



# Forensic Accounting Today

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

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## Ron's Corner

When a property owner enters into a marriage and the marital community pays the property's mortgage during the marriage, California law provides a formula called *Moore/Marsden* for apportionment of the property's value at the end of the marriage. This formula allows the marital community's value to grow, in what would otherwise be separate property, until the date of the parties' separation. (*In re Marriage of Moore (1980) 28 Cal.3d 366, 371-372*; and *In re Marriage of Marsden (1982) 130 Cal.App.3d 426, 436-440*).

The Moore/Marsden formula applies to the case presented here— *In re Marriage of Jodie and Greg Mohler*. The residence they lived in together included two periods of separate property, one prior to their marriage and the other between their separation and trial. This was in addition to the period of community when the parties shared the home. I acted as expert to the Respondent and Appellant (Greg).

In this case, Watts charges may apply due to one of the spouses (Greg) continuing to live in their previously shared home after their date of separation for approximately seven years (*Marriage of Watts (1985) 171 Cal.App.3d 366, 373-374*). Our article elaborates on how the trial court erred in its application of the Moore/Marsden formula and covers the Appellate Court's conclusions.

I think you will find the case presented here informative. Should you have questions concerning Moore/Marsden or Watts charges, I welcome you to contact me.

Ron

## In re Marriage of Jodie and Greg Mohler: Moore/Marsden and Watts Charges Rulings

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

### Background

Greg and Jodie Mohler were married on September 12, 1998, and separated on July 2, 2011. Petitioner (Jodie) filed a Petition of Dissolution on January 25, 2012. Greg filed his response on April 9, 2012. Their trial did not take place until November 15, 2017.

Jodie's Proposed Statement of Decision identified several disputes. Among those concerning the community's interest in Greg's separate property, the *Lomello home*, included reimbursement claims for payment of principal and the sale of the residence. On May 25, 2018, the trial court issued its *Final Ruling on Submitted Matter After Objection and Reconsideration* in favor of Jodie. Greg filed a Notice of Appeal on September 17, 2018.

### Facts of the Case

Greg purchased the Lomello property on February 28, 1995, at a purchase price of \$168,000 with a down payment of \$40,000. During their marriage, the parties obtained a line of credit of \$150,000 secured by the Lomello property. They used the credit to purchase unimproved real estate in Bullhead City, Arizona, a boat, and to pay community expenses, credit card bills, and property taxes.

The parties separated on July 2, 2011, at which time Jodie moved out of the Lomello property. Jodie ceased making payments related to the Lomello property at that point. Greg continued to reside at the home, as well as pay all encumbrances associated with the property with separate funds. Since these facts were undisputed, the court concluded that:

- Title to the Lomello property never changed, and Jodie was never added to the title.
- The Lomello property was Greg's separate property and was subject to a community property apportionment.
- The Lomello home had a value of \$185,000 at the date of marriage.
- As of the date of marriage, the mortgage was \$118,746, with \$9,236 paid on the principal prior to their marriage. During the marriage, the property appreciated \$285,000. The property value increased an additional \$60,000 after separation for a total post-marriage appreciation of \$345,000.
- The post-marital rental value ranged from \$2,100 to \$2,300 per month.
- Payments made after separation by Greg were approximately \$840 per month, plus interest-only payments on the line of credit of approximately \$250 per month.
- Greg continued to claim the Lomello property mortgage interest as a deduction on his tax returns.
- The fair market value of the Lomello property was \$168,000 on the date



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of purchase, \$185,000 on the date of marriage, and \$530,000 as of the date of trial. The principal reduction during the marriage was \$56,557. Greg's payments post-separation lowered the principal by an additional \$52,482.

## The Moore/Marsden Dispute

Jodie contended that the court should consider the principal paydown from the date of marriage to the date of trial as community property contributions to the Lomello property. She based her argument on the fact that the rental value of the property exceeded Greg's costs to maintain it. Jodie contended that the principal paydown the community should be credited with was \$109,039, as opposed to the actual principal paydown during the marriage of \$56,000.

## Jodie's Expert's Calculations Choice

The Trial Court considered that the only dispute between the experts was whether to base the balance of the encumbrances on the time of separation or the date of trial. Jodie's expert erroneously chose to base his calculations on the date of trial. He incorporated that factor in finding that the community's interest in the residence at the time of trial was \$339,449, of which the petitioner's share would total \$169,724.

## My Testimony

I testified that the mortgage payments made by Greg while he had possession and control of the property since the date of separation were paid from separate property funds. Thus, there was no reason to consider the balance of the mortgage at the time of trial. Instead, I correctly assessed the value of the community's interest in light of the value of the property at the time of trial, but only the balance of the mortgage at the time of separation. This methodology yielded a community property interest pursuant to the Moore/Marsden principals of \$172,684 (reduction in principal during marriage plus allocated appreciation), of which \$86,342 would be Jodie's share.

## The Trial Court's Findings

The trial court adopted Jodie's expert's analysis as community property interest in the Lomello property. As a result, the trial court erred by allocating the residence at 35.10 percent Greg's separate property and 64.90 percent community property. The result was Greg, who was awarded residence, owed Jodie \$166,424 as an overall equalizing payment.

## Court of Appeal Findings Regarding Moore/Marsden

The Appellate Court found that Jodie and the trial court were incorrect to use the Moore/Marsden calculation to increase the community's beneficial ownership interest due to payments made from Greg's separate property beyond the date of separation. Moore/Marsden is founded on the concept that community property is being *invested* in the separate property by creating equity in it. Thus, during a marriage, only the portion of community assets that is used to pay off loan principal is relevant to establishing the community interest in the property. After separation, the earnings and accumulations of a spouse are that spouse's separate property. Thus, Greg's post-separation payments from his separate property did not increase the community's interest under Moore/Marsden.

Using Moore/Marsden to compensate the community for Greg's post-separation occupation of the Lomello property is improper as a practical matter. Extending the formula here

led to a transfer of funds from Greg that is not conceptually connected to the reimbursement the community is entitled to from his use. In addition, Moore/Marsden has nothing to do with the calculation of rental profit. In applying Moore/Marsden here, the trial court awarded the community an additional equity interest for each month that Greg occupied the property based on the amount of principal Greg paid. However, this had nothing to do with the property's post-separation rental value to the community.

## Application of Watts Charges

Family law courts use Watts Charges to compensate the community when one spouse has the exclusive use of a community asset, most often the couple's residence, between separation and trial. The spouse using the property is charged for the reasonable value of that use.

The trial court has discretion based on equitable considerations as to whether to impose Watts charges and in what amount. (*In re Marriage of Dellaria & Blickman-Dellaria* (2009) 172 Cal.App.4th 196, 201. [review of orders dividing marital property]). Family Code Section 2555, however, permits the court to revise the disposition of the community estate *in all particulars, including those which are stated to be in the discretion of the court*. The Appellate Court thereby concluded that ordering a revision is warranted here, where the trial court used an incorrect vehicle (Moore/Marsden) to account for a fact (post-separation occupation of the property) that could properly be the basis of Watts charges. In such a case, the court considers the *reasonable rental value* of the home as a guidepost in attempting to ensure that the *net fiscal impact* of a spouse's occupation of the home is reflected in the division of the couples' property (*In re Marriage of Jeffries* (1991) 228 Cal.App.3d 548, 554-555).

## Appellate Court Conclusions

The Appellate Court concluded that as a matter of first impression, Watts charges *may* be applied here as the community does not own the property outright, yet instead maintains a beneficial partial interest in the property due to a Moore/Marsden calculation. The concept is precisely the same as Watts charges when the community maintains title to the home, but with the amount charged discounted for the fact that the community maintains only a partial equitable interest in the property for purposes of dividing the property upon a marital dissolution.

The Appellate Court left the precise Watts calculation to the trial court in this case, as the parties had not briefed on appeal their arguments as to the specific calculation, and they may not have fully presented their evidence and arguments to the trial court. In the final disposition of assets, Greg was to receive half of the community estate, so the Watts charges would not go entirely to Jodie. The remanded case has been sent back to the trial court, and I will update the outcome in a future issue of the newsletter.

## Ron's Secret to Earning the Trust of Family Law Attorneys



Working tirelessly to prevent cases from going to trial despite Ron's confidence and passion for testifying in court