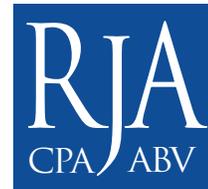




Forensic Accounting Today

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



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A Review of Part One of Our Feature Article

Approximately three years after their marriage, Dawnel and Frank Bonvino purchased a family home in Westlake Village, CA with a down payment from husband's resources and the proceeds from a loan in his name. Title to the home was taken in Frank's name as sole and separate property. Approximately 15 months later, Frank completed the sale of a property in Long Beach that he purchased prior to their marriage, and used the funds from the sale to pay off the loan on the Westlake Village home. Several years later, Dawnel moved out and filed for divorce.

The trial court found the Westlake Village home to be community property because it was acquired during their marriage. In addition, the trial court determined that Frank failed to act in good faith and adequately explain the effects of a quitclaim deed he encouraged her to sign. The court, however, did award Frank reimbursement of his separate property contributions under Family Code §2640.

Frank appealed the decision, contending there was no evidence he transmuted his separate property to the community. To best comprehend the results of the determination and calculation of separate and community property value of their family home, I referred to the findings of *In re the Marriage of Marcia and Lawrence Aufmuth*. In the previous issue of *Forensic Accounting Today*, I provided a review of the Aufmuth case and its ruling, as the Court of Appeal referred to this case in reaching its findings concerning the trial court's decision.

If you do not have a copy of *Forensic Accounting Today* Issue 34, you may download a copy of the newsletter from our blog at: blog.anfusocpa.com.

Ron

In re Marriage of Dawnel and Frank Bonvino: Part 2-Findings of the Court of Appeal

By Ron J. Anfuso, CPA, ABV, CFF, CDF, FABFA

Frank Bonvino's Appeal

Frank Bonvino based his appeal of the trial court's decision on the contention that there was no evidence he transmuted his separate property to community property. By plain language of this statute, Family Code §2640 applies to separate property contributions that are traceable from a community property asset at dissolution. Section 2640 *does not* purport to apply to separate property used during a marriage to acquire an asset that retains its character as separate property. Thus, for Family Code §2640 to apply to a case, the asset purchased during marriage must be characterized as community property. Additionally, for separate property to become community, the transmutation provisions of Family Code §852 must be satisfied before 2640 can apply. Keeping this in mind, let us take a look at the ruling by the Court of Appeal.

The Court of Appeal's Decision

On re-examination, the Court of Appeal reversed the trial court's decision and concluded that the husband had not transmuted his separate property to community. Frank's entire separate property funds could be sufficiently traced to overcome the burden of proof required by the presumption that all property acquired during the marriage belongs to the community. Furthermore, the document of title did not trump the conduct of the parties in determining the character of the property.

Other than the fact that the Westlake Village property was purchased during the parties' marriage, the only evidence that the property was community was Dawnel's testimony concerning a verbal agreement by the parties to add her to the title. For there to have been a transmutation, there must have been certain formalities to increase the certainty that a transmutation had occurred. For example, there must have been "an expressed declaration made, joined in, consented to, or accepted by the spouse whose interest in the property had been adversely affected." (Section 852, subd. (a).) Therefore, a document must have been signed by

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

MOORE/MARSDEN FORMULA

1. First determine the separate property and community property percentage interest in the property.
2. The separate property percentage interest is determined by crediting the separate property with the down payment and the full amount of the loan on the property less the amount by which the community property payments reduced the principal balance of the loan.
3. This sum is divided by the purchase price. The resulting figure is the separate property percentage share.
4. The community property percentage share is determined by dividing the amount in which community property payments reduced the principal by the purchase price.
5. The separate property interest in the property as valued at the end of marriage is determined by adding all the prenuptial appreciation, the amount of capital appreciation during marriage attributable to the separate funds (determined by multiplying the capital appreciation during marriage by the separate property percentage interest), and the amount of equity paid by separate funds.
6. The community property share in the value of the property is determined by adding the amount of capital appreciation during marriage attributable to community funds to the equity paid by community funds.

the adversely affected spouse, which stated in clear and unambiguous terms that the character or ownership of the property at issue was being changed from separate to community. There were no documents presented to satisfy the requirement of section 852 to effect a valid transmutation of the husband's separate property interest in the Westlake Village home. In fact, every document signed by Frank expressed that the Westlake Village property was to be his separate property. It was clear that Frank's traceable separate property investment retained its distinct property character, and both separate property and community property interests were evidenced in accordance with the formula established in *Aufuth* and *Moore*.

The Court of Appeal agreed that the Westlake Village home had both separate and community property interests. This Court also ruled that Frank was not entitled to Family Code §2640 since the house was not fully community property and separate funds were used in the purchase and payoff of the home. Thus, not only had no transmutation taken place, the payoff provided Frank a substantial additional proportionate separate property interest in the home. This resulted in the Court of Appeal remanding that the trial court calculate the separate and community interests using the *Moore/Marsden Formula*. (See the above left column).

As stated in our previous newsletter, the amount of the loan taken out to purchase the Westlake Village property was \$328,000, including closing costs. The separate and community interests were to bear pro tanto responsibility for the closing costs and prepaid items. These included the cost of the loan to complete the purchase in proportion to their ownership interests in the portion of the property purchased with the loan proceeds.

Although the Court of Appeal's decision overturned Frank's award through Family Code §2640, the home value approximately doubled from the time of purchase to the time of the dissolution of marriage. Thus, via the *Moore/Marsden* calculation, Frank's share based on his down payment and payoff of the home resulted in an apportioned interest of the property.

As a result of this case, the precedence in real property apportionment calculations have significantly changed. If you have any questions concerning the findings of this case or the *Moore/Marsden* calculations, you are welcome to contact me.



The biggest mistake a forensic accountant/expert witness can make... NOT PREPARED

Why you can always count on Ron Anfuso to be thoroughly prepared

- Ron Anfuso has handled all expert witness testimony for the firm and wants to keep it that way. He has made over 400 straight court appearances without substitution. Since Ron knows he will be making the next corporate appearance, he begins preparing himself when he first learns a case will be going to trial.
- Ron carefully defines each step he will need to perform well in advance. The result is thorough preparation so he doesn't get caught off guard against tough cross examination.
- Ron values his excellent reputation among judges and works diligently to keep it by always being prepared.

MAKE RON YOUR EXPERT WITNESS FOR YOUR NEXT TRIAL CASE