One amora time…The do's and don't of Transmutation, boiling it down.

Marriage of Lund (2009) 174 Cal. App.4th 40, 94 Cal. Rptr.3d 84

Given the number of cases coming down the pike from the Court of Appeals dealing with transmutation clauses in the context of an estate plan, it is clear the Courts intend to make the parties involved in a transmutation via estate planning stick to their word.

In the most recent transmutation case, Marriage of Lund, the Court focused on whether the wording in the specific document effecting the transmutation was ambiguous. The Court, consistent with the holding in *In Re Marriage of Holtemann* (2008) 166 Cal.App.4th 1166, **(see backpage Winter 2009 Financial Expert)** looked to find whether the document in question contained "the requisite express, unequivocal declarations of a present transmutation." That is, the Court focused on the four corners of the document to determine whether in that specific document alone, the husband "made "an express declaration" in writing of his unambiguous intention to transmute all of his separate property as of the date he executed the 2002 agreement."

In the document in question, the "Agreement to Establish Interest in Property", there were two substantive provisions which made clear that the husband's separate property had been transmuted into community property. The first, Section B, part 1 stated: "All property, real and personal, of the parties hereto, whether title thereto is held in the names of one or the other of the parties or both of the parties as joint tenants or otherwise, is the community property of the parties hereto, each having a present, existing, and equal interest therein."

The second, Section C, states: "All of the property, real and personal, held in the name of Husband having its origin in his separate property no matter how received and/or earned, *is hereby converted to community property* of Husband and Wife, and shall thereafter be the community property of the parties for estate planning hereto, *each having a present, existing, and equal interest therein.*" In the Court's analysis it stated that although the agreement does not use the word "transmutation," sections B and C clearly and unambiguously evidence an intent to transmute Earl's separate property into community property. Hence, Earl made "an express declaration" in writing of his unambiguous intention to transmute all of his separate property as of the date he executed the 2002 agreement.

The second issue in the case was whether the wife had rebutted the presumption that she had exerted undue influence in causing husband to transmute the property. The lower court found that the wife had successfully demonstrated that husband entered the transaction voluntarily with an understanding of all relevant facts, but failed to rebut the presumption that he did not understand the legal effect of the transaction.

In resolving the issue of husband's "understanding" of the legal ramifications of the documents he signed, the Court relied on the statement above the husband's signature

in the agreement which stated in part: “I have carefully read and understand all of the provisions of the foregoing Agreement and approve of and agree to all of the terms hereof.” The Court found that husband’s attestation to his understanding of the agreement served to rebut the presumption that he did not understand the legal import of the agreement.

The results of this case and the transmutation cases preceding it, ring loudly the importance for all parties to understand that a transmutation in the context of an estate plan will impact the determination of a property’s character in a marital dissolution proceeding. No, if and’s or buts about it….