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Community Property

California is a community property state. Generally all assets and liabilities acquired during a lawful marriage and before permanent separation or filing for dissolution is presumed to belong to the community. However, spouses seeking to claim separate rights to property may rebut that presumption by demonstrating that the property was acquired by separate funds, bequeathed or bequeated to one spouse only by that spouse's relatives, and kept separately from the community. Upon dissolution, each spouse is entitled to one half of the community assets after accounting for liabilities and separate contributions..

1. Condo

Separate Property

The community property presumption may be rebutted if a spouse can show that the property was inherited or bequeathed from that spouse's relatives solely to the spouse seeking to rebut the presumption. One factor considered in determining the property's classification is whether the property was kept and used separately by the recipient spouse.

Here, the facts state that H inherited his uncle's condo in 2010, two years after the marriage. No facts indicate that the uncle intended to bequeath the condo to H and W jointly, or attempted to so. The only other fact stated regarding possession and use of the condo is that W subsequently insists that H transfer the condo title to a joint tenancy with W "to avoid probate."

Until this attempted transmutation, the condo is properly classified as H's separate property. Although H transfers the condo title to joint tenancy with W, he can argue that the transmutation was invalid, that he was unduly influenced to do so, and that the condo remained separate property.

Transmutation

Transmutation occurs when one or both spouses attempt to reclassify separate property to community property or community property to separate property. In order for this transmutation to be valid, there must be an express intent of the owner to relinquish their ownership in reclassifying the property.

Here, H transfers the condo title to joint tenancy with W at W's insistence "to avoid probate." Although H transfers the condo title, he never expresses a desire to relinquish his ownership for W's benefit.

W is unlikely to be able to show that H's transfer of the condo title was a valid transmutation.

Undue Influence

The confidentiality afforded spouses for marital privilege is accompanied by the highest duty of care by each spouse to one another. Accordingly, if one spouse is successful in obtaining separate property rights to the other spouse's separate property in the course of a marriage, and that transmutation deprives that spouse and the community of a benefit, the benefiting spouse must rebut the presumption that they acquired those separate property rights by unduly influencing the original owner spouse. W will argue that the transfer was intentional and resulted in the benefit of avoiding probate issues.

There is insufficient information to show whether W would be able to challenge a claim that she unduly influenced H to transfer the condo title to joint tenancy.

Tracing

Upon dissolution, a spouse can claim entitlement to reimbursements to contributions made to the community from separate funds.

Again, H inherited the condo from his relative irrespective of his relationship to

W. The condo was worth \$250,000 at the time he transferred the title. After the title transfer, the condo's value increased. Even if a court determines that the condo is community property, H might argue that he contributed more to the condo's interest. W might argue that after the title transfer, her contribution to the community entitled her to the condo's increased value, but no facts show that W actually contributed to the condo or its increased value. Ultimately, the condo was obtained entirely as separate property and transferred in its entirety to the community, and tracing is not applicable here.

Conclusion

The transmutation of the condo from H's separate property to community property was invalid, and should be classified as H's separate property at dissolution.

2. Motorcycle

CP vs. SP

See rules above

Here, H obtained the motorcycle after the lawful marriage. Although he took title in his name alone, no facts indicate that he established and maintained the motorcycle's classification as separate property. In any event, he acquired the motorcycle with a loan obtained during the marriage, and subsequently used community funds to pay off the loan.

The motorcycle is community property, subject to accounting for H's separate contribution.

Tracing

See rule above

Here, H used separate funds inherited from his uncle to pay for 50% of the motorcycle. He could claim reimbursement for his separate contribution to the motorcycle. However, the remaining balance was a liability to the community, which was likely accompanied by debt interest. In seeking to obtain 75% of the motorcycle's value, he would also have to subtract 50% of the debt interest paid for by the community.

3. Camper Van

Gift

When one spouse gives another spouse property with the intent to give a gift, the property is presumed to become the recipient spouse's separate property. Upon dissolution, a party may seek entitlement to contributions they made to the gift.

Here, W bought H a used camper van titled solely in H's name on H's birthday, using \$20,000 in community funds. Thereafter H used the camper van for summer fishing trips with his friends. There are no facts to support an argument by W that the camper van was used for the benefit of the community or that W retained any kind of interest in the van. The fact that W gave the van to H on his birthday further demonstrates that it was intended as a gift, rather than a community property acquisition.

The camper van is H's separate property upon dissolution, subject to tracing its purchase funds from the community.

Tracing

See rule above

W took \$20,000 out of community funds to purchase the camper van. Although a court will likely find the van to be H's separate property, W can argue that she

is entitled to reimbursement based on her share of the contribution to the community, \$10,000.

4. A1 Bank Account

W's Income

The community presumption that applies to assets and liabilities obtained during the marriage applies to W's income obtained after 2008.

Thus, W's monthly income was presumed to belong to the community.

Transmutation

See rule above

Here, W deposited her earnings into an individual account at A1 Bank in W's name without telling H. H does not have knowledge of the account until the final dissolution hearing, nor do any facts indicate that the community benefited from W's separate account. Neither H nor W expressed the requisite intent to reclassify W's earnings from community property to W's separate property.

Thus, W's deposit of her earnings to the A1 Bank Account was not a valid transmutation, and she is liable to the community for those deposits.

Abatement

When a spouse violates their fiduciary duties to the marriage by converting community property to separate property without the other spouse's knowledge, a court may use the violating spouse's separate property to reimburse the community.

Here, W had impermissibly and secretly been depositing community income into a secret, separate bank account throughout the entire course of H and W's

marriage. H discovered the A1 bank account immediately before the final hearing dissolution. Accordingly, H can seek an accounting of this bank account to abate all the community funds wrongfully converted by W.

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