

*In re Marriage of Cooper*

A Cooper is defined as a person who makes or repairs wooden casks or barrels. These Coopers cause us to confront a tangle of rough and unhinged staves of an interesting legal cask. Air Force Officer-husband and Army Reserve Officer-wife endured six years of delay in a Hawaiian divorce filing (eventually dismissed for lack of jurisdiction) and then the evolution of their Sacramento County marital dissolution proceeding. The Court of Appeal reversal of a trial court ruling involving frequently arising family law issues, its discussion of presumptions, tracing, joint accounts, *Watts* charges, and *Epstein* credits, causes a deeper look into the meritage mix in the barrel of this case.

1. Characterization of Joint Investment Accounts: Joint-titled investment accounts acquired during marriage are presumed to be community property pursuant to Family Code section 2581, absent written evidence that the parties intended them to be one party's separate property. Here, there was an absence of any written agreement or evidence that the accounts were Wife's separate property. Tracing is not one of the permissible methods to rebut a Section 2581 community property presumption. Wife was, however, granted a 2640 right of reimbursement, because she was able to trace her contributions to a separate property source under that statute. Certain questions have arisen as to why tracing is not allowed under Family Code section 2581, but is allowed under Probate Code section 5305(b) [the California Multiple Party Accounts Law (CAMPAL)]. Keep in mind that presumptions change in the event of a death of a spouse before community property is divided. [Family Code section 2040(c)]. The answer as to different standards in the Probate Code and the Family Code can be found in the context of estate planning/family law crossover issues, i.e., the presumptions are different. In situations subject to Probate Court jurisdiction after the death of a spouse, the effect of presumptions are different than Family Court jurisdiction during a marital jurisdiction.

As an example with which we should all be familiar, 2640 reimbursement comes to a family law litigant who can trace, absent a written waiver. But in the event the family court no longer has jurisdiction because of the death of a spouse where no bifurcation of marital status has occurred, there is no right of reimbursement. Why? Because 2640 by its terms applies only to the division of community property in the context of a marital dissolution or legal separation. This discussion is not part of the *Cooper* opinion, but is important and involves substantive information worthy of careful attention. *In re Marriage of Brandes* (2015) 239 Cal.App.4th 1461, contains a discussion of the different methodologies of proof between Family Code section 2581 and Probate Code section 5305, but comes to a different conclusion, i.e., the more specific statute

(section 5305) pertaining to joint accounts prevails. *Brandes* relied on a probate trust administration case as authority and its analysis in this regard is less than dispositive. In *Cooper*, there was no death to trigger Probate Court jurisdiction, and the 2581 presumption prevailed. Nevertheless, the availability of tracing to rebut a community property presumption seems to lack consistent judicial clarity.

2. *Epstein Credits and Watts Charges*: The *Cooper* Court held that it was proper for the trial court to deny *Watts* charges against the Wife for her occupancy of the Sacramento family home during the period of time during which Husband's Hawaiian dissolution proceeding was pending; however, *Watts* charges should have been imposed for the period during which Wife had exclusive use of the family home subsequent to the date of separation but prior to the filing of the Hawaii proceeding, and then again after the Hawaiian proceeding ended by dismissal to the time of the Sacramento County time of trial. As to *Epstein* credits, the Appellate Court determined that Wife should be awarded *Epstein* credits only for the periods during which the *Watts* charges were imposed.
3. *Reimbursement for Down Payment on Family Home*: Another substantive point at issue: Oral testimony is insufficient to support a claim for reimbursement. Absence of written evidence to support a claim for reimbursement is a fatal flaw; thus, Wife's Family Code section 2640 claim of reimbursement was denied. Direct tracing of funds to a separate property source is essential for a spouse to be reimbursed for a contribution to the acquisition of community property pursuant to Family Code section 2640.

It is not that the *Cooper* case constructs new law that makes it worthy of review. Rather, there are substantive issues which appear with such frequency that the Court's analysis provides a helpful reminder of the type of proof necessary to sustain the various claims at issue. Good wine comes from well-constructed casks and good law comes from well-constructed analysis. Salute!

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