



# Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

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## Ron's Corner

The Appeal Decision of *In re the Marriage of Dorothy and Joseph Ciprari* demonstrated that tracing need not be confined to using either the **Direct** or **Exhaustion** method when shown to the court to be inadequate. As stated by the Appellate Panel in this case, *“Trial courts have the flexibility to consider any credible evidence and to evaluate alternative tracing methods to determine whether the proponent of the tracings carries his or her burden of proof.”*

Cases requiring a complex tracing investigation demand that the forensic accountant possesses a meticulous enough conceptual understanding of tracing methodologies to achieve the most positive outcome for the client. He or she must employ due diligence and discernment to draw on whatever combination of procedures are at his or her disposal to reach a logical convincing conclusion.

This case required careful study of approximately 17,000 account entries in 23 accounts over a nearly 20-year period to reach the most accurate findings. The result of employing an alternative tracing method was the Appellate Court upholding the ruling that more than \$5,000,000 of commingled assets was indeed separate property and belonged exclusively to our client.

Should you have questions concerning alternative tracing methods and when to use them, contact me.

Ron

\* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.

## Has Tracing Changed or Remained the Same?

### In re the Marriage of Dorothy and Joseph Ciprari

### Court of Appeal Decision Related to Forensic Accounting

Presented by Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA

#### Part 2

In *part one*, I provided the background of the appeal case of Dorothy (“DeeDee”) and Joseph (“Joe”) Ciprari that dealt with the most contested portion of the case, the tracing issue. On appeal, DeeDee attacked the detailed tracing analysis performed by me, on which the trial court relied. Here in *part two*, I address why the Appeals Court concluded the tracing I performed was valid and constituted substantial evidence in support of the judgment. (You may download part 1 at <https://www.anfusocpa.com/wp-content/uploads/Newsletter-47.pdf>)

### The Trial Court Did Not Err by Adopting the Tracing I Performed

The Appellate Panel saw no reason to straitjacket trial courts by adopting DeeDee’s prohibition of tracing methods to other than the two she identified. *Tracing is simply a method of proof.* As noted above, trial courts have the flexibility to consider any credible evidence and to evaluate alternative tracing methods to determine whether the proponent of the tracings carries his or her burden of proof. *The tracing method may vary depending on the facts.* Thus, trial courts are free to consider and credit reasonable, well-supported, non-speculative expert testimony when determining whether the proponent has successfully traced commingled assets to a separate property source. {See *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 753, 771-772.}

The trial court knew my tracing did not fit neatly into either of the two common methods (*Direct* and *Exhaustion Tracing*), and it combined some aspects of each. Moreover, my tracing was far more complicated than the tracing of *Cochran*. {See *In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1057}. Nevertheless, the trial court found the



## Why Attorneys Choose Us for Cases Involving Complex Tracing

### Our Ability to:

- Discern, select and consistently apply the most effective method of tracing to each case taking into account the unique nature of the respective case
- Get all the facts, no matter the level of difficulty and number of transactions to unravel
- Provide mistake-free conclusions
- Present details and findings clearly to all parties (*attorneys, clients, judges, appellate panels, etc.*)
- Back up our findings with concise, accurate, convincing testimony
- Confidently handle the toughest cross examination

When you need a forensic accountant to perform tracing, choose

**Ron J Anfuso, CPA/ABV**  
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*the better choice*

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of living and support needs analysis; financial specialists and Collaborative Law; gross cash flow available for support; DissoMaster™; divorce tax issues; divorce—what to expect; and business valuation.

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tracing was “*appropriate*,” “sufficiently traced the accounts,” and that “Respondent carried the burden of proof with respect to the marital tracing.”

The Appellate Panel concluded that the trial court was correct in finding that, unlike in a traditional direct tracing, the presumption I employed that all investments were community property until no more community cash remained in the account rendered Joe’s intent irrelevant. The tracing “gave” the investment opportunity first to the community, by characterizing all investments as community property whenever sufficient community property funds were available in the account to purchase the securities. But, whenever the community property funds in an account had been exhausted, by process of elimination, I characterized the remaining funds as separate property because only separate property remained in the account. Thus, I characterized investments made from those separate property funds as separate property.

DeeDee asserted that Joe was required to demonstrate no community funds were available in *any* account before a purchase could be characterized as separate property. However, this confused the nature of Joe’s tracing with a traditional *exhaustion* tracing. The two are not the same, as the trial court recognized, and their requirements differ. In this case, the commingled funds were in a number of separate, identifiable investment accounts. Thus, I had the burden to trace Joe’s separate property through each of those various accounts. That there may have been community funds available elsewhere — whether in another investment account or in one of the couple’s community bank accounts — was irrelevant to the tracing because it would not have altered the characterization of the funds inside any given account. And, unlike community living expenses, which were presumed to have been made with community funds if any such funds were available anywhere, *Cochran* taught us there was no reason to presume an investment made from a commingled fund was a community asset if, through tracing, it could have been demonstrated that all community funds in the account were exhausted before the investment was made.

Here, as reflected in the statement of decision, after considering the entirety of the evidence, the trial court found Joe carried his burden of proof with respect to the marital tracing, and the court adopted my tracing. Thus, the Appellate Panel concluded substantial evidence supported the trial court’s findings. The findings were consistent with the rule that separate property that had been commingled with community property did not lose its separate property status so long as it could have been traced back to a separate property source.

The statement of decision also contained the trial court’s findings that the tracing proved that \$3,791,653 of the remaining assets of the marital estate were Joe’s separate property and that there were reimbursements due in the amount of \$1,389,288, for a total separate property due to Joe in the amount of \$5,180,941. The trial court adopted my characterization of the parties’ assets as of the date of separation and the Appellate Panel found these findings were also supported by substantial evidence.

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