

1 the Court ruled that title to the Property was never transferred to Charles but, rather, that it
2 remained with Chadwick and Janelle. That ruling now necessitates a ruling on how title was
3 held as between Chadwick and Janelle as of the date of the petition.

4 **Background Relevant to the Community Property Issue**

5 In 2000, Chadwick and Janelle Collins, husband and wife, purchased a residence at
6 1480 Beech Tree Road, San Marcos California ("Property") and took title as "Husband and
7 Wife as Joint Tenants." Trial Exhibit 2. In 2002, Chadwick and Janelle decided to move
8 into a larger house on Archer Road, San Marcos ("Archer Road Property"). In an effort to
9 facilitate the move, Chadwick's father, Charles Collins, agreed to take possession of the
10 Property. As noted above, the Court has found that title was never transferred to Charles,
11 but remained with Chadwick and Janelle. The form of record title was never changed from
12 "Husband and Wife as Joint Tenants."

13 There is no evidence that Chadwick or Janelle executed any other document
14 purporting to alter or confirm the manner in which title was held.

15 **Procedural History**

16 On December 12, 2011, Debtor filed his petition. He did not schedule the Property
17 nor did he schedule any claims relating to the Property.

18 On March 7, 2013, the Trustee filed a complaint commencing this Adversary
19 Proceeding ("Complaint"). The Trustee sought a declaratory judgment that Charles had no
20 interest in the Property; that the Property was property of the bankruptcy estate; and that the
21 Property was the community property of Chadwick and Janelle. The Trustee also sought an
22 order directing Charles to turn the Property over to the Trustee. Finally, the Trustee sought
23 authority to sell the Property.

24 On March 10, 2014, Defendants moved for summary judgment. In their motion,
25 Defendants argued that "[i]n California, property acquired during marriage is presumed to
26 be community property, but this presumption is rebuttable and is specifically rebutted when,
27 as here, title to real property is taken as joint tenants. *Hanf v. Summers (In re Summers)*,

1 332 F.3d 1240, 1242-44 (9th Cir. 2003)." As noted above, when Chadwick and Janelle
2 purchased the Property, they took title as "Husband and Wife as Joint Tenants." Based upon
3 this fact and the Ninth Circuits ruling in *Summers*, on September 22, 2014, Judge Peter
4 Bowie (ret.) granted, in part, Defendants' motion for summary judgment holding:

5 Defendants' Motion for Summary Adjudication that the Property was held by Debtor
6 and his nonfiling spouse, Janelle Collins, at all relevant times in joint tenancy and not
7 as community property is GRANTED.

8 See Docket No. 33. This was followed by the Trustee's motion for summary judgment, in
9 which no one raised the community property issue. See Docket Nos. 35, 37, and 38. That
10 motion was denied. See Docket No. 40.

11 Then came second motions for summary judgment filed by both Plaintiff and
12 Defendants. In her reply in support of her motion, the Plaintiff raised the community
13 property argument again based upon the intervening case of *In re Marriage of Valli*, 58 Cal.
14 4th 1396 (2014). The Plaintiff, however, did not address Judge Bowie's September 22, 2014
15 order directly, nor did she move for reconsideration. See Docket No. 59. In the Tentative
16 Ruling on the motions, this Court provided: "The Court is not inclined to reconsider Judge
17 Bowie's ruling that the Property was held, pre-transfer to Charles, by Chadwick and Janelle
18 as joint tenants as opposed to community property at this time. It may be entirely
19 unnecessary to make this ruling if the Defendants prevail at trial."

20 Defendants did not prevail in phase one of the trial. Rather, the Court ruled that
21 Chadwick and Janelle, not Charles, hold title to the Property. Therefore, the issue of how
22 they own the Property is now ripe for reconsideration.

23 **Analysis**

24 Judge Bowie's September 22 Order is interlocutory as it did not fully adjudicate the
25 claims of the parties. FRCP 54(b), made applicable by FRBP 7054, states the general rule
26 that, until a trial court enters a final judgment, any order that resolves fewer than all of the
27 claims among all of the parties "is subject to revision at any time before the entry of
28 judgment adjudicating all the claims and the rights and liabilities of all the parties." In other

1 words, "interlocutory orders are not subject to the law of the case doctrine and may always
2 be reconsidered prior to final adjudication." *In re Akbari-Shahmirzadi*, 2013 WL 1099794,
3 at *3 (Bankr. D.N.M. Mar. 15, 2013) (citing *Filebark v. U.S. Dep't of Transp.*, 555 F.3d
4 1009, 1013 (D.C. Cir. 2009). Accordingly, the Court can revisit the prior ruling at any time
5 before it becomes final.

6 The Court made the September 22 ruling based upon the presumption of title under
7 Evidence Code § 662 and the Ninth Circuit's ruling in *Summer* holding that the fact that
8 Chadwick and Janelle held title as joint tenants carried the day. It did so, however, without
9 the benefit of the California Supreme Court's ruling in *In re Marriage of Valli*, 58 Cal. 4th
10 1396 (2014), which was entered after Defendant's initial motion for summary judgment was
11 fully briefed.

12 In *Marriage of Valli*, the Supreme Court of California held that the presumption of
13 ownership based on title found in Evidence Code § 662 did not apply to overcome the
14 presumption of community property provided in Family Code § 760 and the formal
15 requirements for transmutation provided in Family Code §§ 850 and 852:

16 Referring to Evidence Code section 662, which states that '[t]he owner of the legal
17 title to property is presumed to be the owner of the full beneficial title,' the Court of
18 Appeal here asserted that 'because the form of title presumption applies ... a
19 transmutation theory is not involved.' This reasoning by the Court of Appeal, we also
20 conclude, is erroneous. We need not and do not decide here whether Evidence Code
21 section 662's form of title presumption ever applies in marital dissolution
22 proceedings. Assuming for the sake of argument that the title presumption may
23 sometimes apply, it does not apply when it conflicts with the transmutation statutes.

24 *Id.* at 1406. See also *In re Marriage of Bonvino*, 241 Cal. App. 4th 1411, 1430 (2015) ("We
25 note the presumption of Evidence Code section 662 based on the form of title does not apply
26 in this case, because it conflicts with the transmutation requirements.") The court in *Valli*
27 specifically rejected the Ninth Circuit's approach in *Summers*. 58 Cal.4th at 1405. The
28 situation in *Valli* is the situation we have here.

Property acquired during marriage is community property, unless it is: 1) traceable
to a separate property source; 2) acquired by gift or bequest; or 3) earned or accumulated

1 during the spouses' separation. Cal. Fam. Code § 760; Cal. Civ. Code § 687; *Marriage of*
2 *Valli*, 58 Cal.4th at 1400. Money borrowed by either spouse on the credit of community
3 property is community in character. *In re Marriage of Fisher*, 78 Cal.App.3d 556, 551
4 (1976).

5 While married in 2000 Chadwick and Janelle purchased the Property using
6 community assets – Chadwick testified that the down payment was made from a joint
7 account into which Janelle had contributed. Trial Transcript: 43:3-16. They both signed the
8 note. Trial Transcript: 43:17-20. Because Chadwick and Janelle acquired the Property
9 during marriage and the source is not traceable to a separate property source, gift or bequest,
10 or earnings during separation, it is community property. *Valli*, 58 Cal.4th at 1400.

11 Spouses can alter the form of title from community to separate, but only in
12 accordance with Family Code §§ 850 & 852, which require an express declaration:

13 Married persons may, through a transfer or an agreement, transmute—that is,
14 change—the character of property from community to separate or from separate to
15 community. (Fam.Code, § 850.) A transmutation of property, however, "is not valid
16 unless made in writing by an express declaration that is made, joined in, consented
17 to, or accepted by the spouse whose interest in the property is adversely affected."
18 (*Id.*, § 852, subd. (a).) To satisfy the requirement of an "express declaration," a
19 writing signed by the adversely affected spouse must expressly state that the
20 character or ownership of the property at issue is being changed.

21 *Marriage of Valli*, 58 Cal. 4th at 1400-01. Chadwick and Janelle took title to the Property
22 as "Husband and Wife as Joint Tenants." However, the Court finds that this bare statement
23 in the Grant Deed does not amount to a valid transmutation as there is no "express
24 declaration that is made, joined in, consented to, or accepted by the spouse whose interest in
25 the property is adversely affected." Thus, despite the form of title taken, Chadwick and
26 Janelle took the Property as community property under Family Code § 760, and they took
27 no steps to transmute that would satisfy the requirements of Family Code § 852. Under
28 *Valli*, Evidence Code § 662 does not apply to change this.

29 Defendants have argued that the ruling in *Valli* does not apply beyond the confines of
30 a marital dissolution action and does not apply when the rights of third parties are at issue.

1 Rather, Defendants urge the Court to follow the Ninth Circuits decision in *Summers*. They
2 argue:

3 The Ninth Circuit's holding in *Hanf v. Summers (In re Summers)*, 332 F.3d 1240
4 (9th Cir. 2003) that real property titled in joint tenancy retains its character as such in
5 a bankruptcy case was not altered by the decision in *Valli* since *Valli*, a marital
6 dissolution case, did not address what property a third party creditor can attach and
7 did not disapprove any of the many cases that have held the act of specifying the
8 form of title on a deed to real property to be joint tenancy is sufficient to overcome
9 the general community property presumption. *Valli* disapproved of *Summers* only to
the extent *Summers* held there could never be a transmutation of property when a
third party was in the transaction. (*Summers* stated that an interposal transfer was
required for transmutation; *Valli* held it was not.)

10 Defendants' Reply to Plaintiff's Brief at 2:10-13.

11 This argument was recently considered and rejected by Judge Robert Kwan of the
12 Central District in *In re Obedian*, 546 B.R. 409 (Bankr. C.D. Cal. 2016). In *Obedian*, the
13 court, addressing the rights of third party California Department of Health Care Services
14 (DHCS) to a debtor's marital property in a bankruptcy case, engaged in an extensive review
15 of the law before *Valli* and the precedential weight of conflicting Circuit and state court
16 rulings.

17 The Court in *Obedian* began by applying Family Code § 760, determining that the
18 property was presumed to be community property and that the presumption could be
19 rebutted by a preponderance of evidence:

20 Based on California Family Code § 760, the court preliminarily determines
21 that the evidence admitted at the evidentiary hearing indicates that the Real Property
22 should be presumed to be community property belonging to both Debtor and
23 Mr. Obedian since the Real Property was acquired by both spouses during marriage
24 and the exceptions of acquisition of property traceable to a separate property source,
acquired by gift or bequest, or earned or accumulated while the spouses are living
separate and apart, do not apply. *In re Marriage of Valli*, 58 Cal.4th at 1400, 171
Cal.Rptr.3d 454, 324 P.3d 274 (citations omitted).

25 546 B.R. at 414.
26
27
28

1 The Court then considered whether to apply the strict transmutation requirements of
2 Family Code § 852, as had the California Supreme Court in *Valli*, or the presumption in
3 favor of title found in Evidence Code § 662, as had the Ninth Circuit in *Summers*:

4 Although time of acquisition generally controls the characterization of property,
5 evidentiary presumptions and marital property transmutation transactions may also
6 affect the analysis. Thus, the court also considers the applicability of California
7 Family Code § 852(a), California's marital property transmutation statute, and
8 California Evidence Code § 662, California's general presumption of record title....
9 Because application of both California Family Code § 852(a) and California
Evidence Code § 662 as statutory exemptions to California Family Code § 760 yields
conflicting characterizations of the Real Property, the court must thus determine
which rule to apply.

10 546 B.R. at 414–15.

11 The Court recognized that *Summers* was a bankruptcy case, not a marital dissolution
12 case and that the case involved acquisition of property from a third party:

13 The Ninth Circuit in *In re Summers*, construing California family law in the context
14 of a bankruptcy case as opposed to a marital dissolution case and determining
15 whether real property transferred by a third party to a husband, a wife and a daughter
16 as joint tenants constituted property of the bankruptcy estate of one of the spouses,
17 held that the marital property transmutation statute in California Family Code §
18 852(a) does not apply when a married couple acquires real property from a third
19 party as joint tenants.... The Ninth Circuit held that the general presumption under
20 California law that property acquired by a married couple during marriage is
community property was rebutted by a third party deed specifying record title in the
property as joint tenants and that the statutory formalities of the California marital
property transmutation statute were inapplicable to transactions where a spouse
acquires property during marriage from a third party.

21 546 B.R. at 415 (citations omitted). Nevertheless, in an extremely well-reasoned and well-
22 stated opinion the *Obedian* court held that *Summers*, did not require a different result. The
23 court first explained its decision not to follow Ninth Circuit precedence:

24 This court must determine whether it should follow the Ninth Circuit's decision in
25 *Summers* or the California Supreme Court's decision in *Valli* in applying California
26 law in determining the character of the Real Property as joint tenancy separate
27 property as record title shows or community property based on application of the
28 general community property presumption because these decisions conflict as to the
applicability of the marital property transmutation statute in California Family Code
§ 852(a) to spousal property purchases from third parties. "In general, prior Ninth

1 Circuit published authority is binding within the Circuit to the same extent as is
2 Supreme Court precedent." 2 Goelz, Watts and Batalden, Rutter Group Practice
3 Guide: Federal Ninth Circuit Civil Appellate Practice, ¶ 8:154 at 8–22 (2015), citing
4 inter alia, *Hart v. Massanari*, 266 F.3d 1155, 1171 (9th Cir.2001). "In resolving an
5 issue of state law, a Ninth Circuit panel ordinarily should follow the holding of a
6 prior panel on that issue. But if state courts subsequently disagreed with the prior
7 panel, the later Ninth Circuit panel is not bound to follow the prior panel." 2 Goelz,
8 Watts and Batalden, Rutter Group Practice Guide: Federal Ninth Circuit Civil
9 Appellate Practice, ¶ 8:205.3 at 8–44, citing inter alia, *F.D.I.C. v. McSweeney*, 976
10 F.2d 532, 535–536 (9th Cir.1992). Moreover, in interpreting state law, the Ninth
11 Circuit must follow the decisions of the state's highest court. 2 Goelz, Watts and
12 Batalden, Rutter Group Practice Guide: Federal Ninth Circuit Civil Appellate
13 Practice, ¶ 8:204 at 841, citing inter alia, *Johnson v. Fankell*, 520 U.S. 911, 916, 117
14 S.Ct. 1800, 138 L.Ed.2d 108 (1997) ("Neither this Court nor any other federal
15 tribunal has any authority to place a construction on a state statute different from the
16 one rendered by the highest court of the State.") and *Muniz v. United Parcel Service,
17 Inc.*, 738 F.3d 214, 219 (9th Cir.2013), *In Muniz v. United Parcel Service, Inc.*, the
18 Ninth Circuit stated that "[d]ecisions of the California Supreme Court, including
19 reasoned dicta, are binding on us as to California law." 738 F.3d at 219.

20 546 B.R. at 421. The court went on to provide the statutory analysis under *Valli*:

21 Accordingly, in this case, the court applies the community property presumption in
22 California Family Code § 760 and the marital property transmutation statute in
23 California Family Code § 852(a) as indicated by the California Supreme Court in
24 *Valli* rather than applying the general record title presumption in California Evidence
25 Code § 662 and not applying the marital property transmutation statute as indicated
26 by the Ninth Circuit in *Summers*. Thus, the court determines that the Real Property
27 is community property unless Trustee can rebut the evidentiary presumption under
28 California Family Code § 760 by proving by a preponderance of the evidence that
Debtor and Mr. Obedian transmuted the Real Property from community property
pursuant to the requirements of California Family Code § 852(a).

546 B.R. at 422. The Court agrees with the analysis of Judge Kwan. In a footnote
Defendants argue that *Obedian* was incorrectly decided on this point. The Court disagrees.
The Court has thoroughly read and considered the ruling in *Obedian* and finds it persuasive.

Defendants also argue that in *Obedian* there was substantial evidence that the parties
had no intention to hold their property in joint tenancy. First, the Court finds that the ruling
in *Obedian* was not based upon the weight of the evidence, but rather upon a finding that the
strict transmutation requirements of Family Code § 852(a) were not met in that case.

1 Further, in the case at hand there is evidence that Janelle had no specific intent to hold the
2 Property in any particular manner. In her deposition, which was admitted at trial, Janelle
3 was asked why she and Chadwick took title as joint tenants. She explained that "Chad made
4 all the decisions for that, and I just – you know, I just went along." Depo.Trans. 17:12-25.
5 She also explained that she "knew somewhat" what joint tenants meant. *Id.* at 18:1-3. She
6 only discussed the fact that they held title as joint tenants with Chadwick. *Id.* at 18-8-10.
7 The Court also notes that at a prior hearing, all parties agreed that there was no need for
8 additional evidence in relation to the determination reached here.

9 Having considered the arguments and having thoroughly reviewed the statutory and
10 case law, the Court has concluded that the September 22 ruling must be revisited and
11 revised to conform to *Valli*. The Court holds that as of the petition date, the Property was
12 held by Chadwick and Janelle as community property.

13 **Conclusion and Moving On**

14 In Phase One the Court ruled that as of the petition date Chadwick had an ownership
15 interest in the Property. To that ruling the Court now adds the ruling that as of the petition
16 date Chadwick and Janelle owned the Property as community property.

17 At the status conference the Court and the parties will establish procedures for
18 moving on to Phase Two, in which the Court will address the remaining issues including the
19 Trustee's request for authority to sell the Property and any claim(s) Charles may have
20 against the estate. Because this decision does not resolve all of the issues in this matter, it is
21 not a final order for the purposes of appeal – it is, like Judge Bowie's prior ruling,
22 interlocutory.

23 DATED: August 29, 2016

24 
LAURA S. TAYLOR, Chief Judge
United States Bankruptcy Court

25
26
27
28

In re: CHADWICK C. COLLINS, CASE NO.: 11-19790-LT7

NANCY L. WOLF, TRUSTEE v. CHARLES G. COLLINS, JANELLE L. COLLINS, AND CHADWICK C. COLLINS, ADV.
NO.: 13-90063-LT

CERTIFICATE OF MAILING

The undersigned, a regularly appointed and qualified employee in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

MEMORANDUM DECISION

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed via first class mail to the party at their respective address listed below:

Nancy L. Wolf, Trustee
P.O. Box 420448
San Diego, CA 92142

Kevin J. Hoyt, Esq.
Estes & Hoyt, A.P.C.
550 West C Street, Suite 530
San Diego, CA 92101

Jennifer E. Duty, Esq.
Gordon Rees LLP
101 West Broadway, Ste 2000
San Diego, CA 92101

Susan C. Stevenson, Esq.
PYLE SIMS DUNCAN & STEVENSON
A Professional Corporation
401 B Street, Suite 1500
San Diego, CA 92101

Said envelope(s) containing such document was deposited by me in the City of San Diego, in said District on August 29, 2016-.

/s/ Regina S. Fabre
Regina A. Fabre, Judicial Assistant