

HILLSBOROUGH, SS
NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

SUPERIOR COURT
04-E-0251

Edward J. Burke

v.

Bunny's Superette, Inc., Thomas M. Burke,
Marie I. Burke and Bernardine P. Donelson

AMENDMENT TO PLAINTIFF'S EXHIBIT LIST

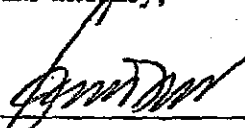
The plaintiff intends produce the following additional exhibits at the Trial in this matter which shall occur on Wednesday, June 15, 2005:

1. All Durable Powers of Attorney signed by Marie I. Burke.
2. All Health Care Powers of Attorney signed by Marie I. Burke.
3. All transmittal letters conveying conformed copies of Powers of Attorney, wills, trust or trust amendments.
4. Marie I. Burke's current will and all prior wills.
5. Marie I. Burke's Revocable Trust.
6. All amendments to Marie I. Burke's Revocable Trust.
7. All checking account statements, registers and cancelled checks of Marie I. Burke.
8. All summaries of checking accounts, income and expenses, prepared on Marie I. Burke's behalf for accountants.
9. Copies of all statements from stock brokers, investment advisors or others regarding Marie I. Burke's stocks, bonds or any and all other investments.
10. Copies of all bank accounts, certificates of deposit, stocks and bonds and any and all other investments of Marie I. Burke.
11. Copies of all of Marie I. Burke's income tax returns.
12. Copies of all of Marie I. Burke's financial records.

The plaintiff reserves the right to update this list of exhibits up to and including the time of trial.

Respectfully submitted,
Edward J. Burke
By his attorney,

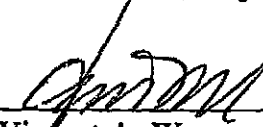
Date: June 8, 2005

By: 

Vincent A. Weners, Jr., Esquire
84 Bay Street
Manchester, NH 03104
(603) 669-3970

CERTIFICATION

I hereby certify that on 8th day of June, 2005, a copy of the within Amendment to Plaintiff's Exhibit List was mailed to James A. Normand, Esquire, Ovide M. Lamontagne, Esquire, Danielle L. Pacik, Esquire and Ruth Tolf Ansell, Esquire, opposing counsel.



Vincent A. Weners, Jr., Esquire

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HILLSBOROUGH, SS
NORTHERN DISTRICT

STATE OF NEW HAMPSHIRE

SUPERIOR COURT
04-E-0251

Edward J. Burke

v.

Bunny's Superette, Inc., Thomas M. Burke,
Marie I. Burke and Bernardine P. Donelson

SECOND AMENDMENT TO PLAINTIFF'S EXHIBIT LIST


The plaintiff intends produce the following additional exhibits at the Trial in this matter which shall occur on Wednesday, June 15, 2005:

1. Copies or originals of all Wills executed by Marie I. Burke prior to January 7, 1999.
2. A list of Marie I. Burke's assets prepared by Thomas M. Burke and given to Ruth Tolf Ansell, Esquire.
3. A list of Marie I. Burke's grandchildren by name and birth date prepared by Thomas Burke and given to Ruth Tolf Ansell, Esquire.
4. All documents relating to the purchase and/or sale of real estate situate at: Rockland Avenue, Manchester, NH; North Adams and Webster Streets, Manchester, NH; and Webster Street, Manchester, NH.

The plaintiff reserves the right to update this list of exhibits up to and including the time of trial.

Respectfully submitted,
Edward J. Burke
By his attorney,

Date: June 13, 2005

By 
Vincent A. Weners, Jr., Esquire
84 Bay Street
Manchester, NH 03104
(603) 669-3970

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THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
NORTHERN DISTRICT

SUPERIOR COURT

Docket No. 04-E-0251

Edward J. Burke

v.

Bunny's Superette, Inc.
Thomas M. Burke
Marie I. Burke
Bernardine P. Donelson

EX PARTE MOTION TO QUASH SUBPOENA
SEEKING PRODUCTION OF DOCUMENTS

NOW COME Respondent, Marie I. Burke, by and through her attorneys, Ansell & Anderson, P.A., and Attorney Ruth Tolf Ansell, and respectfully move to submit the following:

1. On June 13, 2005, the Petitioner served upon Respondent, Marie I. Burke, a *subpoena duces tecum*, attached as Exhibit A, seeking to compel the production of documents at 9:00 a.m. on June 15, 2005; one hour prior to the commencement of the trial in this matter.
2. Also on June 13, 2005, the Petitioner served upon Attorney Ruth Tolf Ansell a *subpoena duces tecum*, attached as Exhibit B, seeking to compel the production of documents at 9:00 a.m. on June 15, 2005, one hour prior to the commencement of the trial in this matter.
3. Each of the *subpoena duces tecum* include a demand for the production of documents not included on the Plaintiff's Exhibit List (filed on May 24, 2005) or

Amended Exhibit List (filed on June 8, 2005).

4. The Plaintiff never requested the production of many of the documents included in the *subpoena duces tecum* prior to June 13, 2005.
5. At the pre-trial conference on January 20, 2005, it was agreed that discovery in this matter would be concluded by May 2, 2005. See Rule 62 Conference Report.
6. Transmittal letters conveying conformed copies of estate planning documents and all other communication between an attorney and her clients is protected from disclosure under the attorney-client privilege. Many of the requested documents fall within the attorney client privilege. Rule 502, Evidence.
7. Many of the requested documents are not relevant to the pending issues and the requests are overly broad, not being limited in time or scope. By example, Maire I. Burke cannot produce copies of all income tax returns that she ever signed, all checking account statements, registers and checks, or all investment statements.
8. An undue burden would be imposed on Marie I. Burke and Ruth Tolf Ansell to produce all of the requested information in less than two days before trial.

WHEREFORE, Respondent Marie I. Burke and Attorney Ruth Tolf Ansell respectfully request that this Court:

- A. Quash the subpoena issued to Marie I. Burke;
- B. Quash the subpoena issued to Attorney Ruth Tolf Ansell; and
- B. Grant such other and further relief as the Court deems equitable, just, and proper.

Respectfully submitted,

MARIE I. BURKE

By and through her attorneys,

ANSELL & ANDERSON, P.A.

Date: June 14, 2005



Ruth Tolf Ansell, Esquire
40 South River Road, Unit #32
Bedford, NH 03110
(603) 644-8211

Date: June 14, 2005



Ruth Tolf Ansell, Esquire
40 South River Road, Unit #32
Bedford, NH 03110
(603) 644-8211

CERTIFICATION OF SERVICE

I certify that on this date I hand delivered copies of the foregoing to: Vincent A. Weners, Jr., Esquire, 84 Bay Street, Manchester, NH 03104; James A. Normand, Esquire, 15 High Street., Manchester, NH 03104; Ovide M. Lamontagne, Esquire, 111 Amherst Street, Manchester, NH 03101; and Danielle Pacik, Esquire, 111 Amherst Street, Manchester, NH 03101.

Date: June 14, 2004



Ruth Tolf Ansell, Esquire

SUBPOENA DUCES TECUM

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS

TO: Ms. Marie Burke
121 Arah Street
Manchester, NH 03104

You are required to appear before the Hillsborough County Superior Court, 300 Chestnut Street, Manchester, New Hampshire, on Wednesday, June 15, 2005 beginning at 9:00 a.m. for a Court Trial to be held by and betwixt

Edward J. Burke v. Bunny's Superette, Inc., Thomas M. Burke, Marie I. Burke and Bernardine P. Donelson

and you are required to bring with you and produce at the time of the Court Trial aforesaid, the documents in the attached list.

HEREOF FAIL NOT, as you will answer your default under the penalties prescribed by law.

Dated at Manchester, N.H. June 13, 2005



Vincent A. Weners, Jr., Justice of the Peace

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Edward J. Burke v. Bunny's Superette, Inc., Thomas M. Burke, Marie I. Burke and Bernardine P. Donelson

Hillsborough County Superior Court
Northern District
Docket No.: 04-E-0251

**DOCUMENTS TO BE PRODUCED FOR SUBPOENA DUCES TECUM
FOR COURT TRIAL ON JUNE 15, 2005 AT 9:00 A.M.**

1. All exhibits listed by any other party to this action.
2. Any and all e-mail correspondence, hand-written notes or other documents which relate to this claim.
3. Any and all e-mail correspondence, hand-written notes or other documents including, but not limited to, accounting records, loan documents and tax returns which relate to Bunny's Superette, Inc. and this claim.
4. Any trust documents or wills executed by Marie I. Burke.
5. Any deeds to or from the parties.
6. Any and all correspondence exchanged by the parties.
7. Any and all pleadings, interrogatory answers, depositions, photographs or other documents in the possession of any party to this case or referred to by any party in this case.
8. All Durable Powers of Attorney signed by Marie I. Burke.
9. Health Care Powers of Attorney signed by Marie I. Burke.
10. All transmittal letters conveying conformed copies of Powers of Attorney, wills, trust or trust amendments of Marie I. Burke or the Marie I. Burke Trust.
11. All checking account statements, registers and cancelled checks of Marie I. Burke.
12. All summaries of checking accounts, income and expenses, prepared on Marie I. Burke's behalf for her accountants.
13. Copies of all statements from stock brokers, investment advisors or others regarding Marie I. Burke's stocks, bonds or any and all other investments.

14. Copies of all bank accounts, certificates of deposit, stocks and bonds and any and all other investments of Marie I. Burke.
15. Copies of all of Marie I. Burke's income tax returns.
16. Copies of all of Marie I. Burke's financial records.
17. Copies or originals of all Wills executed by Marie I. Burke prior to January 7, 1999.
18. A list of Marie I. Burke's assets prepared by Thomas M. Burke and given to Ruth Tolf Ansell, Esquire.
19. A list of Marie I. Burke's grandchildren by name and birth date prepared by Thomas Burke and given to Ruth Tolf Ansell, Esquire.
20. All documents relating to the purchase and/or sale of real estate situate at: Rockland Avenue, Manchester, NH; North Adams and Webster Streets, Manchester, NH; and Webster Street, Manchester, NH.

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SUBPOENA DUCES TECUM

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS

TO: **Ruth Tolf Ansell, Esquire**
Ansell, Barradale Law Firm
40 South River Road
Bedford Place - Unit 32
Bedford, NH 03110

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Edward J. Burke v. Bunny's Superette, Inc., Thomas M. Burke, Marie I. Burke and Bernardine P. Donelson

and you are required to bring with you and produce at the time of the Court Trial aforesaid, the documents in the attached list.

HEREOF FAIL NOT, as you will answer your default under the penalties prescribed by law.

Dated at Manchester, N.H. June 13, 2005



Vincent A. Weners, Jr., Justice of the Peace

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Edward J. Burke v. Bunny's Superette, Inc., Thomas M. Burke, Marie I. Burke and Bernardine P. Donelson

Hillsborough County Superior Court
Northern District
Docket No.: 04-E-0251

**DOCUMENTS TO BE PRODUCED FOR SUBPOENA DUCES TECUM
FOR COURT TRIAL ON JUNE 15, 2005 AT 9:00 A.M.**

1. All exhibits listed by any other party to this action.
2. Any and all e-mail correspondence, hand-written notes or other documents which relate to this claim.
3. Any and all e-mail correspondence, hand-written notes or other documents including, but not limited to, accounting records, loan documents and tax returns which relate to Bunny's Superette, Inc. and this claim.
4. Any trust documents or wills executed by Marie I. Burke.
5. Any deeds to or from the parties.
6. Any and all correspondence exchanged by the parties.
7. Any and all pleadings, interrogatory answers, depositions, photographs or other documents in the possession of any party to this case or referred to by any party in this case.
8. All Durable Powers of Attorney signed by Marie I. Burke.
9. Health Care Powers of Attorney signed by Marie I. Burke.
10. All transmittal letters conveying conformed copies of Powers of Attorney, wills, trust or trust amendments of Marie I. Burke or the Marie I. Burke Trust.
11. All checking account statements, registers and cancelled checks of Marie I. Burke.
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COPY

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.
NORTHERN DISTRICT

SUPERIOR COURT
04-E-0251

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Thomas M. Burke, Marie I. Burke,
and Bernardine P. Donelson

PLAINTIFF'S REQUESTS FOR FINDINGS OF FACT AND RULINGS OF LAW

The Plaintiff respectfully requests that the Court make the following findings of fact and rulings of law:

1. There existed between Bernard Burke, his wife, Marie Burke, and their children, Edward J. Burke, Thomas M. Burke, and Bernardine P. Donelson, a verbal agreement that all of the property owned by Mr. and Mrs. Burke, consisting primarily of the business known as Bunny's Superette, and the real estate and personal property which was derived primarily from the profits and operation of that business, (i.e. situate on Pine Street, 68 and 100 Webster Street, Liberty Street and Arah Street) belonged to the members of the Burke family in equal shares. Specifically, Mr. Burke and his children agreed that the business of Bunny's Superette, the land and building on which it was situate, and various other real estate, in addition to Mr. Burke's estate, was "all of ours in equal shares". The consideration for the agreement was, on the part of the children, that each of them work hard in the family business without compensation. The children did so and Mr. and Mrs. Burke, although keeping the legal title to the property in their name or names until 1999, acted in compliance with the agreement.

2. The agreement between the parties continued and was observed after Mr. Burke's

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death in 1991. Specifically, Marie Burke, Edward J. Burke, Thomas M. Burke and Bernardine P. Donelson agreed that all such property continued to be owned equally by the parties. 3.

3. Specifically, after Bernard Burke died, the business known as Bunny's Superette was owned in four equal shares (and incorporated and formalized by the issuance of shares) and, it was agreed that Mrs. Burke would continue to hold legal title to the real estate in her name, although Thomas and Edward Burke would manage the property for her and generate net rental for her income. The business, the real estate, and the balance of her estate, continued to be owned equally by the four (4) members of the Burke Family during their lifetimes and, at Marie Burke's death, would pass in one-third equal shares to Thomas, Edward and Bernardine.

4. Oral agreements between parents and children to hold property in such a manner or to leave an estate to children in such a manner is not unusual in New Hampshire jurisprudence. See, Tsiatsios v. Tsiatsios, 140 N.H. 173 (1995) and Shaka v. Shaka, 120 N.H. 780 (1980). Compliance with the Statute of Frauds or Statute of Wills is not required in order to enforce such an agreement. See, Foley v. Elliot Hospital, 98 N.H. 186 (1953); Boyle v. Dudley, 87 N.H. 282 (1935). The grounds for enforcing a contract include full performance, part performance, detrimental reliance, quantum meruit, fraud, undue influence, and other equitable considerations.

5. In Tsiatsios, supra, the decedent orally promised to bequeath a farm and motel to his children in exchange for their promise to provide services to him without monetary compensation. The children performed their part of the bargain for a good part of their lives, working hard from a young age and foregoing many youthful activities. The decedent often repeated his promise regarding his bequest of the real estate to the children in exchange for their services. After his wife died, the decedent hired a housekeeper and executed a will leaving the property to his female housekeeper. The jury found that the decedent had made an oral promise