

**IN THE DISTRICT COURT OF APPEAL OF FLORIDA
FOURTH DISTRICT**

JOAN JOHNSON,

Case No.: 4D18-0432

Appellant,

L.T. No.: 502015CP001096XXXXNB

v.

LEE TOWNSEND, et al.,

Appellees.

REPLY BRIEF OF APPELLANT JOAN JOHNSON

On Appeal from the Probate Court of the Fifteenth Judicial Circuit in and for Palm
Beach County, Florida

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REPLY ARGUMENT

Florida is filled with retirees who migrate here from community property states (like Texas) who bring their community property with them. When those retirees bring their community property to Florida, and when the first spouse dies – Florida must recognize the surviving spouse’s vested ownership rights in the community property.

By enacting the Uniform Disposition of Community Property Rights at Death Act, the Florida Legislature recognized that the community property rights of surviving spouses that originated from the community property laws of a sister State must be respected – not confiscated.

By enacting the Uniform Act, the Florida Legislature recognized that how the community property is titled (whether titled in the name of the wife or the husband - regardless of who dies first) is of no moment. Rather, the spouses are each deemed to own half of the property. Title is irrelevant. This is the clear import of F.S. §732.219, which reflects:

Disposition upon death. – Upon the death of a married person, one-half of the property to which ss. 732.216-732.228 apply is the property of the surviving spouse and is not subject to testamentary disposition by the decedent or distribution under the laws of succession of this state. One-half of that property is the property of the decedent and is subject to testamentary disposition or distribution under the laws of succession of this state. The decedent’s one-half of that property is not in the elective estate.

Ergo, under Texas law – which was the jurisdiction where JOAN and CLARK acquired their community property interest in the Palisades investment (which is the basis of JOAN’s Petition), JOAN and CLARK are each deemed to own half of the property - regardless of title. See generally, McClary v. Thompson, 65 S.W. 3rd 829 (Tex. Ct. App. Forth Worth 2002).

California – another community property state with a well developed jurisprudence on community property, described the spouses rights as follows:

“The rationale of this rule is found in the nature of community property. ‘The respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests.’ (Civ. Code, §5105.) In other words, each spouse has a vested undivided one-half interest in the community property. Death of a spouse only dissolves the community; it does not affect the character of the property acquired or rights vested before the spouse’s death (citations omitted).”

Estate of Wilson v. Bowens, 183 Cal.App. 3d 67; 72 (Cal. Ct. of Appeal, First District, Division 5, 1986).

And as described in Footnote 6 by the California Court’s Estate of Wilson v. Bowens opinion:

“The vested nature of the surviving spouse’s claim to one-half of the community property upon the death of the other spouse is consistent with, but not dependent on, the vested nature of the surviving spouse’s community property rights during marriage (citations omitted). ‘The surviving spouse’s rightful claim to half of the community property on the other spouse’s death stems not from the rights held during the

marriage but from the survivor's vested interest existent immediately upon death unless and until voluntarily relinquished.' (Ibid)"

JOAN has a vested ownership interest in one-half of any community property owned at death. Per JOAN's Petition, this \$3 million Palisades investment purchased when they lived in Texas is a vested 50% interest owned by JOAN and is not a "claim" nor a "cause of action" against her husband.

JOAN, as Personal Representative, could perform the ministerial act of delivering to JOAN, individually, her vested 50% property interest in Palisades. [Under Florida's Uniform Act procedure, JOAN's Petition is referred to as "perfecting" her interest. See, F.S. §732.223.]

Whether JOAN's 50% vested ownership in Palisades is considered a lien, a security interest, or, as Texas law reflects, in the nature of a Trust interest – should not matter. JOAN, as Personal Representative of CLARK's Estate, is not holding title to JOAN's vested 50% interest in the Palisades investment adversely to JOAN, individually; so it is not a claim or a cause of action. That Palisades investment sits on the table waiting for its being perfected and transferred. There are no bona fide third party purchasers who are involved; there are no persons who have detrimentally relied in any way upon any representations; JOAN is not equitably estopped in these proceedings to perfect her 50% interest.

As reflected in JOAN's Petition, the \$3,000,000 investment in Palisades, purchased while JOAN and CLARK lived in Texas (using community property), remained titled in CLARK's name from that date of purchase through his death. Under Texas law, that property was, in effect, held in trust by CLARK for JOAN and now JOAN, as Personal Representative, steps into CLARK's shoes as Trustee of JOAN's 50% interest.

As to the continuing viability of the so-called "Trust Exception" to the Claims Statute, the Federal District Court opinion Grijalva v. GulfBank, 2011 WL 282754 (S.D. Fla. 2011) provides no real guidance and should have no weight in this proceeding. The Grijalva case did not involve community property nor did the Plaintiff allege that the decedent held the property as a Trustee for the Plaintiff. Further, the Grijalva court's suggestion that the May v. Illinois National Ins. Co., 771 So.2d 1143 (Fla. 2000), Florida Supreme Court case eviscerated the "Trust Exception" to the Claim's Statute is simply not correct. The Florida Supreme Court did not address the "Trust Exception" to the Claim Statute in its Illinois v. May decision.

Consequently, if JOAN's 50% vested Palisades interest was held by CLARK as Trustee for JOAN, then it is not a probate asset, and thus JOAN is not subject to the claims period (because of the Trust relationship, it is not a probate asset). This

comports with F.S. §732.219 which explicitly states that JOAN's 50% interest "[i]s the property of the surviving spouse and is not subject to testamentary disposition by the decedent of distribution under the laws of succession of this state."

By treating JOAN's vested property rights in Palisades instead in the nature of a creditor claim, thereby depriving JOAN of her community property because she did not file a probate action within the creditor's claim time period, the probate judge committed error.

CONCLUSION

If we in Florida intend to turn community property rights into contractual debt obligations (like creditor claims), it will turn community property jurisprudence on its head and, would undoubtedly, require wholesale legislative correction to address (and fix) the ramifications of such a determination.

Consequently, and respectfully, JOAN believes that the Probate Court erred when it determined that JOAN's 50% vested community property rights in the Palisades investment constitutes a claim or a cause of action subject to the Creditor Claim Statutes - as opposed to a vested interest owned by JOAN which is not subject to disposition or distribution by CLARK at his death.

Again, JOAN respectfully requests the Court reverse the Probate Court's Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-mail this 25th day of June, 2018 to to William E. Boyes, Esq. (bboyes@bfmlaw.com; asabocik@bfmlaw.com; czill@bfmlaw.com), Boyes, Farina & Matwiczyn, P.A., 3300 PGA Blvd, Suite 600, Palm Beach Gardens, FL 33410, and Rebecca G. Doane, Esq. (rgdoane@doanelaw.com; ngarrigan@doanelaw.com; manderson@doanelaw.com), Doane & Doane, P.A., 2000 PGA Blvd, Suite 4410, Palm Beach Gardens, FL 33408.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the contents of this Reply Brief are in compliance with the font requirements of Fla. R. App. P. 9.210(a)(2), on this 25th day of June, 2018.

/s/ Edward Downey

EDWARD DOWNEY
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