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For Application of Family Code § 2851 Joint Title Presumption to be Valid, Family Code § 852 Requirements Must be Met

What Did the Court Rule?

The trial court determined when the husband added his wife as a partner in a modification of a partnership agreement; it converted the husband's separate property interest to community property, and ordered the husband to pay the wife's attorney fees and costs. The husband appealed asserting that his partnership interest was his separate property, regardless of the modification of partnership agreement. The appellate court reversed the trial court's decision.

What's the Main Takeaway?

Unless there is an express written declaration by the transmuting spouse, his or her separate real or personal property will not be transmuted to community property. When in question, the requirements for transmutation under Family Code § 852 must be met before applying Family Code § 2851, which presumes property acquired during marriage is community property.

Summary of the Case: *In re Marriage of Lafkas* (2015), 237 Cal.App.4th 921

- Prior to marriage, Appellant John Lafkas was one of three partners, who, in 1971, formed Smile Enterprises, which invested in real property. Typically, the profits from the partnership were reinvested and partnership expenses were covered by the income generated from the partnerships rental real property.
- John Lafkas and respondent Jean Doane were married on December 15, 1990. Neither John nor Jean contributed any additional funds or efforts to Smile Enterprises.
- In 1995, Smile Enterprises applied for a loan to finance part of the purchase price of two Riverside, California, properties that it was acquiring in an Internal Revenue Code § 1031 tax-deferred exchange.
- Lafkas said he asked Doane to participate in the loan transaction believing that the bank required her name on the application and the partnership. In order for Doane to participate in the transaction, the partners prepared a "Modification and Extension of General Partnership Agreement." A modification of the agreement listed Lafkas and Doane as holding a 1/3 interest as husband and wife. Lafkas did not provide any additional contributions or services for Smile Enterprises.
- Lafkas asserted that the partnership interest was his separate property while Doane asserted that the partnership interest was community property as Lafkas' separate property interest was transmuted

when the partnership agreement was modified to add Doane. Lafkas testified that adding Doane's name to the agreement was to meet the lender requirement, and he never intended to transmute his separate property interest in Smile Enterprise to the parties' community property.

- The trial court found that the modification of agreement was a transmutation under Family Code § 852 and that Lafkas' separate property interest in the partnership was converted to community property. The court also determined that Lafkas retained his separate property interest in the rental property values and the rents collected before June 12, 1995. The court also ordered Lafkas to pay \$160,000 towards Doane's attorney fees and costs.
- Lafkas appealed the trial court's ruling, and the appellate court reversed the trial court's decision as to the characterization of the property and award of fees and costs. The appellate court also held that the one-third partnership interest in name of the parties as husband and wife was directly traceable to Lafkas' separate property interest in the partnership, and there was no additional consideration provided by either party when Doane's name was added to the list of partners. The appellate court also found that there was no written consent and nothing in the new partnership agreement showing any intent to transmute separate property to community property.

[Click here](#) to read the California Court of Appeal's full published opinion. If you have any questions or would like to discuss Seiler's services, please contact Fred Rey, Richard Wilkolaski or Stuart Nakanishi at 650.365.4646.

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