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To: Wendy Burke

From: Andrew Washington

Date: July 25, 2023

RE: In re Marriage of Burke

Introduction

It was a pleasure speaking with you. Please see my analysis below regarding (1) whether the Harlan's DigitalAudio shares are community property or separate property (2) did the community devote more than minimal effort involving Harlan's DigitalAudio shares during marriage so as to acquire an interest in any increase in value, during marriage, of the shares resulting from the community property, and (3) should the family court apportion the \$200 million increase in value, during marriage, of Harlan's DigitalAudio shares?

Statement of Recommendation

Wendy should accept the offer, as the court will likely weigh both *Pereia* and *Van Camp* methods and likely come to a similar result.

Analysis

Issue 1: Are Harlan's DigitalAudio shares community property or separate property?

Property that either spouse acquires during marriage belongs to the marital community - it is community property. CFC 760. At dissolution, community property is awarded to each spouse in an equal 50 percent share. CFC 760. Section 2550. In contrast, property that either spouse acquired before marriage belongs to that spouse - it is his or her separate property. CFC 760. Sec. 770. Likewise, the proceeds of property that either spouse acquired before marriage also belong to that spouse - the proceeds are also his or her separate property - even if he or she acquires the proceeds during marriage. CFC 760. At dissolution, separate property is confirmed in its entirety to the owning spouse CFC 760. Sec 2550.

As in the *Rand* Case, in the instant case, property that either spouse acquires during marriage belongs to the marital community. Here the business fluctuated. Furthermore, proceeds of property that Harlan acquired before marriage also belong to Harlan. Such proceeds would be his or her separate property - even if he acquires the proceeds during marriage.

In conclusion, Harlan's share is community property.

Issue 2: Did the community devote more than minimal effort involving Harlan's DigitalAudio shares during marriage so as to acquire an interest in any increase in value, during marriage, of the shares resulting from the community property?

But because Marriage is an egalitarian partnership, whenever the community devotes more than minimal effort involving a spouse's separate property during marriage, the community acquires an interest in any increase in value, during marriage, of the separate property, and that interest is community property. Dekker.

In Rand, the court held that it was undisputed that the community devoted more than minimal effort involving Charles's share during marriage through Charles's hard work for the business between 1986-1991. Although, Linda did not work for the business, the fact is inconsequential. The community acts whenever either of the spouses acts.

Similar to Rand, Linda did not go to the business but stayed at home and raised the children. Similar to Rand, the court in the instant case will likely determine that the community acts whenever Harlan acts and the fact that Linda did not go to work did not work for the business, the fact is inconsequential.

In conclusion, the community did devote more than minimal effort involving DigitalAudio.

Issue 3: How should the family court apportion the \$200 million increase in value, during marriage, of Harlan's DigitalAudio shares?

Under the Pereira, which applies when the increase in value, during marriage, of one spouse's separate property is principally due to community efforts. The Pereira approach requires the family court to apportion the increase in value mainly to the community estate. Another approach to apportionment is under the Van Camp, which applies when the increase in value during marriage of one spouse's separate property is principally due to factors other than community efforts - again when such efforts are the predominant cause of the increase. The Van Camp approach requires the family court to apportion the increase in value mainly to the estate of the owning spouse.

In the Rand, the court held that the family court properly characterized Charles' RIC shares as his separate property. The court determined that it was undisputed that Charles acquired his shares prior to marriage. In Rand, the court also concluded that the community acquired an interest in the increase in value, during marriage, of Charles's RIC shares. The court ruled that there are two separate periods during marriage: The first between 1986 and 1991, was the Pereira period, during which the increase in value of Charles's RIC shares was principally due to community efforts. The court ruled that it was on account of Charles hard work was the predominant cause of the increase. The second period between 1991 and 2004, was the Van Camp period, during which the increase was principally due to facts other than community efforts, such as market forces were the predominant cause of the increase.

Similar to Charles Rand, the in instant case Mr. Burke (Harlan) also founded DigitalAudio prior to his marriage to Mr. Burke (Wendy). As in Rand's struggles from the beginning to the

company, Harlan also struggled with starting the company because ProAudio got off to a very rocky start. As Ms. Gardner Stated, the company had to be redeveloped several times. It was Harlan pre-marriage that was able to keep updating SoundAudio, and DigitalAudio was able to keep selling until ProAudio became marketable. The company would not have come to existence if it wasn't for all of Harlan's hardwork (premarriage).

Also, similar to Rand, there are two separate periods for the marriage. In the instant case from 1993 when the company was formed to 1989 when Harlan and Wendy were married. Furthermore, in 2009 when the company shares were worth \$200 at the time of separation.

Similar to Rand, in the instant case, it is likely they use both Pereira Method and Van Camp method to separate the labor and earnings growth (Pereira) vs the growth from the result of the character and nature of the market (Van Camp).

In conclusion,

Similar to Rand, in the instant case, it is likely they use both Pereira Method and Van Camp method to separate the labor and earnings growth (Pereira) vs the growth from the result of the character and nature of the market (Van Camp).

Conclusion,

Thank you for allowing me to help you with this analysis, if there is anything else I can assist you with please let me know.

Question #3 Final Word Count = 1056

END OF EXAM