UNITED STATES BANKRUPTCY COURT
Eastern District of California

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: **TUESDAY**
DATE: **JULY 30, 2024**
CALENDAR: **10:30 A.M. ADVERSARY PROCEEDINGS**

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be simultaneously: (1) **IN PERSON** at Sacramento Courtroom No. 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business** day prior to the hearing.

Information regarding how to sign up can be found on the **Remote Appearances** page of our website at:

https://www.caeb.uscourts.gov/Calendar/RemoteAppearances.

Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by **ZoomGov** may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to the trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

- Review the Pre-Hearing Dispositions prior to appearing at the hearing.
- Review the court's Zoom Procedures and Guidelines for these, and additional instructions.
- Parties appearing via CourtCall are encouraged to review the CourtCall Appearance Information.

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including screen shots or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

PRE-HEARING DISPOSITION INSTRUCTIONS

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"**No Ruling**" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"**Tentative Ruling**" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"**Final Ruling**" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: "**[Since posting its original rulings, the court has changed its intended ruling on this matter]**".

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("$880," not "$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. 23-23124-A-7 **IN RE: KEVIN BASSHAM**
23-2092 CAE-1

ORDER TO SHOW CAUSE
6-20-2024 [14]

DINGMAN V. BASSHAM

No Ruling

2. 23-23124-A-7 **IN RE: KEVIN BASSHAM**
23-2092 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
11-8-2023 [1]

DINGMAN V. BASSHAM
CRISTIN DINGMAN/ATTY. FOR PL.

No Ruling

3. 22-20832-A-7 **IN RE: DANIEL STEWART**
24-2013 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-21-2024 [1]

RICHARDS V. ROGERS
CHARLES HASTINGS/ATTY. FOR PL.

Final Ruling

The status conference is continued to September 10, 2024. If a judgment has not been entered, not later than 14 days prior to the continued status conference, the plaintiff shall file a status report.

4. 22-20832-A-7 **IN RE: DANIEL STEWART**
24-2014 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-21-2024 [1]

RICHARDS V. KELLER
CHARLES HASTINGS/ATTY. FOR PL.

Final Ruling

The status conference is continued to September 10, 2024. If a judgment has not been entered, not later than 14 days prior to the continued status conference, the plaintiff shall file a status report.

5. 22-20832-A-7 **IN RE: DANIEL STEWART**
24-2033 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
4-4-2024 [1]

RICHARDS V. RITCHIE BROS.
AUCTIONEERS (AMERICA) INC.
A. RAUSCH/ATTY. FOR PL.
ADVERSARY PROCEEDING DISMISSED: 05/29/24

Final Ruling

This case was dismissed on May 29, 2024. The Status Conference is concluded.

6. 22-21649-A-7 **IN RE: MARY KATTENHORN**
23-2082 BLL-2

MOTION FOR SUMMARY JUDGMENT
6-13-2024 [54]

KATTENHORN V. BMO HARRIS BANK,
N.A. ET AL
RICHARD HALL/ATTY. FOR MV.
DEFENDANT PHILLIP KATTENHORN NON-OPPOSITION

Final Ruling

Motion: Summary Judgment
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Continued to September 10, 2024, at 10:30 a.m.; notice of intend to grant summary judgment as to first cause of action (declaratory relief) against plaintiff, Fed. R. Civ. P. 56(f)
Order: Civil minute order

Debtor Mary Kattenhorn ("Mary") moves for summary judgment as to the characterization, i.e., community vs. separate property, as to her interest 3905 Mist Lane, Auburn, California. BMO Harris Bank ("BMO Harris") opposes the motion. The central issue is whether a grant deed executed in 2011, transmuted the character of the property from separate to community property.

FACTS

The essential facts are not in dispute. In 2008, Phillip and Mary (then Houar) purchased 3905 Mist Lane, Auburn, California. At that time Phillip and Mary were not married. They received title by grant deed but took the property as "joint tenants."

In 2009, Phillip and Mary married each other.

IN 2011, Phillip and Mary executed a grant deed to "Phillip Kattenhorn and Mary Kattenhorn, husband and wife as joint tenants." Ex. A in Support of Motion for Summary Judgment, ECF No. 58. The grant deed states simply:

> For valuable consideration, receipt of which is hereby acknowledged, Phillip Kattenhorn and Mary Kattenhorn, husband and wife, who acquired title as Phillip Kattenhorn an unmarried man and Mary Jean Hour, an unmarried woman hereby grant(s) to Phillip Kattenhorn and Mary Kattenhorn, husband and wife as joint tenants the following described property...

Id.

That deed contained no other verbiage as to the characterization, or attempt to re-characterized, their interests. *Id.*

Later, BMO Harris obtained a judgment against Phillip and recorded an abstract of judgment creating a lien against 3905 Mist Lane, Auburn, California.

Phillip and Mary commenced marital dissolution proceedings in state court.

Mary filed a Chapter 7 bankruptcy; at the time she filed, the state court had not divided the couple's property. Mary, supported by Phillip, seeks to avoid the judicial lien in favor of BMO Harris, 11 U.S.C. § 522(f). For the purposes of that proceeding, Mary seeks to avoid the lien based on the belief that she has a community property interest in the entire property. In contrast, BMO Harris contends that Mary only held a fractional, i.e., one-half interest in that property.

PROCEDURE

Mary Kattenhorn filed an adversary proceeding against BMO Harris Bank and her former spouse, Phillip Kattenhorn seeking: (1) declaratory relief as to the nature and extent of her interest in 3905 Mist Lane, Auburn, California; and (2) seeking to avoid the lien of BMO Harris Bank.

Mary now moves for summary judgment as to the nature, i.e., community property, of Mary's interest in 3905 Mist Lane, Auburn, California. Mot. for Partial Summary J. 6:1-7, ECF No. 54. Phillip Kattenhorn ("Phillip") has filed a non-opposition to the motion. BMO Harris opposes the motion.

JURISIDICTION

This court has jurisdiction. 28 U.S.C. §§ 1334(a)-(b), 157(b); *see also* General Order No. 182 of the Eastern District of California. Jurisdiction is core. 28 U.S.C. § 157(b)(2)(A),(B),(K); *In re Ahn*, 804 F. App'x 541, 544 (9th Cir. 2020). All parties have consented to entry of final orders and judgments. 28 U.S.C. § 157(b)(3); *Wellness Int'l Network, Ltd. v. Sharif*, 135 S.Ct. 1932, 1945-46 (2015); Scheduling Order 2.0, ECF No. 50.

LAW

Summary Judgment

Federal Rule of Civil Procedure 56 requires the court to grant summary judgment on a claim or defense "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), *incorporated by* Fed. R. Civ. P. 56. "[T]he mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *California v. Campbell*, 138 F.3d 772, 780 (9th Cir. 1998) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986)). "A fact is 'material' when, under the governing substantive law, it could affect the outcome of the case." *Thrifty Oil Co. v. Bank of Am. Nat'l Trust & Sav. Ass'n*, 322 F.3d 1039, 1046 (9th Cir. 2003) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

"The court must view the evidence in the light most favorable to the non-movant and draw all reasonable inferences in the non-movant's favor." *Swoger v. Rare Coin Wholesalers*, 803 F.3d 1045, 1047 (9th Cir. 2015) (citing *Clicks Billiards Inc. v. Sixshooters Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001)).

A shifting burden of proof applies to motions for summary judgment. *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010). "The moving party initially bears the burden of proving the absence of a genuine issue of material fact." *Id.*

"Where the non-moving party [e.g., a plaintiff] bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case. Where the moving party meets that burden, the burden then shifts to the non-moving party to designate specific facts demonstrating the existence of genuine issues for trial." *Id.* (citation omitted). The Ninth Circuit has explained that the non-moving party's "burden is not a light one. The non-moving party must show more than the mere existence of a scintilla of evidence." *Id.* "In fact, the non-moving party must come forth with evidence from which [the factfinder] could reasonably render a verdict in the non-moving party's favor." *Id.*

When the moving party has the burden of persuasion at trial (e.g., a plaintiff on claim for relief or a defendant as to an affirmative defense), the moving party's burden at summary judgment is to "establish beyond controversy every essential element of its . . . claim. *S. California Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003) (internal quotation marks omitted). In such a case, there is no need to disprove the opponent's case "[i]f the evidence offered in support of the motion establishes every essential element of the moving party's claim or [affirmative] defense." Hon. Virginia A. Phillips & Hon. Karen L. Stevenson, *Federal Civil Procedure Before Trials, Calif. & 9th Cir. Edit.,* Summary Judgment, Burden of Proof ¶ 14:126.1 (Rutter Group 2019).

A party may support or oppose a motion for summary judgment with affidavits or declarations that are "made on personal knowledge" and that "set out facts that would be admissible in evidence." Fed. R. Civ. P. 56(c)(4). The assertion "that a fact cannot be or is genuinely disputed" may be also supported by citing to other materials in the record or by "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

"A motion for summary judgment cannot be defeated by mere conclusory allegations unsupported by factual data." *Angel v. Seattle-First Nat'l Bank*, 653 F.2d 1293, 1299 (9th Cir. 1981) (citing *Marks v. U.S. Dep't of Justice*, 578 F.2d 261, 263 (9th Cir. 1978)). "Furthermore, a party cannot manufacture a genuine issue of material fact merely by making assertions in its legal memoranda." *S.A.*

Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co., 690 F.2d 1235, 1238 (9th Cir. 1982).

Transmutation

In most instances, the time of acquisition of property determines its character. Commentators are very clear on this point.

> Characterization by Time of Acquisition: A community property interest may only be acquired *during marriage* and *before separation*. [Fam.C. §§ 760, 771(a) & 772] Concomitantly, a spouse's community property interest arises *at the time the property is acquired*; it is not affected by a change in the form of the property (*¶ 8:125*) and may be altered only by judicial decree or joint action between the parties. [*Marriage of Rossin* (2009) 172 CA4th 725, 732, 91 CR3d 427, 432; *Marriage of Moore & Ferrie* (1993) 14 CA4th 1472, 1478, 18 CR2d 543, 546].
>
> *These principles culminate in the general rule that the separate vs. community character of property is normally determined by reference to the time of its acquisition.* [*Marriage of Fabian* (1986) 41 C3d 440, 445, 224 CR 333, 336; see *Marriage of Lehman* (1998) 18 C4th 169, 177, 74 CR2d 825, 828 (characterization of employee retirement benefits)—"What is determinative of characterization is … a single concrete fact—time" (i.e., whether right to benefits accrues before, during or after marriage); *Marriage of Rossin*, supra, 172 CA4th at 732, 91 CR3d at 431—"Perhaps the most basic characterization factor is the time when property is acquired in relation to the parties' marital status" (internal quotes omitted)]
>
> a. [8:71] Premarital acquisitions: *Property acquired before marriage is the acquiring spouse's separate property, as is property obtained during marriage that can be traced to a premarital acquisition.* [Fam.C. § 770(a)(1) & (3) ("rents, issues and profits" of SP are SP)]
>
> Like community property, separate property does not lose its character as such by a mere change in *form or identity* (*¶ 8:125*). [*Marriage of Koester* (1999) 73 CA4th 1032, 1037-1038, 87 CR2d 76, 80-81—SP character of business owned before marriage not changed simply by incorporation during marriage; *Marriage of Rossin*, supra, 172 CA4th at 735-736, 91 CR3d at 434 (disability benefits under private insurance policy purchased with SP before marriage)]

Hogoboom et al., *California Practice Guide-Family Law* § 8:70 et seq. (Rutter Group June 2024) (emphasis added).

Notwithstanding these principles, before and during marriage married persons may change, in the words of family law, transmute their property from one form, e.g., separate property to community property. Id. at § 8:471, citing Fam.C. § 850(a), (b) & (c); see

also Fam.C. § 1500. A transfer is not a sufficient basis to find transmutation.

> A "transfer" of property between spouses is not necessarily a "transmutation" that changes characterization or ownership. As discussed at ¶ 8:472 ff., a transmutation can occur only by adherence to statutory formalities, which involve more than a mere transfer of or direction to transfer property. [Marriage of Barneson (1999) 69 CA4th 583, 591, 81 CR2d 726, 731—"transmutation may be effected by means of a transfer, but a transfer is not necessarily a transmutation"].

Id. at § 8:471.2.

Transmutations must be in writing.

> *Transmutations of real or personal property made on or after January 1, 1985 are invalid unless evidenced "in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest is adversely affected."* [Fam.C. § 852(a), (e) (emphasis added); *Estate of MacDonald* (1990) 51 C3d 262, 267-268, 272 CR 153, 157; see *Marriage of Knox* (2022) 83 CA5th 15, 20, 40-42, 299 CR3d 276, 278, 294-296 (dictum)—because pro per W failed to offer grant deed into evidence, family court found residence's SP character unaltered even though H acknowledged changing title (concluding if W had been represented by counsel, she probably would have prevailed on transmutation issue); Marriage of Wozniak (2020) 59 CA5th 120, , 273 CR3d 421, 434-435 (declining to interpret § 850 as permitting unilateral property transfers from one spouse to the other absent "acceptance")—W's refusal to accept H's interspousal transfer deed deemed sufficient to render said deed ineffective for purposes of transmuting H's CP interest in parties' residence into W's SP].

Id. at § 8:472 (emphasis added).

More importantly, the express declaration its must meet certain requirements.

> Fam.C. § 852 is strictly construed to draw a "bright line" between valid and invalid transmutation agreements. Clearly, the agreement must be *in writing*, signed by the spouse whose interest is adversely affected. [Fam.C. § 852(a)] **But, more significantly, "a writing signed by the adversely affected spouse is *not* an 'express declaration' … [within the meaning of the statute] *unless* it contains language which expressly states that the characterization or ownership of the property is being changed."** [*Estate of MacDonald* (1990) 51 C3d 262, 264, 272, 272 CR 153, 155, 160 (original and added emphasis); *Marriage of Benson*, supra, 36 C4th at 1107, 32 CR3d at 478-479; see also *In re Brace* (2020) 9 C5th 903, 938, 266 CR3d 298, 323 (citing *MacDonald* with approval and finding joint tenancy deed by itself insufficient)—for joint tenancy

> property acquired with community funds on or after 1/1/85, valid transmutation from CP to SP requires written declaration expressly stating change in property's character/ownership; *Marriage of Begian & Sarajian* (2018) 31 CA5th 506, 513, 242 CR3d 692, 697—no valid transmutation where Trust Transfer Deed signed by H in favor of W failed to expressly state what real property interest was being transferred and could be interpreted in more than one way (¶ 8:479.1)].

Id. at § 8:477 (emphasis added).

Several other matters warrant comment. The first is that extrinsic evidence is inadmissible.

> The § 852(a) express written declaration requirement was enacted with an aim to avoid the extensive litigation that ensued under prior law permitting oral and implied transmutations. It also discourages spouses from committing perjury by manufacturing an oral or implied transmutation. [See Marriage of Benson, supra, 36 C4th at 1106, 32 CR3d at 477-478; Marriage of Campbell (1999) 74 CA4th 1058, 1062, 88 CR2d 580, 583].

Id. at § 8:478.

Second, MacDonald requires a "clear demonstration" in a change in ownership.

> No particular "magic words": A valid transmutation agreement need not "use … the term 'transmutation' or any other particular locution." Nor need a writing sufficient to satisfy the "express declaration" requirement contain the words "community property" or "separate property." For example, a spouse may effectively transmute their CP interest to the other spouse's SP by signing a writing that states "I give to … [my spouse] any interest I have in … [specified property]." [*Estate of MacDonald*, supra, 51 C3d at 273, 272 CR at 161; *Marriage of Starkman*, supra, 129 CA4th at 664, 28 CR3d at 642; see *Estate of Bibb* (2001) 87 CA4th 461, 468-469, 104 CR2d 415, 420—express declaration requirement satisfied by use of word "grant" in deed (¶ 8:484)].
>
> "**The *MacDonald* test is not difficult to meet: It requires only a clear demonstration of a change in ownership or characterization of the property at issue.**" [Marriage of Barneson, supra, 69 CA4th at 593, 81 CR2d at 733].
>
> a) [8:479.1] "Transfer" not enough: But, as noted earlier, use of the word "transfer," without more, does not satisfy § 852(a) and thus does not effect a transmutation. "[W]hile the term 'transfer' could refer to a change in ownership, it does not necessarily do so." [*Marriage of Barneson*, supra, 69 CA4th at 590-591, 81 CR2d at 731 (emphasis in original); see also *Marriage of Begian & Sarajian* (2018) 31 CA5th 506, 509, 516-518, 242 CR3d 692, 694, 699-701—Trust Transfer Deed purporting

to "grant" real property to W and stating said transfer was "gift" deemed invalid transmutation susceptible to at least two different interpretations (¶ 8:477); and ¶ 8:483.5].

Id. at §§ 8:479-8:479.1 (emphasis added).

Finally, as applied to grant deeds, the *MacDonald* rule has been applied in this fashion.

> Deeds between spouses: An executed deed between spouses satisfies the *MacDonald* "bright line" test if, independent of extrinsic evidence, it "contains a clear and unambiguous expression of intent to transfer an interest in the property." [*Estate of Bibb* (2001) 87 CA4th 461, 468, 104 CR2d 415, 419]
>
> **A *grant deed* signed by a spouse transferring a separate property interest in real property to both spouses as joint tenants meets the test. "[S]ince 'grant' is the historically operative word for transferring interests in real property, there is no doubt that [H's] use of the word 'grant' to convey the real property into joint tenancy satisfied the express declaration requirement** …" [*Estate of Bibb*, supra, 87 CA4th at 468-469, 104 CR2d at 420; see also *Marriage of Haines* (1995) 33 CA4th 277, 293-294, 39 CR2d 673, 683 (disagreed with on other grounds by *In re Brace* (2020) 5 C5th 903, 916, 266 CR3d 298, 304-305) (summarily concluding *quitclaim deed* satisfies § 852(a) formalities); compare *In re Brace* (2020) 9 C5th 903, 938, 266 CR3d 298, 323 (joint tenancy deed, by itself, insufficient; ¶ 8:477); *Marriage of Knox* (2022) 83 CA5th 15, 20, 299 CR3d 276, 278 (dictum)—because pro per W failed to offer grant deed into evidence, family court found residence's SP character unaltered even though H acknowledged changing title, *discussed further at* ¶ 8:472]
>
> And, in a "case of first impression," an interspousal transfer grant deed (ITGD) signed by H transferring the community's interest in real property to W as her *sole and separate property* met the test: "The standard ITGD expresses an intent to transfer a property interest from one spouse to another. The constituent components of the word 'interspousal'—literally *between* spouses—plus the words 'transfer' and 'grant,' plus the usual statement about the grantee (or grantees) taking the property as either community or separate property, are all clear indicators the document constitutes an express declaration of an agreement to change the marital character of the property." [*Marriage of Kushesh & Kushesh-Kaviani* (2018) 27 CA5th 449, 451, 455, 457, 238 CR3d 174, 175-176, 179-180 (emphasis in original) (distinguishing *Marriage of Valli* which gave Fam.C.'s transmutation statutes precedence over Ev.C. § 662's title presumption (¶ 8:33.2), and finding ITGDs are both "title documents" and "writings that expressly transfer spousal interests"); see also *Marriage of Wozniak* (2020) 59 CA5th 120, , 273 CR3d 421, 432—although H's ITGD met

> all § 852(a)'s writing requirements, W's refusal to *accept* said deed rendered it ineffective for purposes of transmuting H's CP interest in parties' residence into W's SP (¶ 8:472)].

Id. at § 8:484 (emphasis added).

DISCUSSION

In determining whether the *MacDonald* test for transmutation has been satisfied the court looks solely to the 2011 Grant Deed. *In re Marriage of Begian & Sarajian*, (2018) 31 Cal. App. 5th 506, 512, 242 Cal. Rptr. 3d 692, 697. It does so through the lens of the *Marriage of Barneson*; *Barneson* reminds us that: (1) there is a presumption against transmutation; (2) the written express declaration must be a "clear demonstration"; and (3) that the spouses intended to change ownership or characterization of the property.

Here, the result turns on the presumption against transmutation and on the rule that the court may only look to the 2011 Grant Deed for the purposes of determining intent. The only real question is whether the 2011 Grant Deed evidences a clear intent to change the character of the property from separate to community. The mere existence of a transfer between spouses does not evidence an intent to change the character of the property. *Marriage of Barneson*, (1999) 69 CA4th 583, 591, 81 CR2d 726, 731. The use of "joint tenancy" verbiage does not evidence an intent to change the character of the property. *Estate of Petersen*, (1994) 28 CA4th 1742, 1754-1755, 34 CR2d 449, 458-459. A deed that "grants" a spouse an interest in property not previously held has been held to change the character of property. *Est. of Bibb*, (2001) 87 Cal. App. 4th 461, 468–69; *In re Marriage of Knox*, (2022) 83 Cal. App. 5th 15, 20. But the court's research did not reveal any cases where the use of the word "grant" in a deed between spouses that already hold an interest in the property has been deemed a clear demonstration of an intent to change the character of the property. For these reasons, the court does not find the *MacDonald* standard satisfied.

NOTICE OF INTENT TO GRANT SUMMARY JUDGMENT AGAINST PLAINTIFF

Rule 56(f)(1) allows the court to grant summary judgment against a non-movant, i.e., the plaintiff. Here, Mary Kattenhorn seeks declaratory relief that the 2011 Grant Deed changed the character of 3905 Mist Lane, Auburn, California, from separate property to community property. For the reasons set forth above this court believes that as a matter of law the 2011 Grant Deed was ineffective to change the character of Mary Kattenhorn's interest in the property. Under Rule 569 The court will continue this matter to allow Mary Kattenhorn to file such briefs and/other evidence as she desires on this subject.

CONCLUSION

The hearing on this matter is continued to September 10, 2024, at 10:30 a.m. The court will issue a civil minute order setting a further briefing schedule.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion is continued to September 10, 2024, at 10:0 a.m.;

IT IS FURTHER ORDERED that not later than August 12, 2024, the plaintiff may file further briefs and/or evidence with respect to these issues; the court is particularly interested in authority for the proposition that the use of the word "grant" in a deed between spouses who already hold an interest in the asset/property as separate property was deemed a change in the character of the property under the *MacDonald* test;

IT IS FURTHER ORDERED that not later than August 26, 2024, the defendants may file such further briefs and/or evidence as they desire; and

IT IS FURTHER ORDERED that the record will be closed as of the close of business on August 26, 2024, and that no further briefs and/or evidence/objections are authorized.

7. 23-23376-A-7 **IN RE: JOSEPH/RACHEL DIAZ**
24-2021 CAE-1

CONTINUED STATUS CONFERENCE RE: COMPLAINT
3-6-2024 [1]

FARRIS V. DIAZ ET AL
GABRIEL HERRERA/ATTY. FOR PL.

No Ruling