

SUPREME COURT  
**FILED**

AUG 28 2019

Jorge Navarrete Clerk

Case No. S252473

**IN THE SUPREME COURT OF CALIFORNIA**

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

Deputy

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

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

*Appellants.*

v.

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

*Respondent,*

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

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

**1. Joint Tenants Possess the Entire Estate and Not Just a Fractional Interest**

In her Amicus Brief, Professor Blumberg argues that “[w]ith a joint tenancy, each spouse owns a one-half separate property ownership interest with a right of survivorship.” (Amicus Brief, p. 13, ll. 1-2). This is not correct.

As recognized by the United States Supreme Court:

Joint tenancies were the predominant form of concurrent ownership at common law, and still persist in some States today. 4 Thompson § 31.05. The common law characterized *each joint tenant as possessing the entire estate, rather than a fractional [\*\*\*447] share*: “Joint-tenants have one and the same interest . . . held by one and the same undivided [\*\*\*\*13] possession.” 2 W.

Blackstone, Commentaries on the Laws of England 180 (1766).

*United States v. Craft*, 535 U.S. 274, 280, 122 S. Ct. 1414, 1421 (2002) (emphasis added) [analyzing property subject to a federal tax lien]. See also, *United States v. Jacobs*, 306 U.S. 363, 59 S. Ct. 551 (1939) [entire value of property held in joint tenancy included in decedent’s estate].

Thus, when spouses acquire title to property as joint tenants, it does not hew the ownership into separate units. As such, no transmutation can occur by taking title to property in joint tenancy as a matter of law. Instead each joint tenant spouse always holds an interest in the entirety of the property which interest is subject to the claims of creditors.

In this case, the spouses acquired title to the properties in joint tenancy. Because each joint tenant possessed the entire estate and not fractional interests, the spouses' interests were not limited to distinct one-half separate property interests.

Property of a bankruptcy estate consists of all interests of a debtor in property as of the commencement of the case, all community property, and all property avoided and recovered by the bankruptcy trustee. 11 U.S.C. § 541(a)(1)-(3). In this case, the Debtor fraudulently transferred his joint tenancy interest which transfer was avoided and recovered by the Chapter 7 Trustee. Given Appellants' failure to prove that the former joint tenancy interest of the non-debtor, Mrs. Brace, was her separate property,<sup>1</sup> the lower courts correctly determined that the entirety of the properties were property in which Mr. Brace had an interest.

DATED: August 16, 2019

MARSHACK HAYS LLP

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

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<sup>1</sup> Debtor's transfer of his joint tenancy interest severed the joint tenancy.

CERTIFICATE BY APPELLATE COUNSEL  
OF WORD COUNT

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

The undersigned certifies that Appellant's Opening Brief contains 413 words. The undersigned relied on the word county of his Microsoft Word processing software in making this certification.

Dated: August 16, 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

\*\*\*\*\*

**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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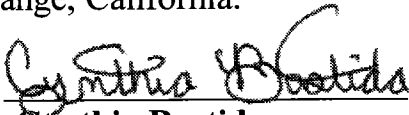
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**Cynthia Bastida**

*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

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