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## No duty to disclose finances before divorce petition

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Joy Evans and William Evans married in 1985 and separated in 2007. The two agreed that William would buy Joy out of the family home, their only significant marital asset, and the record reflected both parties assumed it had a net equity of \$600,000. And so Joy typed up a "pre-divorce agreement" providing for William to pay Joy \$300,000 for her one-half interest in the residence, which both parties signed. A recent Court of Appeal decision tested the enforceability of that agreement. *Marriage of Evans*, 2014 DJDAR 12106 (Aug. 29, 2014).

The Evans' pre-divorce agreement showed that it was made in contemplation of the dissolution of their marriage. Pursuant to the agreement, William paid Joy \$197,000 for her interest in the residence, leaving an unpaid balance of \$103,000. The agreement further provided that the terms of the final payment were "to be determined at the time of the final divorce agreement."

In February 2009 — approximately two years after separating and reaching an agreement about the residence — Joy filed a petition for dissolution of marriage. The parties exchanged preliminary declarations of disclosure in early 2010, and in October 2012, Joy served her final declaration of disclosure. William never served one.

At the time of their dissolution proceeding, the residence had an approximate fair market value of \$420,000 and was encumbered by a promissory note secured by a first trust deed with an unpaid balance of \$350,000, leaving net equity of \$70,000, much less than the \$197,000 William had already paid to Joy for her interest.

Clearly regretting his agreement to pay the agreed upon sum due to the decreased fair market value of the residence, and hoping to avoid paying Joy the remaining \$103,000, William tried to use the parties' failure to exchange preliminary declarations of disclosure prior to reaching the agreement about the residence, and his failure to serve a final declaration of disclosure, to

argue that the parties had violated the provisions of the Family Code, making their agreement unenforceable. The Court of Appeal rejected William's positions as illogical due to the plain language of the statutes, which require disclosures only within the context of pending dissolution actions, not for pre-petition agreements.

Accordingly, the primary issue on appeal was whether a settlement agreement entered into before filing a petition for dissolution of marriage, but in contemplation of it, is unenforceable due to the parties' failure to serve each with declarations of disclosure.

The Court of Appeal first considered the requirements for both preliminary and final disclosure declarations: The declarations of disclosure must include the "full and accurate disclosure of all assets and liabilities in which one or both parties may have an interest." Family Code Section 2103. These full and accurate disclosures "must be made in the early stages of a proceeding for dissolution or legal separation," and "each party has a continuing duty to immediately, fully, and accurately update and augment that disclosure to the extent that there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues ... each party will have a full and complete knowledge of the relevant underlying facts." Family Code Section 2100(c).

Preliminary declarations of disclosure are governed by Family Code Section 2104, and must be done after or concurrently with service of the petition for dissolution. The final declaration of disclosure, governed by Family Code Section 2015, must be exchanged before or at the time the parties enter into an agreement for the resolution of property or support issues other than temporary support, or if the case goes to trial. Final declarations can also be waived by the parties if they have exchanged preliminary declarations and if the waivers are mutual, knowing, intelligent and voluntary actions by the parties.

Family Code Section 2106 restricts the court from entering judgments if there is no exchange of final declarations of disclosure

to limited circumstances, which include mutual waivers of the exchange of final declarations, if there is a default judgment entered, or if there is good cause for the failure to provide a final declaration pursuant to Family Code Section 2107.

The Court of Appeal disagreed with William that these provisions should be interpreted to require the exchange of disclosure declarations before the parties enter into a pre-petition agreement resolving their property rights. It was clear from the express wording of Section 2104 that a preliminary declaration of disclosure was unambiguously associated with the filing of a petition for dissolution. There must be an existing proceeding for dissolution of marriage before there was an obligation by the parties to disclose their assets and liabilities. Otherwise, there could be no violation.

Similarly, as the requirement for a final declaration of disclosure presumed the existence of a preliminary declaration of disclosure, there could be no violation of the requirement to exchange final declarations in connection with a pre-petition property settlement.

It was clear to the Court of Appeal that, by following the general rule of statutory construction, statutes are to be interpreted in harmony with the overall statutory scheme — and Family Code Sections 2104 and 2105 were not intended to apply to pre-petition agreements.

The Court of Appeal also rejected William's attempt to use the decision in *In re Marriage of Burkle*, 139 Cal. App. 4th 712 (2006), to claim that declarations of disclosure are mandated by the intent of the parties, rather than when the agreement was reached (pre- or post-filing of the petition). The Court of Appeal read the decision in *Burkle* as finding that the disclosure requirements do not apply unless a petition for dissolution is pending, and the parties negotiate and execute an agreement in contemplation of a judgment dissolving the marriage.

The Court of Appeal rejected William's attempt to use *Burkle* to avoid the deal he negotiated before the filing of the divorce petition, finding that the clear intent of the parties is not the sole trigger for

the exchange of the disclosure declarations. The trial court's order upholding the pre-petition William and Joy entered into was affirmed.

It is clear from this case that parties can avoid disclosing their financial information to each other before reaching a property settlement if, and only if, they reach their property settlement prior to filing for dissolution of marriage, at which time the obligation to provide financial disclosures becomes effective. Joy's position in this case was also helped by the finding that both parties shared the same belief as to the fair market value of their residence at the time they entered into their agreement.

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