Property of Non-debtor Spouse and the Presumption of Title

By Ellen Kaufman Wolf and Evan Granowitz, Wolf Group L.A.[1]

A 2014 decision from the California Supreme Court may change the landscape of property held in name of non-debtor spouse: does the presumption of title still trump the community property presumption?

Evidence Code section 662 states: "The owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."

As expressly stated in Section 662, "to overcome the form of title presumption, the evidence of a contrary agreement or understanding must be 'clear and convincing.'" *In re Marriage of Brooks*, 169 Cal. App. 4th 176, 190 abrogated on another point by *In re Marriage of Valli*, 58 Cal.4th 1396, 1405 (2014). "This standard requires evidence that is so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind." Id. (internal marks omitted).

The Presumption Cannot be Overcome With Evidence that Title was Taken to Obtain a Loan. Although it is theoretically possible to overcome the title presumption, one may not do so on the theory that title was taken in a particular form in order to obtain a loan, no matter how strong the evidence. See *In re Marriage of Brooks*, 169 Cal. App.4th at 190 ("Nor can the presumption be rebutted by evidence that title was taken in a particular manner merely to obtain a loan."). As one California court has explained, "[s]ignificantly, when it applies, the form of title presumption may not be 'rebutted by evidence that title was taken in a particular manner merely to obtain a loan.'" In re *Marriage of Fossum*, 192 Cal. App. 4th 336, 345 n.5 (2011).

Can the Doctrine of Unclean Hands be Used to Preclude Evidence to Rebut Title*?* The doctrine of unclean hands can bar "both legal and equitable" claims. *Jade Fashion & Co., Inc. v. Harkham Industries, Inc*., 177 Cal. Rptr. 3d 184, 200 (2014). "Whether the defense applies in particular circumstances depends on the analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injuries." Id. "The focus is the equities of the relationship between the parties, and specifically whether the unclean hands affected the transaction at issue." Id. An after-the-fact and very convenient explanation for why the trust is listed as an owner in the deed, without any indication of husband and wife's respective

[1] Ellen Kaufman Wolf and Evan Granowitz are lawyers at Wolf Group L.A., a business law boutique for matters involving business, real estate, and estates, and emphasizing creditors' rights and remedies. Ms. Wolf is the presiding Chair of the Executive Committee for the LACBA Remedies Section.

ownership interests, may be fraudulent – e.g., title in both names to qualify for a loan, and/or more favorable interest rates, than the separate property spouse could qualify for.

" 'The [unclean hands] doctrine demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands . . . or he will be denied relief, regardless of the merits of his claim.' [Citation.] 'The doctrine of unclean hands requires unconscionable, bad faith, or inequitable conduct by the plaintiff in connection with the matter in controversy.' " (Bank of America, N.A. v. Roberts (2013) 217 Cal.App.4th 1386, 1400 (Bank of America).) "Whether the particular misconduct is a bar to the alleged claim for relief depends on (1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries." (Kendall-Jackson Winery, Ltd. v. Superior Court (1999) 76 Cal.App.4th 970, 979 (Kendall-Jackson).) "The misconduct must ' " 'prejudicially affect . . . the rights of the person against whom the relief is sought so that it would be inequitable to grant such relief.' " ' " (Ibid.)

Does the Presumption of Title Still Trump the Presumption of Community Property as to a Creditor? In cases between spouses, it does not. *In re Marriage of Valli*, 58 Cal.4th 1396 (2014) holds that, at least as between spouses, the form-of-title presumption does not apply to property characterization if the spouse who does not hold record title was unaware that title was taken solely in the other spouse's name. A life insurance policy on the husband's life was community property upon the spouses' marital dissolution, even though the policy named the wife as the sole owner and beneficiary, where the policy premiums were paid with community property funds from a joint bank account, and the policy was not transmuted to separate property with an express declaration. [In re Marriage of Valli, 58 Cal. 4th 1396, 171 Cal. Rptr. 3d 454, 324 P.3d 274 (2014)].

***Does In re Marriage of Valli Reach Beyond Family Law Court*?** The court rejected the wife's argument that the transmutation requirements apply only to transactions between spouses, and not to one spouse's acquisition of property from a third party. In reaching its decision, the court noted:

> "As mentioned, the Court of Appeal here concluded that the transmutation statutes were "not relevant to this case" because the disputed life insurance policy "was acquired from a third party and not through an interspousal transaction."
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> We need not and do not decide here whether Evidence Code section 662's form of title presumption ever applies in marital dissolution proceedings. Assuming for the sake of argument that the title presumption may sometimes apply, it does not apply when it conflicts with the transmutation statutes. (See *In re Marriage of Barneson* (1999) 69 Cal.App.4th 583, 593, 81 Cal.Rptr.2d 726.)"

In light of the Valli holding, it is not entirely clear whether the form of title presumption or the community property presumption would apply in a creditor's case, which involves a third-party and not a dispute between spouses. In his concurring opinion, Justice Chin explained that:

> "Because legal title in the policy was in wife's name, wife argues, and the Court of Appeal found, the policy is presumed to be her separate property, a presumption rebuttable only by clear and convincing evidence.
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> Obviously, both presumptions cannot be given effect. The life insurance policy cannot both be presumed to be community property (because acquired during the marriage) and to be wife's separate property (because ****282** placed in her name). One statutory presumption must yield to the other.
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> In my view, as in the view of all amici curiae to appear in this case—law professors and attorneys specializing in the field—the section 760 presumption controls in characterizing property acquired *****464** during the marriage **in an action between the spouses**. Section 662 plays no role in such an action. The detailed community property statutes found in the Family Code, including section 760, are self-contained and are not affected by a statute found in the Evidence Code.
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> Justice Chin further wrote:
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> "In concluding that section 662 applies, the Court of Appeal relied heavily on two cases: *In re Marriage of Lucas* (1980) 27 Cal.3d 808, 166 Cal.Rptr. 853, 614 P.2d 285 (*Lucas*) and *In re Marriage of Brooks & Robinson* (2008) 169 Cal.App.4th 176, 86 Cal.Rptr.3d 624 (*Brooks*). …At the appellate level, the dispute in *Brooks, supra,* 169 Cal.App.4th 176, 86 Cal.Rptr.3d 624, did not involve an action between the spouses. Rather, on appeal, the sole dispute was between **a *third party,*** to whom the wife had sold certain real property, and the husband, who claimed an interest in the property and sought to set aside the sale. The wife did not even appear in the appeal. The Court of Appeal used section 662 to help resolve the dispute in favor of the third party, whom the trial court found to be a bona fide purchaser who had purchased the property without knowing of any community property claim the husband might have had. The Court of Appeal noted that the trial "court did not expressly determine whether the Property was a community property asset." (*Brooks,* at pp. 182–183, 86 Cal.Rptr.3d 624.) Rather, the trial court had merely held that the third party was a bona fide purchaser and, as such, " 'takes it[s] title free of any unknown community property claim [the husband] may have with respect to the Property.' " (*Id.* at p. 183, 86 Cal.Rptr.3d 624.) The Court of Appeal agreed with this conclusion. It *****468** emphasized section 662's purpose of promoting the

stability of titles to property. (*Id.* at p. 185, 86 Cal.Rptr.3d 624.) **Unlike in the case of an action between the spouses, this policy *does* play a role in a dispute between a spouse and an innocent third party purchaser.**

The *Brooks* court stressed that the appeal "does not involve a division of the community estate between [husband and wife]. Whether [the wife] might be obligated to reimburse [the husband] for his contributions to the Property was not before the trial court and is not an issue on appeal." (*Brooks, supra,* 169 Cal.App.4th at p. 188, 86 Cal.Rptr.3d 624.) Accordingly, *Brooks* concerned the rights of a third party that purchased property in good faith not knowing of any possible community property claims. *Brooks* might have been correct to apply section 662 to an action between one of the spouses and a third party bona fide purchaser. That question is not implicated here, and I express no opinion on it. To the extent *Brooks* said anything suggesting section 662 would apply to an action between the spouses, it mistakenly relied on *Lucas, supra,* 27 Cal.3d 808, 166 Cal.Rptr. 853, 614 P.2d 285, and is, accordingly, unpersuasive."

In short, the *Valli* holding seems to leave open the possibility that the form of title presumption might apply in certain situations involving third parties, such as the case of a third party who purchases or loans against property in good faith not knowing of possible community property claims.