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Shared Use and Ownership

Community/Separate Property

No undue influence shown in wife's agreement to quitclaim real property to husband—transmuting community property to his separate property—to gain favorable mortgage rate; husband met burden of proof standard of preponderance of evidence.

Marriage of Mathews (2005) 133 CA4th 624, 35 CR3d 1

Husband met Wife, a Japanese citizen, while he was working in Japan. They married in Japan and, two years later, moved to the United States and purchased a residence. To obtain a lower mortgage interest rate, Wife quitclaimed her interest in the residence to Husband, so he acquired it in his name alone. Throughout the marriage, Husband and Wife believed the residence was community property. The couple separated in 2003 and sold the residence. In 2004, after a trial, the trial court ruled that the residence was Husband's separate property, rather than community property.

The court of appeal affirmed, holding that the trial court applied the wrong burden of proof concerning the issue of undue influence, but that the error was harmless because substantial evidence supported the trial court's finding. Under Fam C §721(a) and (b), spouses may enter into transactions with each other that comport with general rules governing confidential fiduciary relationships, including a requirement that neither take unfair advantage of the other. If one spouse secures an advantage from a transaction, a statutory presumption arises under §721 that the advantaged spouse exercised undue influence, and the transaction will be set aside. *Marriage of Haines* (1995) 33 CA4th 277, 293, 39 CR2d 673.

Here, Husband and Wife entered a transaction by signing a quitclaim deed, which allowed Husband to gain the residence as separate property; thus, under *Haines*, the presumption that Husband exercised undue influence applied. Husband had the burden of overcoming that presumption by a preponderance of the evidence (not clear and convincing proof). See Evid C §115; *Estate of Stephens* (2002) 28 C4th 665, 677, 122 CR2d 358. Substantial evidence in the record supported the conclusion that Husband did overcome the presumption: Husband and Wife agreed that she signed the quitclaim deed to obtain a lower mortgage interest rate, and that Wife freely and voluntarily did so. Wife admitted she asked questions when she was unclear but asked none when she signed the quitclaim deed, and Husband placed no pressure on Wife to sign. Although Wife's first language is Japanese, she was above average in her English skills and her work as a translator suggested a more than adequate command of the English language.

COMMENT: *Since real property and community property issues overlap in this case, I asked Christine Tour-Sarkissian, who teaches Real Estate Transactions and Real Estate Litigation in our Real Estate Clinic at Golden Gate University School of Law and who is also a Certified Family Law Specialist, to comment on the significance of this decision. Thanks, Christine.—Roger Bernhardt*

Until now, family law attorneys were unsure as to what burden of proof courts would require for them to overcome the presumption of undue influence when an interspousal transaction had given one spouse an advantage over the other. The holding here—that a mere preponderance of the evidence is sufficient—should eliminate their fear that the higher and more difficult standard of clear and convincing proof would be the one they had to meet. The court's holding, despite its claim to the contrary, clearly chips away at the stricter standards that had been set in *Marriage of Haines* (1995) 33 CA4th 277, 293, 39 CR2d 673, and *Marriage of Delaney* (2003) 111 CA4th 991, 4 CR3d 378, reported in 26 CEB RPLR 241 (Nov. 2003), with accompanying Editor's Take.

Another element from *Haines* and *Delaney* that the opinion does not seem to follow is the requirement that there be adequate consideration for the transfer of the property into one name alone. The court's failure even to discuss this issue leaves practitioners quite in the dark as to how important this consideration now is.

A third lingering uncertainty arises from the fact that the effect of the quitclaim deed in *Mathews* was not only to transmute the property, but also to amount to a waiver of valuable property rights. The *Mathews* court appears to have intentionally avoided viewing this case as involving a waiver of the favored entitlement to a property right. Had the court treated this as a waiver situation, it would have had to apply the much tougher evidentiary burden of clear and convincing evidence. See *City of Ukiah v Fones* (1966) 64 C2d 104, 107, 48 CR 865.

In light of this decision, counsel to a married couple not contemplating divorce should be careful in allowing them to carry out their desire to get a better interest rate by changing title; they should execute some additional documents that show that no unfair advantage is resulting from it. After all, gloom and doom are what we lawyers are supposed to be always thinking about anyway. —*Christine Tour-Sarkissian*