Case No. S252473

IN THE SUPREME COURT OF CALIFORNIA

In re CLIFFORD ALLEN BRACE, JR.
9th Cir. Case No. 17-60032

STEVEN SPEIER, CHAPTER 7 TRUSTEE,
Plaintiff and Respondent,

v.

CLIFFORD BRACE, JR. AND AHN BRACE,
Defendants and Petitioners.

After a request made pursuant to California Rules of Court, Rule 8.548, for this Court to decide questions of California Law presented in a matter pending in the United States Court of Appeals for the Ninth Circuit.

PETITIONER'S REPLY BRIEF

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I INTRODUCTION

This Reply Brief is submitted pursuant to California Rules of Court 8.200(a)(3), and in reply to the Answer Brief on the Merits and Appellee's Opening Brief filed by Appellee on May 2, 2019. (Hereinafter the "Answering Brief"). In that Answering Brief, Appellant mischaracterizes Appellants' position on the central issues of the case in an attempt to create "straw man" arguments; makes arguments which are not germaine to this Court's determination on the issue(s) submitted to it by the Certification; fails to address or respond to arguments made by Appellants in their Opening Brief, and raises an argument not previously raised at trial or on appeal to either the Ninth Circuit Bankruptcy Appellate Panel (hereinafter the "BAP") or the Ninth Circuit Court of Appeal. (Hereinafter the "Ninth Circuit").

Appellant will address each of these issues in response to the Answering Brief.

II SUMMARY OF ARGUMENT

In Appellant's section entitled Summary of Argument commencing on page 1 of the Answering Brief, Appellant presents, without citation to the record or otherwise, a combination of its version of the facts in the case,

conclusory arguments in its favor, a characterization of the findings of the trial court and the basis' therefor not found in the record, and its characterization of Appellants' position on appeal and Appellee's argument in response.

III STATEMENT OF FACTS AND PROCEDURAL HISTORY

In Section 3 of his Answering Brief at page 3, Appellant presents what it describes as a "brief" Statement of Facts and Procedural History. In subsection A to that section, Appellant argues, without reference to the record, that at trial, "Appellants did not dispute that the community property presumption did not apply to this case". Appellant mischaracterizes both the position of Appellants and Appellee in this regard at trial.

A. In the Bankrupty Court, Appellants Acknowledged that the Community Property Presumption Applied

In support of this argument, Appellee points to evidence at trial proffered by Appellant of an oral pre-nuptial agreement, which the Trial Court found unpersuasive. However, Appellee overlooks the fact that Appellant's position at trial was that the transfer of the Debtor's one-half interest in the Properties to an irrevocable trust under which his non-debtor spouse was the sole beneficiary, was mandated by the terms of that post nuptial agreement. (Appendix "Appx" W, 600-601). This position was taken

as a defense to the arguments of the Appellee that the Transfers to the Trust were fraudulent conveyances not supported by consideration. The rejection of this defense by the Trial Court resulted in a finding in favor of the Appellee at trial that such transfers were fraudulent conveyances and were set aside.

B. In their Motion for Reconsideration, Appellants Argued that Respondent's Recovery of Mr. Brace's Fraudulent Transfers Resulted in the Properties Becoming Tenancies in Common with Mrs. Brace

Appellee further argues at Section B, page 5 of his Answering Brief that in Appellants' Motion for Reconsideration, Appellants argued that as a result of the trial court's finding of fraudulent conveyance, the Property is now held by the spouses as tenants in common. A review of that Motion for Reconsideration shows that in that Motion Appellants contested a portion of the original judgment which had found that the Properties, upon setting aside the Trust Transfers were "community property" and property of the estate. (Appx. AA, 660-61)

Appellants argued that because title to the Properties was held in joint tenancy they should be restored to their condition *pro ante*, except that by virtue of the transfer, the joint tenancy had been severed resulting in the creation of a tenancy in common. (Appx AA, 666:4-8). This argument was

ultimately rejected by the trial court and, instead, it found that in that circumstance title was returned to its status pro ante and thus in joint tenancy. (Appx HH, 954-55). Thus, Appellee's argument in this regard is not contrary to Appellant's prior position and, in fact has no impact upon the issues in this appeal.

Of more direct significance, in his Opposition to the Motion for Reconsideration, the Appellee argued positions which are totally at odds with their positions on Appeal. Appellee argued to the trial court that the manner in which title is held is determinative of the character of the Property pursuant to California Evidence Code ("CEC") 662. Specifically, Appellee argued in his Opposition Brief to the Motion for Reconsideration that since the Trust Transfer Deeds to the Redlands and San Bernardino Properties named as transferor, "Clifford Brace Jr. a married man" rather than "Clifford Brace Jr., a married man as his sole and separate property", this was sufficient to establish, conclusively, that at the time of the Trust Transfers the Property was community property and not the Debtor's and his spouse's separate property in equal shares. In support of this contention Appellee stated:

> Under Cal. Evid. Code § 622, facts recited in a written instrument, other than a recital of consideration, are conclusively presumed to be

> true as between the parties or their successors in interest. 27 Cal. Jur. 3d Deeds of Trust § 69. Thus, the facts recited in the Trust Transfer Deeds are conclusively presumed to be true, and Debtor is estopped from denying that the Properties were held as community property at the time they were transferred to the Crescent Trust. (Appx. CC, 732:16-20)

Further, at the hearing on the Motion for Reconsideration on November 5, 2015, Appellee's counsel advanced this argument again. When the Court questioned whether when a Debtor and his non-debtor spouse hold title to real property as joint tenants, it nonetheless constitutes community property and thus entirely subject to administration by the trustee, Appellee's counsel agreed that the effect of holding title as joint tenants was to place only the Debtor's one half interest as property of the estate in the following exchange:

> MS. MARSHACK: Your Honor, I believe that Mr. Wade is actually correct on this issue.
> THE COURT: Uh-huh.
> MS. MARSHACK: If it is held to be a joint tenancy or a tenancy in common, only the Debtor's one-half interest --
> THE COURT: Uh-huh.
> MS. MARSHACK: -- comes into the estate --
> THE COURT: Right.
> MS. MARSHACK: -- and that is all the Trustee will administer.
> THE COURT: Uh-huh.
> (Appx. HH, 963)

The record further reflects that in the briefs of the parties and at

the hearing on the Motion for Reconsideration neither Appellant nor Appellee raised the issues presented by the California Supreme Court in its decision in *In re: Valli* 58 Cal 4th 1396 (2015). Instead, after an initial hearing on the Motion for Reconsideration on November 5, 2015, the court continued the hearing to December 10, 2015 in order to further consider the parties positions on the Motion for Reconsideration. (Appx. HH, 973) At the continued hearing, the trial court raised the issue of the effect of the decision in *In re: Valli, sua sponte*. The trial court indicated that it believed that the decision in *In re Valli,* controlled and over ruled the decision in *In re: Summers* and that as a result, the joint tenancy property was community property in this case. The court indicated that it intended to rely upon the decision in *Miller v. Gammie* (9th Cir. 2003) 335 F.3rd 889 for the proposition that it could disregard the Circuit's decision in *In re: Summers* as "clearly erroneous" (Appx. II, 985).

Counsel for Appellants attempted to be allowed an opportunity to further brief the issue in order to raise additional California authority to support the position that for purposes of 11 U.S.C. Section 541, the decision in In re: Valli did not control outside of

marital dissolution proceedings. The trial court refused further briefing on that issue, acknowledging that such issues would be preserved on appeal. (Appx. II, 1007-08) It is exactly those issues which were, and remain the core of Appellant's position on appeal.

C. Before the Bankruptcy Panel, Appellants Argued that *Summers* and *Valli* Were Irrelevant and that Evidence Code Section 662 Was Dispositive regarding the Characterization of the Properties.

Appellee argues that before the Bankruptcy Appellate Panel, Appellants argued that the decisions in *In re Summers* and *In re Valli* were "irrelevant" to the decision on appeal. (Answering Brief p. 6-7). Counsel for Appellants did make that statement in oral argument before the BAP, however, it was misinterpreted by the BAP. By stating the proposition thus, Appellants meant only that the decision in *In re Valli* did not extend to determinations of the community nature property when title was held in joint tenancy in proceedings outside of a marital dissolution and that *In re: Valli* did not require a determination in support of the trial court's ruling based on that decision.

Further, that in criticizing that portion of the decision in *In re: Summers* which held that the taking of title from a third party as other

than community property did not abate the requirements of the transmutation provisions of FC 852, *In re Valli* did not necessarily obviate the remainder of the decision in *In re Summers*. Thus, Appellants argued that the BAP could rule in Appellants' favor without relying on either *In re Valli* or the transmutation findings of the Ninth Circuit in *In re: Summers*.

D. Before the Ninth Circuit Court of Appeals, Appellants Argued That Evidence Code Section 662 Controlled Because The Form of Title Presumption Survived Valli When It Came To The Rights Of Creditors.

Appellee argues that in the appeal to the BAP, Appellants limited their argument to "solely on the interplay between Evidence Code Section 662 and Family Code 760". (Answering Brief p. 6). While this was one argument raised in that appeal, and one which Appellants maintain in this appeal. It was not the only basis for that argument. Additionally in the appeal to the Ninth Circuit, Appellants raised the panoply of arguments which mirror those raised to this Court in it Opening Brief, as well as those raised before the BAP, which were rejected by it in the decision in *In re: Brace*, 566 B.R. 13 (9th Cir. B.A.P. 2017)

Further, Appellee argues that a series of bankruptcy decisions

post *In re Valli*, support the finding of the trial court in this case. In the decision in *In re Obedian*, 546 B.R. 409 (Bank. C.D. Cal. 2016), the court addressed the issue of the interaction between CFC 760 and CEC 662 in an instance wherein a non-debtor spouse sought to avoid a judgment lien on co-owned property under 11 U.S.C. 522(f). As did the trial court in this matter, the court in *In re Obedian* interpreted the decision in *In re Valli* to determine that the presumption of CFC 760 overruled that of CEC 662 as to property taken in joint tenancy by spouses during marriage in joint tenancy absent a showing rebutting the presumption of CFC 760 as to "an agreement or understanding between the parties to the contrary" (*In re: Obedian*, supra at p. 416)(quoting *In re Marriage of Tucker*, 141 Cal. App. 3d at p. 132)

The court in *In re Obedian*, supra, went on to discuss the decision in *In re Summers* in detail. It noted that the decision in *In re Summers* rested its decision on 1) a finding that the transmutation provisions of CFC 852 did not apply when title to property was acquired by spouses from a third party; and, 2) that the act of taking title to property by spouses as joint tenants was, itself, evidence sufficient to meet the burden of proof as to the intent of the parties and

obviate the burden under CFC 760. In this regard the decision in *In re Obedian*, supra quoted the decision in *In re Summers*, supra as follows:

> Our reading of California law leads to the conclusion that the transmutation requisites had no relevance to the conveyance in this case. There simply was no interspousal transaction requiring satisfaction of statutory formalities . . . . Applying California law, we conclude that a third party conveyed joint tenancy interests to Eugene and Ann Marie Summers, a transaction to which the transmutation statute does not apply. The third-party deed specifying the joint tenancy character of the property rebutted the community property presumption, and rendered California's transmutation statute inapplicable. In re Summers, 332 F.3d at 1245, citing inter alia, *In re Marriage of Cross*, 94 Cal.App.4th 1143, 1147, 114 Cal. Rptr. 2d 839 (2001). (*In re Obedian*, 546 B.R. 409, 417, 2016)

In so deciding, the court in *In re Obedian*, supra found that in the decision of this Court in *In re Valli*, that:

> in a marital dissolution proceeding, acquisitions of property made by one or both spouses from a third party during marriage are not exempt from the marital transmutation provisions for transmuting community property to separate property, and unless the requirements of these statutes are met, property acquired during marriage is community property" (Citations)

Thus, the court in *In re Obedian*, supra, extended the holding of this Court in *In re Valli* beyond the confines of a marital dissolution proceeding and to property taken by spouses as joint tenants without

addressing any of the considerations arising from those particulars. Instead it focused entirely on the portion of the decision in *In re Summers* that the transmutation provisions of CFC 852 did not apply to property taken by spouses from a third party and this Court's decision in *In re Valli* to the contrary finding that this Court had overruled *In re Summers* in that regard.

Further, after acknowledging that the decision in *In re Valli* specifically stated that:

> 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 statues. (*In re Valli*, id at p. 1405-1406)

as well as the language of the concurring opinion in *In re Valli* which stated that the purpose of CEC Section 662 was:

> promoting the stability of titles to property . . . [u]nlike in the case of an action between the spouses . . . does play a role in a dispute between a spouse and an innocent third party purchaser" (*In re Obedian*, supra at p. 421)

the Court in *In re Obedian*, supra, nevertheless found that there was sufficient "dicta" in *In re Valli* to extend that holding to determinations outside of dissolution proceedings and without regard

to CEC 662. (*In re Obedian*, supra at p. 422)

The second case cited by Appellee for this position is that of *In re Collins*, 2016 WL 4570413 at*5 (Bankr. S.D. Cal. 2016) affd. *Collins v Wolf*, 591 B.R. 752 (S.D. Cal. 2018). After trial of the matter, the bankruptcy court ruled that a deed to the debtor and his spouse in joint tenancy, nonetheless constituted community property under the decision in *In re Valli* and that the interests asserted by a third party claimant who was not on title were invalid.

On appeal to the District Court, that court addressed the issue of whether *In re Valli* applies in non-dissolution contexts. After noting that this Court in Valli found that transfers from third parties were not "exempt" from the transmutation requirements of CFC 852, the court concluded that, there was no question as to the fact that the presumption of CFC 760 took precedence over CEC 662, "in marital or separation proceedings." (*Wolf v. Collins*, supra at p. 765)

The Court went on to note that this Court in *In re Valli* had left open whether or not the presumption of CFC 760 prevailed in matters outside of a dissolution proceeding. After discussing the separate basis for the court's holding in *In re Summers* and the panoply of decisions

which had held that the presumption of CFC 760 did not apply outside the dissolution context, the court stated the proposition as follows:

> The foregoing discussion illustrates the difficulty in discerning which presumption—§ 662 or § 760—controls non-dissolution cases in light of *Valli*. Part of the difficulty comes from the fact that there are essentially two form of title presumptions, § 662 and § 5110 (now Family Code § 2581). At bottom, Appellants ask this Court to do what no California court has done and hold that § 662 overcomes § 760 in a non-dissolution context. Because no California court has expressly done so, this Court declines to hold that § 662 overcomes the § 760 presumption. Other federal courts have reached similar conclusions. See *Brace*, 566 B.R. at 23 (*Collins v. Wolf*, 591 B.R. 752, 767)

In so ruling, the Southern District Court merely outlined the dimensions of the issue in this appeal and rather than rule on its merits, simply sustained the trial court's ruling, leaving to the State Courts a determination of same.

In any event, the determinations of the bankruptcy trial courts, the Southern District of California or the BAP, do not control the determination of the Certified Issue in this case. If the Ninth Circuit believed that they did, it would have merely relied on the decision in In re Brace before the BAP and not requested this Court's intercession on the matter.

Appellant argues that in the appeal before the Ninth Circuit,

Appellants "recast" their arguments to contend that *In re Valli* did not completely overturn *In re: Summers* and that the surviving portion of mandated that the title presumption mandated that the title presumption of CEC 662 applies. This is not a new argument. It is the argument preserved at the trial court level, raised at the BAP and rejected by them and raised again on the appeal before the Ninth Circuit and argued extensively before this Court in their Opening Brief on Appeal.

However, it is not the only argument on Appeal. The Opening Brief before this Court contains the entirety of Appellants' arguments on appeal and will not be restated herein.

E. **In Their Opening Brief, Appellants Continue To Ignore Valli and Contend That the Family Code Only Applies In the Context of a Marital Dissolution.**

Appellee, in his Answering Brief argues that "Appellants Continue To Ignore Valli and Contend that the Family Code Only Applies in the Context of a Marital Dissolution" (Answering Brief p. 9). Appellant hardly failed to address this Court's decision in *In re Valli*. One need only look to Appellants' Opening Brief to this Court at pages 30 to 39 for an analysis of that decision to find the breadth

and depth of Appellant's discussion of the decision in *In re Valli* to see that it was certainly not ignored. Once again, Appellants will not repeat those arguments in this brief.

IV LEGAL ARGUMENT

In the section of Appellee's Answering Brief entitled "Legal Argument" beginning at page 10, Appellee presents, his legal argument on the issue before this Court. After restating the holdings of the trial court and the BAP that based upon this Court's holding in *In re Valli*, CFC 760 controls and requires a finding that the property at issue is community property, Appellee raises a new argument in support of its position. At page 11 of the Answering Brief, Appellee states that Appellants "ignore California statutory law that explicitly makes Family Code Section 760 applicable to areas of law beyond family law, including interests in property under the Civil Code" (Answering Brief p. 11) What follows are two footnotes, 10 and 11, quoting the CCC at sections 687 and 695.020 without context, explanation or citation to any authority as to their applicability in this proceeding.

A review of the decision by the BAP, and the tables of citations

to Appellee's brief on appeal to the BAP and the Ninth Circuit show that citation to these sections was never made previously by the Appellee. Certainly, if the matter at issue was determinable merely by the clear language of these two sections, Appellee would have raised that issue previously. Further, if these issues controlled on the rights of third party creditors to property held in joint tenancy by spouses, there would be some case law to that effect to be provided by Appellee's.

In fact, a review of these provisions demonstrates why no such authority is cited and why the matter was not previously raised by Appellant.

CCC section 687 stands in that portion of the Civil Code under Division 2 (Property); Title 2 (Ownership); Chapter 2 Modification of Ownership; Article 1 (Interests In Property) Sections 678-704. Included in that Article at Section 683 is the provision governing property taken in joint tenancy. That section provides in relevant part that:

> (a) A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or by transfer from a sole owner to himself or herself and

> others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from spouses, when holding title as community property or otherwise to themselves or to themselves and others or to one of them and to another or others, when expressly declared in the transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. A joint tenancy in personal property may be created by a written transfer, instrument, or agreement.
> Cal Civ Code § 683

This provision provides that spouses can elect to hold property in joint tenancy by a transfer deed so stating. Originally adopted in 1855 and amended to its present language in 1955, this section has long be interpreted as providing that by taking what would otherwise be community property in joint tenancy, spouses agree that all the incidents of joint tenancy apply to their ownership of their respective interests.

Thus, when property is conveyed to husband and wife as joint tenants, the form of conveyance destroys the statutory presumption that property is community, and such deed creates joint tenancy in which interest of husband and wife are separate property. *Launer v. Griffen* (1943), 60 Cal. App. 2d 659. Further, where property is deeded to husband and wife as joint tenants, they are presumed to hold

separate interests in the property in joint tenancy. *In re Rauer's Collection Co.* (1948), 87 Cal. App. 2d 248.

Though realty is purchased largely with husband's separate estate, taking title in his name and that of his wife as joint tenants is tantamount to a contract that it be held in joint tenancy with all characteristics of such estate. *Barba v. Barba* (1951), 103 Cal. App. 2d 395. Further, notwithstanding property taken by spouses as joint tenants is purchased with community funds, in absence of evidence of intent that property be held as community property, it is held in joint tenancy. *King v. King* (1951), 107 Cal. App. 2d 257, and use of community funds to purchase property and taking of title thereto in names of spouses as joint tenants is tantamount to binding agreement between them that property shall not thereafter be held as community property. *Schindler v. Schindler* (1954), 126 Cal. App. 2d 597.

None of these decisions was addressed by this Court in the decision in *In re: Valli* because the facts in that case did not contain the issue of taking property as joint tenants, and, instead only of the taking of title as one spouse's separate property. However, in this case these decision would control on that issue.

Conversely, CCC Section 687, which was enacted in 1872, was adopted in its present form to incorporate the reference to Division 4 of the Family Code commencing at section 760 in 1992 and has co-existed with CCC 683, both before and after that date without apparent conflict. No case has held that the definition of community property under CCC section 687, with or without the reference to CFC 760, overrides or conflicts with the provisions of CCC 683 for purposes of the determining the manner in which title is held and which provides that spouses can choose to take title in joint tenancy.

Further, the provisions of CCC 687 which incorporate the definition of community property in CFC 760 became operative on January 1, 1994, along with the adoption of CFC 760. Therefore both of those sections apply only property acquired after the operative date of the statute, January 1, 1994. In this case, the Appellants acquired title to the Redlands property in either 1988 or 1978 and thus the incorporation of Section 760 and its presumption has no effect on that property. (Cite to record)

The reference to California Code of Civil Procedure ("CCP") 695.020 is likewise not determinative. Enacted in its present form in

1992 to reference the Family Code in place of prior references to the Civil Code, that section merely states the general rule that community property of spouses is subject to the enforcement of a judgment against either spouse. It does nothing to determine what, in fact constitutes community property under either the Family Code or other provisions of law.

Appellee argues that Appellants incorrectly argue that in order to prevail, they must establish that the position of the Appellee as Chapter 7 Trustee of the estate of Clifford Brace is a "third party". (Answering Brief p. 12) In this regard. Appellants argue, without authority, that the trustee, "stands in the shoes" of the debtor in all respects. As discussed in Appellants' Opening Brief on Appeal this position is far from established in the bankruptcy context outside of the general proposition that community property is "property of the estate under 11 U.S.C. 541 and that the bankruptcy court relies on State law for that determination.. (See Appellants' Opening Brief p. 14-15)

Appellee admits that an expansion of the reading of *In re: Valli* outside of dissolution actions and regarding property held in joint

tenancy will upend the prior law concerning treatment of property of spouses held in joint tenancy in probate and related proceedings. In response to that, Appellee merely argues that "a decision affirming the Bankruptcy Appellate Panel's decision will provide necessary clarification regarding the characterization of property rights in such cases." (Answering Brief p. 12).

In so arguing, Appellant admits, without support, that this Court should, and intended by the decision in *In re: Valli* to modify decades of case law under which property held by spouses as joint tenants which have respected the effects of which in probate and related proceedings have treated the interests of both spouses as their respective separate property and not as community property. (Appellants' Opening Brief p. 15-30)

A. The Bankruptcy Appellate Panel and the Bankruptcy Court Correctly Concluded that Family Code Section 760 Controls Over Evidence Code Section 662

Appellee's argument continues at Section 4(A) on page 13. In this regard, it quotes heavily from the decision in *In re Brace* before the BAP and decisions in accord. One such decision was that of the BAP in the case of *In re Lewis*, 515 B.R. 591, 598 (B.A.P. 9th Cir.

2014). That case involved the rights of a non-debtor spouse to object to the sale of community property claims co-owned with the debtor under 11 U.S.C. 363(I). In this regard, it cited *In re Valli* for the proposition that the presumption of CFC applied to make that determination and that the Appellant had not overcome its burden to the contrary. Notably, the decision in *In re: Lewis*, supra, did not address the issues of spouses holding title as joint tenants and whether this was sufficient to overcome the presumption of CFC 760 in the bankruptcy context.

The remainder of Appellee's arguments in this regard rely on the decision of the BAP in *In re Brace*, supra together with the reading of CFC Section 760, CCC 687 and CCP 690.020. Appellant has addressed these issues in their Opening Brief on Appeal and elsewhere in this Reply Brief.

Appellee argues further that case law prior to the decision in *In re Vallli* in which courts had relied on either CEC 662 or the limiting language of CFC 5110 to find that title held in joint tenancy by spouses was co-owned in equal parts by each spouse as their separate property was rendered inapposite by the decision in *In re: Valli*. This

is, essentially, a restatement of Appellee's argument that this Court in *In re Valli* addressed those issues conclusively or intended to do so.

A reading of the decision in this regard shows that the Court did not address any of the issues regarding either the conflict between the provisions of CEC 662 and the issues raised by taking title as joint tenants between spouses. Instead, Appellant falls back to the decision by the BAP in *In re Brace*, supra for its interpretation of the breadth of this Court's findings in *In re Valli*. Clearly neither that decision nor the Judgment of the trial court which are themselves the subject of Appeal to and Certification to this Court by the Ninth Circuit cannot, themselves, operate as precedent for this Court's ruling. They are, at most, merely arguments on those issues.

F. **Public Policy Supports Consistency in the Laws Governing Characterization of Property Acquired During Marriage.**

Finally, Appellant argues that "public policy" supports consistency in the characterization of community property for all purposes under California law. This is correct, Appellee argues, even though Appellee concedes that this Court has consistently noted the importance of maintaining the underlying principals of community property in respecting the rights of spouses against fraud and abuse by

over reaching spouses.

Instead, Appellant argues for "uniformity" above all other consideration under the law, including that of protecting the interests of and innocent spouse against those seeking to secure their interest in property for the debts of their spouse. Such is certainly not in keeping with either the overall purpose of fairness to spouses in the Family Code or the rights of third parties in unrelated proceedings. It fails to estimate the enormous impact such a sweeping determination would have on issues as disparate as taxation, probate of the property of spouses and exclude them from particpating fully in the rights and options available to non-married persons. In so doing, it might well undermine the institution of marriage itself.

In this same vein, Appellant argues the corollary to that proposition that applying the community property presumption of CFC 760 to other areas of law will not cause "confusion" in those other areas. After acknowledging again Appellants' argument that extending the holding in *In re Valli* to matters outside of dissolution proceedings would, "obviate a body of law, which, until now has been settled" (Answering Brief p. 25), Appellee concludes that applying In

re Valli outside dissolution proceedings to the rights of third parties in unrelated matters would be "unchanged".

As set forth in Appellant's Opening Brief and elsewhere in this Reply, extending In re: Valli would do tremendous harm to existing precedents in this State and do so unnecessarily and to the detriment of all concerned. Except, of course Chapter 7 trustees seeking to expand the estates of debtor to include that of non-debtor spouses.

Dated: 5/21/2019

Respectfully Submitted,
The Law Offices of Stephen R. Wade
By: /s/ Stephen R. Wade
Stephen R. Wade

CERTIFICATE BY APPELLATE COUNSEL

OF WORD COUNT

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

The undersigned certifies that Appellant's Reply Brief contains 6284 words. The undersigned relies on the word count of his WordPerfect word processing software in making this certification.

Date: 05/21/2019

/S/ Stephen R. Wade
Stephen R. Wade

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