

In re Brace

The tension between the operative effect of the title presumption of Evidence Code 662 and the community property presumption in Family Code 760 was resolved in favor of the family law community property presumption in *In re Marriage of Valli* (2014) 58 Cal. 4th 1396 [2014 Cal.Fam.Law Monthly (July 2014) 159]. In addition, *Valli* made clear that the 662 title presumption does not apply when it conflicts with the Family Code transmutation statute, Family Code section 852. Further, the statutory transmutation requirements apply not only to transactions between spouses, but also to property acquisitions from third parties. OK so far. Much attention was focused on Justice Chin's concurring opinion, in which he opined that the 662 title presumption which applies to an action between the spouses does not necessarily apply to a dispute between a spouse and a third party. *Valli* did not address the applicability of the community property presumption in other contexts.

The issue in the *Brace* bankruptcy case is whether the same rules concerning community property presumptions should apply to disputes concerning ownership of property arising in other contexts (such as bankruptcy) that require a determination of the respective spouses' rights in marital property. Here, debtor-husband and his wife acquired a home and another parcel of real property, taking title as "husband and wife as joint tenants." Husband created an irrevocable trust with himself as trustee and wife as beneficiary. The home and parcel of property were transferred to the trust. Husband was facing a large judgment in pending litigation. Husband filed a Chapter 7 Bankruptcy Petition and the Court appointed a Trustee. Trustee sought to recover the property for the bankruptcy estate, contending a fraudulent transfer under California Civil Code section 3439.04(a). The bankruptcy court ruled in favor of the Trustee, and held the properties were recoverable by the bankruptcy estate. When the properties were returned from the trust to the parties as joint tenants, debtor-husband argued that they held title as tenants-in-common and that only his half, not wife's, was subject to the bankruptcy estate. The bankruptcy court disagreed, determining that the properties acquired during marriage were presumed community property, and thus fully recoverable as property of the bankruptcy estate pursuant to 11 U.S.C. #541 and subject to administration by the Estate.

The Ninth Circuit affirmed, citing and relying on *Valli* that the community property presumption prevailed over the title presumption and that the *Valli* holding was not restricted to the marital dissolution or separation context and applies with equal force in the bankruptcy context where a determination of the respective rights of spouses in marital property require determination. The Ninth Circuit held that, as a general rule, California's community property presumption applies in disputes in bankruptcy involving the characterization of marital property. This case takes us through the door left open by Justice Chin in his *Valli* concurrence. *Brace* tells us the *Valli* holding applies in a bankruptcy context. It teaches us not to read *Valli* too restrictively, and to be aware that there is always room for creative advocacy.

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