



Forensic Accounting Today

Newsletter of Ron J. Anfuso, CPA/ABV, An Accountancy Corp.

Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA*

28441 Highridge Road, Suite 110 • Rolling Hills Estates, CA 90274

Phone: (310) 378-6606 • E-mail: rja@anfusco.com

Website: www.anfusocpa.com • Blog: blog.anfusocpa.com



Issue 34

The First Case in a Long Time That Changed How Apportionment Calculations Work

A November 2015 decision by the California Court of Appeal Second Appellate District considered the 1979 judgment of *in re the Marriage of Marcia and Lawrence Aufmuth* in its ruling concerning the apportionment calculation of a family home. According to Family Code §2640, (b)... *the party shall be reimbursed for the party's contributions to the acquisition of property of the community property estate to the extent the party traces the contributions to a separate property source. The amount reimbursed shall be without interest or adjustment for change in monetary values and may not exceed the net value of the property at the time of the division.*

In the case of *in re the Marriage of Marcia and Lawrence Aufmuth*, however, the parties agreed that the separate and community interests were to be computed on a pro rata basis in direct proportion to the amounts of separate and community funds invested in the property. This means that any funds found to be separate by the trial court would increase or decrease based on the agreed upon fair market value of the parties' home. To compute the respective interests in property using the *Aufmuth Formula*, the share of capital appreciation (or depreciation) attributable to each source was added to the amount of equity contributed by each source.

In this newsletter, I review the apportionment of the family home in the case of *in re Marriage of Marcia and Lawrence Aufmuth*. Then I present how the findings of this case were used in the recent case of *in re Marriage of Dawnel and Frank Bonvino*. As a reference, I have included the Moore/Marsden Formula. If you have any questions concerning these cases or apportionment of property, please contact me.

Ron

In re Marriage of Dawnel and Frank Bonvino Findings Change Precedence in Real Property Apportionment Calculations

By Ron J. Anfuso, CPA, ABV, CFF, CDFA, FABFA

Approximately three years after their marriage, Dawnel and Frank Bonvino purchased a family home in Westlake Village with a down payment from husband's resources and the proceeds from a loan in his name. The property was purchased in 1996. Title to the home was taken in Frank's name as sole and separate property. Approximately 15 months later, Frank completed the sale of a property in Long Beach that he purchased prior to their marriage and used the funds from the sale to pay off the loan on the Westlake Village home. Several years later, Dawnel moved out. She filed for divorce in 2005.

The trial court found the Westlake Village home to be community property. In addition, the court awarded Frank reimbursement of his separate property contributions under Family Code §2640. The court also charged husband for the fair rental value of the home from the time Dawnel moved out to the date of judgment.

Frank appealed the decision, contending there was no evidence that he transmuted his separate property to community property. Rather, he asserted the trial court should have found that both separate and community property interests were established in the Westlake Village home proportionate to the equity in the property.

To best comprehend the results of the Superior Court regarding the determination and calculation of separate and community property value of their family home, I refer to the findings of *In re the Marriage of Marcia and Lawrence Aufmuth*.

Background: Computation of Separate and Community Interest in a Home: In re the Marriage of Marcia and Lawrence Aufmuth

Lawrence and Marcia Aufmuth were married in August 1967. In July 1971, the parties purchased a family home for \$66,500 with a down payment of \$16,500 made by Marcia from separate funds

Continued on page 2

* For an explanation of these titles, please visit our website or request a copy of Issue 3 of *Forensic Accounting Today*.

MOORE/MARSDEN FORMULA

1. First determine the separate property and community property percentage interest in the property.
2. The separate property percentage interest is determined by crediting the separate property with the down payment and the full amount of the loan on the property less the amount by which the community property payments reduced the principal balance of the loan.
3. This sum is divided by the purchase price. The resulting figure is the separate property percentage share.
4. The community property percentage share is determined by dividing the amount in which community property payments reduced the principal by the purchase price.
5. The separate property interest in the property as valued at the end of marriage is determined by adding all the prenuptial appreciation, the amount of capital appreciation during marriage attributable to the separate funds (determined by multiplying the capital appreciation during marriage by the separate property percentage interest), and the amount of equity paid by separate funds.
6. The community property share in the value of the property is determined by adding the amount of capital appreciation during marriage attributable to community funds to the equity paid by community funds.

Imagine...



A Forensic Accounting Firm that makes it a top priority to return your phone calls promptly

**Ron J. Anfuso, CPA/ABV,
An Accountancy Corp.**

Bonvino: Continued from page 1

acquired before their marriage. The remaining \$50,000 was paid via a real estate loan. Title to the property was taken in both names as community property. All subsequent payments and costs connected with the property were paid from community earnings.

Lawrence and Marcia separated in September 1975. They agreed at the trial that the fair market value of their home was \$125,000, and that the separate and community interests would be computed on a pro rata basis in direct proportion to the amounts of separate and community funds invested in the property. (See *In re Marriage of Jafeman* (1972) 29Cal.App.3d 244, 256-257.)

In accordance with the agreed on method of computation, the court found that the *present value* of the initial down payment was \$31,014 and the joint investment was \$46,986. The court apparently determined the \$31,014 value by adding the amount of capital appreciation attributable to separate funds (28.81 percent of \$58,500) to the amount of the equity paid by separate funds (\$16,500). The \$46,986 amount was determined by adding the amount of capital appreciation attributable to community funds (75.19 percent of \$58,500) to the amount of equity paid by community funds (\$50,000 minus \$47,000).

The Bonvino Property

Dawnel and Frank Bonvino purchased the Westlake Village property for \$410,000. Frank made a down payment of \$90,212.50. Dawnel was aware that Frank made this down payment from funds he acquired prior to their marriage.

Frank applied for a home loan of \$328,000. This included \$8,212.50 for closing costs. The loan application stated the title would be held in the name of Frank Bonvino, *married as sole and separate property*.

Frank and a notary told Dawnel that due to bad credit (the result of credit card debt) she had to sign a quitclaim deed for the parties to be able to purchase the Westlake Village home. On November 15, 1996, Dawnel signed a quitclaim. The deed was recorded on December 11, 1996 from the sellers granting Frank Bonvino, a married man, sole and separate property.

Dawnel was assured by Frank he would put her name on the title as soon as they closed escrow. She trusted Frank and always assumed the house was community property. Although the intent to change title was discussed several times during the marriage, her name was never added to the title.

The monthly mortgage payments of approximately \$2,600 were paid from community funds. Following the sale of Frank's Long Beach property 15 months after the purchase of the Westlake home, the escrow company sent the proceeds from the sale directly to his bank to pay off the mortgage on the Westlake Village property.

In the next issue of *Forensic Accounting Today*, we will discuss the findings of the Supreme Court of California.