

WRITTEN DECISION - NOT FOR PUBLICATION

ENTERED <u>10-1-10</u>
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CLERK, U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA
BY <u>19</u> DEPUTY

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

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In re)	Case No. 09-08919-B7
)	Adv. No. <u>10-90142</u>
DAVID FOLSOM,)	
)	MEMORANDUM DECISION
Debtor.)	
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)	
)	
GERALD H. DAVIS,)	
Chapter 7 Trustee,)	
)	
Plaintiff,)	
)	
v.)	
)	
DAVID FOLSOM, an individual;)	
PAMELA BRODWOLF-FOLSOM,)	
an individual,)	
)	
Defendants.)	
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Prior to their marriage in 1990 David Folsom, the debtor herein, and Pamela Brodewolf-Folsom, entered into a "Premarital Contract" which dictates how the property of David and Pamela will be held. At issue in this case are eight condominiums in Bransen West, Missouri (the Condominiums). Title to the

1 Condominiums are held in Pamela's name. David and Pamela contend
2 that the Condominiums are the separate property of Pamela. The
3 Trustee seeks summary judgment that under the provisions of the
4 Premarital Contract, the Condominiums are held as community
5 property, and thus they are property of David's bankruptcy
6 estate.

7 The Trustee, and to a lesser extent, David and Pamela,
8 rely for their positions on the terms of the Premarital Contract.
9 The Court agrees that the terms of the Premarital Contract are
10 controlling on this issue. The Premarital Contract generally
11 provides that each party's premarital property, the proceeds
12 therefrom, and all property acquired with such proceeds, would
13 remain their separate property. See Paragraphs D, 1, 3 and 5
14 of the Premarital Contract. The Premarital Contract also
15 provides that under certain circumstances, the separate property
16 of each could become community property.

17 The Trustee bases his case on paragraph 6 of the Premarital
18 Contract which provides in relevant part:

19 Community Property: The parties do not intend to
20 establish joint checking and savings accounts. In the
21 event that any joint accounts are established, the
22 funds deposited in said accounts shall be community
23 property of the parties.... Any assets acquired from
24 funds in the parties joint accounts will be community
25 property. The parties acknowledge that the foregoing
26 accounts and property so acquired shall constitute
their only community property. The parties further
agree that no community property or community property
interest can be created except as provided herein or as
provided in a separate written agreement of the
parties.

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1 Notwithstanding the stated intent of the parties as of
2 October 1990, Davis and Pamela did in fact establish at least one
3 joint checking account - Bank of America checking account number
4 XXXXX-X2952, which was held in both of their names (Checking
5 Account). Pamela and David argue that, notwithstanding the fact
6 that David was a signatory to the account, it was not actually a
7 joint account, because David was added to the account solely for
8 Pamela's convenience and that he had no right to access. This
9 may well have been the informal agreement of David and Pamela.
10 However, they have provided no evidence or authority which would
11 preclude David from withdrawing funds from the Checking Account
12 had he chosen to do so. Under California law, this is sufficient
13 to create a "joint account." California Probate Code § 5130
14 provides:

15 "Joint account" means an account payable on request to
16 one or more of two or more parties whether or not
17 mention is made of any right of survivorship.

18 Thus the Checking Account was a "joint account," and thus
19 under the terms of the Premarital Contract funds placed therein
20 and any property purchased with those funds would be community
21 property. It is undisputed that the Condominiums were purchased
22 with funds from the Checking Account. Thus, under Paragraph 6
23 of the Premarital Contract, the Condominiums would be community
24 property.

25 David and Pamela argue that Paragraph 6 was not meant to
26 be an operative provision - that is, it was not intended to
transmute separate property funds into community property by

1 placing them in a joint account. Rather, it was a statement
2 of intent and a directive that only community property would be
3 placed in joint accounts. They base this rather tortured reading
4 of Paragraph 6, by pointing to Paragraph 13 which provides:

5 Transmutation: Except as otherwise provided herein,
6 property or interests therein, now owned or hereafter
7 acquired by the parties, which by the terms of this
8 Agreement are classified as the separate property of
9 one of them, can become the separate property of the
10 other or the community of jointly-owned property of the
11 parties only by a written instrument executed by the
12 party whose separate property is thereby reclassified.

13 David and Pamela argue that since Paragraph 13 of the
14 Prenuptial Contract requires a separate written instrument to
15 effectuate a transmutation, it would be illogical to consider
16 the Prenuptial Contract itself to be such a written instrument.
17 At first blush the argument seems reasonable. It fails though,
18 upon closer scrutiny.

19 Paragraph 13 itself begins "[e]xcept as otherwise provided
20 herein," indicating clearly that the method of transmutation set
21 forth in Paragraph 13 was not exclusive. Further, as set forth
22 above, Paragraph 6 provides "no community property or community
23 property interest can be created *except as provided herein or as*
24 *provided in a separate written agreement of the parties.*"

25 (Emphasis added.) Clearly, under the Prenuptial Contract there
26 were two methods for transmuting separate property into community
27 property - a separate writing (Paragraph 13) or depositing funds
28 into a joint account (Paragraph 6).

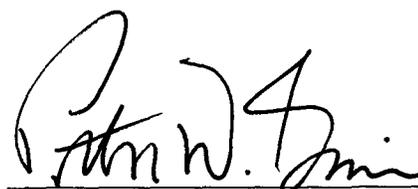
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1 The answer then is straightforward. The funds used to
2 purchase the Condominiums were taken from a joint account.
3 Since the funds were in a joint account, they were community
4 property under the terms of the Premarital Contract. The
5 property acquired therewith were also community property, and
6 the Condominiums are thus property of David's bankruptcy estate.
7 The Trustee's motion for summary judgment is granted.

8 The Trustee shall lodge an order consistent herewith within
9 thirty days (30) of the date of service of this Memorandum
10 Decision.

11 IT IS SO ORDERED.

12 DATED: OCT -1 2010

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16 PETER W. BOWIE, Chief Judge
17 United States Bankruptcy Court
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