robert Radasevich
Robert Radasevich

010463.0865:35194970.2