

Case No. S252473

**IN THE SUPREME COURT OF CALIFORNIA**

SUPREME COURT  
**FILED**

AUG 16 2019

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***In re: CLIFFORD ALLEN BRACE, JR.***

Jorge Navarrete Clerk

**9<sup>th</sup> Cir. Case No. 17-60032**

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Deputy

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***CLIFFORD BRACE, JR. AND ANH BRACE,***

*Appellants.*

v.

***STEVEN SPEIER, CHAPTER 7 TRUSTEE,***

*Respondent,*

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***RESPONDENT'S RESPONSE TO AMICUS CURIAE BRIEF***

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D. EDWARD HAYS, #162507  
ehays@marshackhays.com  
JUDITH E. MARSHACK, #163871  
jmarshack@marshackhays.com  
MARSHACK HAYS LLP  
870 Roosevelt  
Irvine, California 92620  
Telephone: (949) 333-7777  
Facsimile: (949) 333-7778

*Attorneys for Respondent, Steven Speier, Chapter 7 Trustee*

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Respondent, Steven Speier in his capacity as Chapter 7 Trustee for the Bankruptcy Estate of Clifford Brace, Jr., submits this response to the *Amicus Curiae* Brief filed by Grace Ganz Blumberg in support of Appellants as follows:

**1. Question Presented**

California Family Code § 760 provides that all property acquired during marriage is community property unless traceable to a separate property source. Civil Code § 687 which defines property rights under California law and Code of Civil Procedure § 695.020 which specifies which property of a judgment debtor is subject to enforcement of a judgment both expressly provide that community property is the property defined in Family Code § 760.

This Court has held that property acquired during marriage is community property unless it is validly transmuted to separate property. *In re Marriage of Valli*, 58 Cal.4<sup>th</sup> 1396 (2014). In other words, the form of title upon acquisition is irrelevant to the character of the property as community. For example, the life insurance policy in *Valli* which was acquired in the name of only one spouse was nevertheless community property as would be the wages earned by one spouse even though they are payable to only one spouse.

Property of a bankruptcy estate includes all interests of the debtor in property including all community property as of the commencement of the case. Property rights are determined by reference to non-bankruptcy law. 11 U.S.C. § 541(a)(2), *Butner v. United States*, 440 U.S. 48 (1979). In other words, a Chapter 7 bankruptcy trustee stands in the shoes of the debtor and has all of the same rights in property as the debtor had outside of bankruptcy.

The bankruptcy code provides that community property shall be segregated into sub-estates and first made subject to payment of community

claims before any remaining property is subject to payment of post-separation claims. 11 U.S.C. § 726(c). Under Family Code § 910, a community claim is a claim that arose prior to separation. The liability of community property to pay community claims is the same inside or outside of bankruptcy because the uniform treatment of property interests by both state and federal courts serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving “a windfall merely by reason of the happenstance of bankruptcy.” *Lewis v. Manufacturers National Bank*, 364 U.S. 603, 609 (1961).

In her Amicus Brief, Ms. Ganz fails to cite to or make any effort to distinguish the controlling Civil Code and Code of Civil Procedure sections which clearly provide that property rights and the property subject to enforcement of a judgment are governed by the Family Code. In other words, the Legislature has provided for a unitary system for determining the character of property whether in a divorce, a judgment enforcement proceeding, or a bankruptcy.

It is illogical and contrary to the plain meaning of California statutes for property that is community property as between spouses to be something different vis-à-vis creditors based solely on the form of title taken upon acquisition.

In this case, during their marriage, Appellants acquired title to three parcels of real property in joint tenancy. Mr. Brace then fraudulently transferred his joint tenancy interests in the properties to a trust. After Mr. Brace filed bankruptcy, Respondent avoided the fraudulent transfers. The fraudulent transfer judgment is a final judgment not subject to any appeal. The bankruptcy court then determined that the properties in their entirety were community property and thus property of the bankruptcy estate because they were acquired with community property during marriage and

the trial court found that Appellants failed to prove the existence of any transmutations. This appeal followed.

In her Amicus brief, Ms. Ganz argues that it is “not germane that the case arises in bankruptcy court or that the spouses’ interests are aligned” and that California Evidence Code section 662 is “immaterial.” Respondent agrees.

Ms. Ganz further takes the position that “spouses’ acceptance of joint tenancy deeds to [] realty transmute[s] their property from community property to joint tenancy” and that “the use of community property funds to purchase realty, title to which the spouses took in joint tenancy, worked a transmutation.” These positions, however, are not supported by California law and are based only on outdated cases interpreting statutes that have been repealed or replaced.

In *Siberell v. Siberell*, 214 Cal. 767 (1932), the Court affirmed the decision of the trial court that property held in joint tenancy was community property and would be divided equally. The wife appealed contending that she should be awarded 75% of the property. In affirming the trial court, the Supreme Court stated that “[i]t is not disputed that the property was acquired with community funds and the testimony of the defendant with reference to the circumstances under which the deed of 1918 was executed is sufficient evidence to support the finding that the property [held in joint tenancy] was community property. This is an additional reason why the division ordered by the trial court may not be disturbed. In any state of the case the court had the power to divide the property equally.” *Id* at 774-775.

The balance of the Court’s discussion that joint tenancy automatically effected a transmutation was thus unnecessary to the decision. Furthermore, the primary reason articulated in support of such holding was that “From the statutes [former Civil Code §§ 163, 164, and

687 all of which have been repealed and replaced] it must follow that all property not held as community property must, for the want of a better name, be classed as separate property.” Id at 770. The manner of vesting, however, is irrelevant to the character of property as community or separate.

After *Siberell*, the Legislature in 1965 sought to clarify the law by enacting what has now been amended and recodified as Family Code § 2581. Section 2581 provides that joint tenancy property is presumptively community when dividing property in a dissolution proceeding. Because *Siberell* was decided in 1932 interpreting code sections that no longer exist, it conflated vesting as being determinative of the character of property, and the Legislature enacted what is now Section 2581 to change and contention that that joint tenancy property was not community property, it is no longer good law.

Additionally, taking title as joint tenancy does not satisfy the “express declaration” requirement articulated in *In Estate of MacDonald*, 51 Cal.3d 262, 272 Cal.Rptr. 155 (1990). In *MacDonald*, this Court held that for a transmutation to be effective, it must “expressly state[] that the characterization of ownership of the property is being changed.” Receiving a deed that merely specifies the manner of vesting does not satisfy the requirement that the character of the property is being changed.

In *Valli*, this Court disapproved of the Ninth Circuit’s decision in *In re Summers*, 332 F.3d 1240 (9<sup>th</sup> Cir. 2003). In *Summers*, the Court held that property acquired in joint tenancy created separate property interests based solely on the form of title. In rejecting this analysis, the *Valli* decision holds that all property acquired during marriage is community property unless it can be traced to a separate property source and that the form of title did not create a valid transmutation.

*Estate of Bibb*, 87 Cal.App. 4<sup>th</sup>, 104 Cal.Rptr. 2d 1311 (1997) also does not compel a different result. In *Bibb*, an automobile was registered in the name of husband *or* wife. The Court found that no transmutation was effected because there was no clear expression of an intent to change the character of the property. But, a deed signed by husband conveying his interest in real property to his wife did evidence an intent to transfer his interest. But, when taking title in joint tenancy, there is no intent to change the character of the community property funds into separate property interests. And, “accepting” a deed that provides for a community property vesting does not evidence an intent to relinquish an interest in property.

Lastly, while this action is not one for dissolution of marriage and division of community property, Family Code § 2581 remains instructive. Section 2581 confirms that notwithstanding a joint tenancy vesting, property held in joint tenancy is nevertheless community property. As such, the character of joint tenancy property never ceases to be community as between spouses.

In bankruptcy, property of the estate includes all interests of the debtor in property as of the commencement of the case. 11 U.S.C. § 541(a). Under California law, a creditor can enforce a judgment against a judgment debtor’s interests in property. CCP § 695.010 [“all property of the judgment debtor is subject to enforcement of a money judgment”]; CCP § 695.020 [“Community property is subject to enforcement of a money judgment as provided in the Family Code”]; CCP § 697.340(a) [“A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable)”]; and Fam. Code § 910(a) [“the community estate is liable for a debt incurred by either spouse before or during marriage”]. Because the Civil Code and Code of Civil Procedure provide that community property

is defined by the Family Code, Section 2581 expressly extends beyond dissolution proceedings.

In this case, the trial court heard the testimony of both Appellants and found them to lack credibility. As such, the Court found that Appellants failed to prove any transmutation with respect to the properties. Because the properties were admittedly acquired during marriage with community funds and Appellants failed to prove the existence of any transmutions, this Court should answer the certified question by holding that property acquired during marriage with community funds remains community property even if title is take in joint tenancy absent proof of a valid transmutation.

## 2. Conclusion

In this case, there is no reason to establish two separate sets of laws governing the character of property acquired during marriage. To the extent that a spouse's interest in property is community, that interest is subject to claims of creditors under California law and the Bankruptcy Code as set forth in the plain language of the Civil Code and Code of Civil Procedure including Civil Code § 687 and Code of Civil Procedure § 695.020. There is no reason for these statutes and this Court's holding in *Valli* establishing the character of property acquired during marriage as community to not also define a judgment debtor's property rights subject to creditor claims.

DATED: August 15, 2019

MARSHACK HAYS LLP

By: D. Edward Hays  
D. EDWARD HAYS  
JUDITH E. MARSHACK  
Attorneys for STEVEN SPEIER  
Respondent and Chapter 7 Trustee

CERTIFICATE BY APPELLATE COUNSEL  
OF WORD COUNT

California Appellate Rules, Rule 8.204(c)(1)

The undersigned certifies that Appellant's Opening Brief contains 1,741 words. The undersigned relied on the word county of his Microsoft Word processing software in making this certification.

Dated: August 15, 2019

By: *D. Edward Hays*  
D. EDWARD HAYS.  
JUDITH E. MARSHACK

In re: Clifford Allen Brace, Jr.  
Supreme Court Case No. S252473  
Court of Appeals, 9<sup>th</sup> Circuit Case No. 17-60032  
Bankruptcy Appellate Panel No. 16-1041

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**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. My business address is:  
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I hereby certify that the following document: **RESPONDENT'S  
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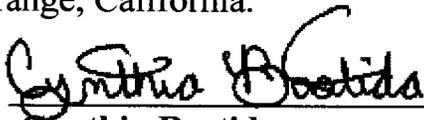
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**Cynthia Bastida**

*In re: Clifford Allen Brace, Jr.*  
 Supreme Court Case No. S252473  
 Court of Appeals, 9<sup>th</sup> Circuit Case No. 17-60032  
 Bankruptcy Appellate Panel No. 16-1041

**Service List**

<p><b><u>VIA OVERNIGHT MAIL</u></b>          Supreme Court of California          Earl Warren Building          Civic Center Plaza          350 McAllister Street          San Francisco, CA 94102</p>	
<p><b><u>VIA OVERNIGHT MAIL</u></b>          William Derek May          Law Office of W. Derek May          400 N. Mountain Avenue          Suite 215B          Upland, CA 91786          Email: wdmlaw17@gmail.com</p>	<p>Attorney CLIFFORD ALLEN BRACE, Jr., Individually and as the Trustee of The Crescent Trust dated July 30, 2004 – Appellant; and           ANH N. BRACE, individually and as The Trustee of The Crescent Trust dated July 30, 2004 - Appellant</p>
<p><b><u>VIA OVERIGHT MAIL</u></b>          Wayne A. Silver          Law Office of Wayne A. Silver          643 Bair Island Road          Suite 403          Redwood City, CA 94063          Email: w_silver@sbcglobal.net</p>	<p>Attorney for NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS - Amicus Curiae; and           NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER - Amicus Curiae</p>
<p><b><u>VIA OVERNIGHT MAIL</u></b>          Tara A. Twomey          National Cons. Bankruptcy Rights Center          1501 The Alameda          Suite 200          San Jose, CA 95126          Email: tara.twomey@comcast.net</p>	<p>Attorney for NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS - Amicus Curiae; and           NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER - Amicus Curiae</p>

<p><b><u>VIA OVERNIGHT MAIL</u></b>  Stephen R. Wade  Law Offices of Stephen R. Wade  405 N. Indian Hill Blvd  Claremont, CA 91711  Email: <a href="mailto:srw@srwadelaw.com">srw@srwadelaw.com</a></p>	<p>Attorney CLIFFORD ALLEN BRACE, Jr., Individually and as the Trustee of The Crescent Trust dated July 30, 2004 – Appellant; and</p> <p>ANH N. BRACE, individually and as The Trustee of The Crescent Trust dated July 30, 2004 - Appellant</p>
<p><b><u>VIA OVERNIGHT MAIL</u></b>  Clifford Allen Brace Jr.  Suite 190  22421 Barton Road  Grand Terrace, CA 92313</p>	<p><b><u>VIA OVERNIGHT MAIL</u></b>  Christopher C. Melcher  Walzer Melcher LLP  5941 Variel Avenue  Woodland Hills, CA 91367</p>
<p><b><u>VIA OVERNIGHT MAIL</u></b>  Grace Ganz Blumberg  Distinguished Professor of Law Emerita  UCLA School of Law  405 Hilgard Avenue  Los Angeles, CA 90095-1476</p>	