

THE PRACTITIONER

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Yours or Ours

Courts Use a Detailed Formula to Apportion Separate Property Assets the Community Has Acquired

Couples often bring into the marriage previously acquired separate property, some of which is encumbered by debts, mortgages or other obligations.

In *Marriage of Branco*, 96 Daily Journal D.A.R. 9365 (1st Dist. Aug. 1, 1996), Mary Ann Branco had received real estate (the Taft residence), encumbered by a \$23,500 mortgage, from her first divorce and prior to her marriage to Steven Branco on Aug. 6, 1977. In 1978, the couple decided to refinance the residence and use a portion of the \$46,000 loan to pay off the existing mortgage. They used the remaining proceeds to pay off pre-existing, separate property debts: improvements on the residence, which included a swimming pool, landscaping, fences and retaining wall; a vacation for the couple; and a camper and truck.

The loan documents included the earnings of both parties, and both signed the note and deed of trust. At the time the loan was secured, the property's value was \$57,500.

In 1989, the Brancos borrowed an additional \$60,000, secured by the Taft residence. To obtain this loan, the lender required Mrs. Branco to deed the property to the community; one day later it was deeded back to her as her sole and separate property.

Mrs. Branco testified at trial that the lender requested the property be held in both parties' names since the loan was a joint obligation. She also testified that proceeds of the second loan were used to pay off creditors; Mr. Branco's child-support arrears, his car lease and credit cards in his name; and to purchase carpeting, furniture and appliances for the home.

Mr. Branco testified that some of the money went to help Mrs. Branco's daughter from a previous marriage who had recently had an accident.

At the time of trial, the parties stipulated that the fair market value of the home was \$180,000. Evidence was submitted showing that Mr. Branco had paid the mortgage, property taxes and insurance on the Taft residence during the marriage and following the date of separation. Evidence was also submitted showing that Mrs. Branco made the payments on both loans after the separation date.

The trial court found that the Taft residence was Mrs. Branco's separate property and that the community had no property interest. The court further found that the loans taken by the parties, using the home as security, were community debts. The trial court cited no authority to support Mr. Branco's claim that the community debt transmuted the Taft residence into a community asset.

In characterizing the nature of the debts, the court determined that since both parties had benefited from the loan proceeds, since the parties had "intended to begin their marriage free of pre-existing encumbrances" and since the loan proceeds were used to satisfy separate property obligations of both parties, each party had made a gift to the other with respect to the satisfaction of these separate property obligations.

More important, the court determined that the fact that the separate property of Mrs. Branco was used to secure the loan did not change the reality that the loans were community obligations. As such, the parties were ordered to each pay one-half of the payments on the two loans.

Mr. Branco appealed, contending that use of a community debt, i.e., the proceeds of the loan, to pay off the original mortgage on the Taft residence meant that the community had "stepped into the shoes" of Mrs. Branco's prior separate property mortgage by helping to "facilitate the continued acquisition and purchase of the home." Therefore, Mr. Branco argued, the residence had become a community property economic asset.

Moreover, continued Mr. Branco, the total responsibility for the two loans should be assigned to Mrs. Branco because the property securing them was awarded to her as her sole and separate property.

The Court of Appeal, in reversing and remanding, found Mr. Branco's argument that the residence should be treated as a community property economic asset persuasive. However, the court was not convinced that the debts secured by the residence should be treated as separate property.

The appellate court reviewed a line of cases

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beginning with *Marriage of Moore*, 28 Cal.3d 366 (1980), and *Marriage of Marsden*, 130 Cal.App.3d 428 (1982). These cases set forth the applicable rules to determine a community interest in property that is essentially separate, but acquired when community funds are used to reduce the principal on the underlying loan.

In *Moore*, the wife purchased a house before the marriage, taking title as a single woman and making loan payments that slightly reduced the principal. During the marriage, the parties made the loan payments with community funds. Upon dissolution, the community was given a proportionate share in the property based upon a ratio of the payments made with community funds vs. the payments made with Mrs. Moore's separate funds prior to the marriage and post-separation.

In *Marsden*, the husband built a home nine years prior to the marriage. After the marriage, the loan payments were made with community funds. The court, following *Moore's* detailed mathematical formula, found the husband's total separate property to be the down payment, the loan payments made before the marriage and after separation, the property's appreciation before the marriage, the appreciation during the marriage of that percentage of the property considered to be separate and one-half of the community's appreciation per-

centage during the marriage.

The nonowner spouse received one-half of the community payment amount that reduced the loan principal, plus one-half of the community's share of the appreciation during the marriage.

In both *Moore* and *Marsden*, the parties made payments on the original mortgage with community earnings. In *Branco*, the couple paid the original mortgage in full with proceeds from a community property loan.

The *Branco* court found no difference between the community acquiring interest in property by using community funds to make payments on a spouse's pre-existing loan and a community acquiring interest in property by using proceeds from a community property loan to completely pay off a pre-existing separate property loan.

Disregarding the trial court's finding that the parties wished to begin their marriage by wiping out all their separate property pre-existing debts and gifting the same to each other, the appellate court found that pursuant to *Moore*, no matter what the intentions of the parties, the community was entitled to an interest in the property if it contributed to the property's acquisition.

Moreover, and disputing the trial court's conclusion that the loans in no way facilitated the property's acquisition, the appellate court found that a portion of the loan proceeds was used to pay off the mortgage balance, and thus did help to facilitate the home's continued acquisition.

Finding the rationale of *Moore* and *Marsden* compelling, the *Branco* court awarded Mr. Branco one-half of the community interest in the Taft residence's appreciation during the marriage. Mrs. Branco was awarded the other one-half of the community interest in the appreciation, as well as all the appreciation before the marriage and after separation, the down payment and the payments on the original loan made before the marriage and after separation.

As for Mr. Branco's argument that the loans should be assigned to Mrs. Branco, the appellate court determined that only a portion of the loans was used to repay the original mortgage. The balance was used for purposes having nothing to do with the continued acquisition and ownership of the Taft property. As such, the court affirmed that the loans were community obligations.

The moral of the *Branco* story is easy: Unless there are separate property sources of income that a party can use to pay off pre-existing separate property debts or encumbrances, the court more likely than not will calculate and find that community payments (whether earnings or loan proceeds), used during the marriage to satisfy the separate property debts and continued acquisition of the separate property, entitle the community to "step into the shoes" of the lender or encumbrance to the extent the same is satisfied by community funds.

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