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Community-funded improvements to separate property: Marriage of Wolfe, 2001

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Community-funded improvements to spouse's separate property are not presumed gift and community is entitled to reimbursement; however, community payments of property taxes are not reimbursed.

Marriage of Wolfe (2001) 91 CA4th 962, 110 CR2d 921

On dissolution of marriage, a husband was ordered to reimburse his wife for one-half of the community funds spent to pay the property taxes and install a drip irrigation system on his separate property. California courts do not presume a gift when community funds contribute to the purchase or reduce an encumbrance on separate property. Rejecting the husband's argument that the expenditure on improvements should be presumed to be a gift, the court of appeal held that, likewise, community-funded improvements to a spouse's separate property were subject to reimbursement. The court, however, held that this rule did not extend to community payment of taxes on separate property.

▶***THE EDITOR'S TAKE:*** I have never understood why the legislature went to all the work it took to write what is now Fam C §2640, which prescribes how to characterize separate property contributions to community property assets, but did not do the same for the converse case of community property contributions to separate property assets. Now, in *Wolfe*, a court has done it for them, at least to some extent. Of the community funds used to improve Phillip's separate property ranch, the share Joyce was entitled to receive as reimbursement looks exactly like what she would have received if the money had been her separate property and the ranch had been community property. Although the funds were expended seven years earlier, she was awarded no interest on them, as dictated by §2640(b) (which provides, "The amount reimbursed shall be without interest . . .").

It is hard to know what treatment spouses really intended for funds that were spent at a time when they were probably still in love with each other (although that does not seem to have been the case here, where the expenditures and divorce took place in the same year); but, as a generalization, the code section is probably correct in assuming that she would not have said, "I want my money to go to him even if we later get divorced," and that he would not have replied, "and I want to have to pay interest to her on those funds even though we never called it a loan." Thus, an interest-free loan seems like a good guess as well as a good compromise, and one that works equally well in the case of community funds that were used to improve separate property.

The court also treats the community funds advanced to pay the taxes the same way as does the code section, entirely denying reimbursement. If the outcome is based on that analogy, we may also expect to see no reimbursement for mortgage interest, maintenance, or insurance of the property, since those items are expressly listed in §2640(a) as nonreimbursable. These contributions get treated as gifts, probably not because anyone believes there was really a donative intent underlying them, but because an accounting line has to be drawn somewhere, and

the ordinary expenses of holding property are better placed on the other side of it (even, apparently, when the spouses are not using that property as their community abode).

The opinion also toyed with the possibility of treating the improvement expenditure as an investment, but rejected it because Joyce sought no more than pure reimbursement. Had the code analogy been literally followed, she could not have gotten any appreciation value anyway, because the statutory reimbursement does not include an "adjustment for change in monetary values." One is tempted to say that if a spouse wants to be an investor, the code requires her to say it (otherwise she is a mere lender or donor), but since reimbursement is even further qualified so that it "shall not exceed the net value of the property at the time of the division," the expender will receive investment treatment (rather than loan, but not necessarily rather than gift, treatment) when the property depreciates rather than appreciates. That, too, is probably what would happen regardless of whether the dollars flow from separate to community or vice versa.

Finally, we should be aware that this case says nothing about the treatment of expenditures by unmarried co-owners. Unmarried tenants in common and joint tenants are subject neither to §2640 nor to any judicial analogy to that section. Furthermore, results in those instances will not only be different from this one, but could differ among themselves, because the differences in the way title is held—under the "unity of title" requirement of joint tenancy, joint tenants necessarily hold equal interests, while tenants in common may hold varying percentage shares in the co-owned property—will lead to different consequences. —*Roger Bernhardt*