

MAR 15 2017

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

**ORDERED PUBLISHED**

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
OF THE NINTH CIRCUIT**

In re: ) BAP No. CC-16-1041-LNTa  
)  
CLIFFORD ALLEN BRACE, JR., ) Bk. No. 6:11-26154-SY  
)  
Debtor. ) Adv. No. 6:11-02053-SY  
)

CLIFFORD ALLEN BRACE, JR., )  
)  
INDIVIDUALLY AND AS THE )  
TRUSTEE OF THE CRESCENT TRUST )  
DATED JULY 30, 2004; ANH N. )  
BRACE, INDIVIDUALLY AND AS )  
THE TRUSTEE OF THE CRESCENT )  
TRUST DATED JULY 30, 2004, )  
)  
Appellants, )

v. )

**OPINION**

STEVEN M. SPEIER, )  
)  
Chapter 7 Trustee, )  
)  
Appellee. )

Argued and Submitted on January 19, 2017  
at Pasadena, California

Filed - March 15, 2017

Appeal from the United States Bankruptcy Court  
for the Central District of California

Honorable Scott Ho Yun, Bankruptcy Judge, Presiding

Appearances: Stephen R. Wade argued for appellants; Matthew W.  
Grimshaw of Marshack Hays LLP, argued for  
appellee.

Before: LAFFERTY, TAYLOR, and NOVACK,\* Bankruptcy Judges.

\* Hon. Charles Novack, United States Bankruptcy Judge for  
the Northern District of California, sitting by designation.

1 LAFFERTY, Bankruptcy Judge:  
2

3 **INTRODUCTION**

4 The bankruptcy court found that Debtor's transfers of  
5 marital property into a trust for the benefit of his non-debtor  
6 spouse were avoidable as actually fraudulent conveyances. In a  
7 separate unpublished memorandum decision, we affirmed that aspect  
8 of the bankruptcy court's ruling.

9 Relying on a recent California Supreme Court decision, Valli  
10 v. Valli (In re Marriage of Valli), 58 Cal. 4th 1396, 1400  
11 (2014), the bankruptcy court also determined that while avoidance  
12 of the transfers restored title to the couple as joint tenants,  
13 under California's community property presumption, the entirety  
14 of each property was recoverable by the estate.

15 Appellants contend that, notwithstanding Valli, the  
16 community property presumption applies only in the context of  
17 property division in a marital dissolution or legal separation.  
18 They assert that the bankruptcy court should have applied the  
19 record title presumption of Cal. Evid. Code § 662, rather than  
20 the community property presumption of Cal. Fam. Code § 760, to  
21 find that the real properties were held separately by the spouses  
22 and to conclude that only Debtor's separate interest in the  
23 properties was recoverable by the estate.

24 For the reasons set forth below, we AFFIRM the bankruptcy  
25 court's determination that the community property presumption  
26 applies in this context.

27 **FACTS**

28 During their marriage, Debtor and his non-debtor spouse,

1 Anh N. Brace, acquired their residence in Redlands, California, a  
2 rental property in San Bernardino, California, and a parcel of  
3 real property in Mohave, Arizona (collectively, the  
4 "Properties"). Appellants took title to each of the Properties  
5 as "husband and wife as joint tenants."

6 On July 30, 2004, Debtor formed the Crescent Trust. The  
7 instrument creating the Crescent Trust states that it is an  
8 irrevocable trust and that Debtor is the sole trustee; Ms. Brace  
9 is the beneficiary of the trust. The trust instrument was not  
10 recorded. Shortly thereafter, Debtor executed and had recorded  
11 trust transfer deeds transferring his interests in the Redlands  
12 and San Bernardino properties into the Crescent Trust for no  
13 consideration. At the time of the transfers, Debtor was a  
14 defendant in litigation in San Bernardino County Superior Court,  
15 and a judgment in that litigation was entered a few weeks after  
16 the transfers occurred.

17 Debtor filed a chapter 7<sup>1</sup> petition on May 16, 2011, and  
18 Robert L. Goodrich was appointed chapter 7 trustee ("Trustee").<sup>2</sup>  
19 In December 2011 Trustee filed an adversary proceeding against  
20 Appellants, individually and in their capacities as trustees of  
21 the Crescent Trust,<sup>3</sup> seeking: a declaration that the Properties  
22 were property of the bankruptcy estate; a judgment quieting title  
23 to the Properties in the bankruptcy estate; turnover of any of

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24  
25 <sup>1</sup> Unless otherwise indicated, all chapter and section  
26 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,  
"Rule" references are to the Federal Rules of Bankruptcy.

27 <sup>2</sup> Appellee Steven M. Speier was substituted as chapter 7  
28 trustee after Mr. Goodrich resigned in December 2015.

<sup>3</sup> Ms. Brace is not a trustee of the Crescent Trust.

1 the Properties determined to be property of the estate; avoidance  
2 and recovery of Debtor's transfers of the Redlands and San  
3 Bernardino properties into the Crescent Trust as actually and/or  
4 constructively fraudulent transfers under Cal. Civ. Code  
5 § 3439.04(a) (collectively, the "Fraudulent Transfer Claims");  
6 and revocation of Debtor's discharge under §§ 727(d)(1) and  
7 (d)(2).

8 After trial on the Fraudulent Transfer Claims, the  
9 bankruptcy court ruled in favor of Trustee on the actually  
10 fraudulent transfer and alter ego claims, finding, among other  
11 things, that the transfers of the Redlands and San Bernardino  
12 properties into the Crescent Trust were avoidable and that all  
13 three Properties were recoverable in their entirety by the  
14 estate. The bankruptcy court found not credible Appellants'  
15 testimony that they had intended the Properties to be held  
16 separately and that the transfers were done for estate planning  
17 purposes.

18 After the bankruptcy court entered judgment on the  
19 Fraudulent Transfer Claims, Appellants timely moved to amend the  
20 judgment, arguing that the judgment should have provided that the  
21 Properties, as recovered, were owned one half by Debtor and one  
22 half by Ms. Brace as tenants in common<sup>4</sup> and that only Debtor's  
23 interests in the Properties, but not Ms. Brace's, were property  
24 of the estate. The bankruptcy court disagreed, finding

25 that although these properties are returned to joint  
26 tenancy between the Debtor and Defendant Anh Brace, the

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27 <sup>4</sup> It is not clear from the record why Appellants argued that  
28 the Properties should be deemed held as tenants in common, given  
that they had originally taken title as joint tenants.

1 properties were acquired by the Debtor and Anh Brace  
2 during the marriage with community assets and they  
3 presumptively constitute community property under  
4 applicable law. Defendants failed to establish that  
5 the Redlands Property, San Bernardino Property, or  
[Mohave] Property were not community in nature and,  
therefore, they constitute property of the Estate  
pursuant to 11 U.S.C. § 541 and are subject to  
administration by the Estate.

6 Second Amended Judgment, ¶ 6. Thereafter the bankruptcy court  
7 entered an amended judgment clarifying that although the  
8 Properties were restored to joint tenancy as a matter of title,  
9 they were community property under California law and were thus  
10 property of the estate.

11 Appellants timely appealed the amended judgment.<sup>5</sup>

#### 12 JURISDICTION

13 The bankruptcy court had jurisdiction pursuant to 28 U.S.C.  
14 §§ 1334 and 157(b)(2)(E), (H), and (J). We have jurisdiction  
15 under 28 U.S.C. § 158.

#### 16 ISSUE

17 Whether the bankruptcy court erred in determining that, upon  
18 avoidance of the transfers of the Properties, those properties  
19 were held by Appellants as community property and were thus  
20 property of the estate.

#### 21 STANDARDS OF REVIEW

22 We review the bankruptcy court's findings of fact for clear  
23 error, and its conclusions of law de novo. Carrillo v. Su  
24 (In re Su), 290 F.3d 1140, 1142 (9th Cir. 2002). A finding is  
25

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26  
27 <sup>5</sup> Because the amended judgment did not dispose of all the  
28 claims in the adversary proceeding, the parties obtained a second  
amended judgment from the bankruptcy court that contained a  
certification pursuant to Rule 54(b) that there was no just  
reason to delay entry of a final judgment on the Fraudulent  
Transfer Claims.

1 clearly erroneous "when although there is evidence to support it,  
2 the reviewing court on the entire evidence is left with the  
3 definite and firm conviction that a mistake has been committed."  
4 Anderson v. City of Bessemer City, N.C., 470 U.S. 564, 573 (1985)  
5 (citation omitted).

6 We review de novo the bankruptcy court's interpretation of  
7 state law. Salven v. Galli (In re Pass), 553 B.R. 749, 756 (9th  
8 Cir. BAP 2016). In interpreting California law, we are bound by  
9 decisions of the California Supreme Court, including reasoned  
10 dicta. See Muniz v. United Parcel Serv., Inc., 738 F.3d 214, 219  
11 (9th Cir. 2013); Johnson v. Fankell, 520 U.S. 911, 916 (1997) (a  
12 federal tribunal has no authority to place a construction on a  
13 state statute different from the one rendered by the highest  
14 court of the State). And, as we discuss more fully at  
15 Subsection C.3. below, though we are ordinarily bound by prior  
16 decisions of the Ninth Circuit on all matters, if, subsequent to  
17 a Ninth Circuit decision interpreting state law, the highest  
18 court of the state has issued a decision disagreeing with the  
19 Ninth Circuit's interpretation, we are not bound to follow the  
20 Ninth Circuit's interpretation of that state law any more than a  
21 subsequent Ninth Circuit panel would be. See Miller v. Gammie,  
22 335 F.3d 889, 900 (9th Cir. 2003) (noting that the Circuit is not  
23 bound by its prior decisions when a "relevant court of last  
24 resort has undercut the reasoning underlying the prior circuit  
25 precedent in such a way that the cases are clearly  
26 irreconcilable."); Cf. F.D.I.C. v. McSweeney, 976 F.2d 532, 535-  
27 36 (9th Cir. 1992) (in the absence of intervening controlling  
28 authority, a three-judge Ninth Circuit panel is bound by its

1 prior decisions interpreting state and federal law).

## 2 **DISCUSSION**

3 We look to relevant non-bankruptcy law to determine the  
4 nature and extent of a debtor's interest in property. Butner v.  
5 United States, 440 U.S. 48, 55 (1979); Hanf v. Summers  
6 (In re Summers), 332 F.3d 1240, 1242 (9th Cir. 2003). Here the  
7 relevant law is California state law. Whether restoration of the  
8 Properties to the transferor(s) on avoidance of the transfers  
9 warranted, in this case, a finding that the Properties were  
10 community assets subject to administration by the estate in their  
11 entirety requires an analysis of the presumptions found in  
12 California statutes, the application of those presumptions by  
13 California courts, and their application to the facts presented  
14 here.

### 15 **A. California Presumptions Affecting Property Ownership**

16 In this appeal, we are concerned with two California  
17 presumptions affecting determinations of the ownership of  
18 property. The first is Cal. Evid. Code § 662 (the "record title  
19 presumption"), which provides generally that "[t]he owner of the  
20 legal title to property is presumed to be the owner of the full  
21 beneficial title. This presumption may be rebutted only by clear  
22 and convincing proof."

23 The second is CFC § 760 (the "community property  
24 presumption"), which provides, "except as otherwise provided by  
25 statute, all property, real or personal, wherever situated,  
26 acquired by a married person during the marriage while domiciled  
27 in this state is community property."

28 The community property presumption applies to property

1 acquired during marriage unless it is: (1) traceable to a  
2 separate property source; (2) acquired by gift or bequest; or  
3 (3) earned or accumulated while the spouses are living separate  
4 and apart. Valli, 58 Cal. 4th at 1400. The community property  
5 presumption may be rebutted by evidence that the spouses agreed  
6 to recharacterize, or "transmute" the property from community to  
7 some other form of ownership. A transmutation is not valid  
8 unless "made in writing by an express declaration that is made,  
9 joined in, consented to, or accepted by the spouse whose interest  
10 in the property is adversely affected." CFC § 852(a).<sup>6</sup>

11 The record title presumption promotes California's public  
12 policy in favor of the stability of titles to property.  
13 In re Marriage of Haines, 33 Cal. App. 4th 277, 294 (1995). And  
14 there can be no question that, as a general rule, this  
15 presumption supports the integrity of property transactions.

16 On the other hand, the community property presumption "is  
17 perhaps the most fundamental principle of California's community  
18 property law." Valli, 58 Cal. 4th at 1408-09 (Chin, J.,  
19 concurring). The community property presumption protects spouses  
20 from undue influence in transactions between one another. See  
21 id. at 1411-12 (concluding that the community property  
22 presumption serves the same purpose as the fiduciary duties  
23 imposed on spouses under CFC § 721(b)). Moreover, this  
24 presumption also protects the integrity of transactions  
25 undertaken between spouses and between a marital community and

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27 <sup>6</sup> For transmutions occurring prior to 1985, a  
28 transmutation may be shown by evidence of an oral or implied  
agreement to do so. See Woods v. Sec. First Nat'l Bank of Los  
Angeles, 46 Cal. 2d 697, 701 (1956).



1 third parties, by creating and enforcing consistent and reliable  
2 "rules of the road," rebuttable by written and contemporary  
3 evidence to the contrary, for characterizing property ownership.  
4 In the absence of such clear and consistent rules the parties,  
5 and the courts called upon to decide disputes between them, would  
6 be forced to revert to admittedly unreliable evidence concerning  
7 dubious assertions of intent and prior understandings.

8         The record title presumption and the community property  
9 presumption each promote fundamentally important, but nonetheless  
10 fundamentally different, public policies favoring the integrity  
11 of property transactions. And as the California Supreme Court  
12 stated in Valli, because of the differences between these  
13 competing policies, which turn on the longstanding rules in  
14 California concerning ownership of property by married couples,  
15 the policy in favor of the general stability of titles embodied  
16 in the record title presumption is "largely irrelevant to  
17 characterizing property acquired during the marriage in an action  
18 between the spouses." Id. at 1410. As such, the Valli court  
19 determined that Cal. Evid. Code § 662 "has no place in the  
20 characterization of property in actions between spouses." Id. at  
21 1409. Thus, after Valli, there is no doubt that the community  
22 property presumption controls in marital dissolution or  
23 separation proceedings. What Valli did not address was the  
24 applicability of the community property presumption in other  
25 contexts.

26         Of course, these presumptions come into play only when a  
27 dispute arises about the parties' respective rights and  
28 liabilities as to a particular marital asset. The question

1 raised by this appeal is whether the same rules concerning  
2 presumptions should apply to disputes concerning the ownership of  
3 property arising in other contexts (such as bankruptcy) that  
4 require a determination of the respective spouses' rights in  
5 marital property.

6 Appellants contend that the community property presumption  
7 applies only in the marital dissolution or separation context and  
8 that the record title presumption applies in all other disputes  
9 over marital property involving third parties.

10 We disagree. Although there may be instances where the  
11 record title presumption could apply to marital property, for the  
12 reasons explained below we hold that, as a general rule,  
13 California's community property presumption applies in disputes  
14 in bankruptcy involving the characterization of marital property.  
15 Our holding is based on controlling California case law  
16 interpreting the relevant statutes and the policies expressed  
17 therein, which we believe apply equally in disputes between  
18 spouses over property division and in bankruptcy matters that  
19 require a determination of the characterization of marital  
20 property.

## 21 **B. Appellants' Arguments**

22 Because the Appellants' arguments have shifted somewhat  
23 during the course of this dispute, in an apparent attempt to  
24 respond to the California Supreme Court's holding in Valli, we  
25 believe it would be helpful to describe in some detail the  
26 evolution of Appellants' arguments.

27 In the bankruptcy court, Appellants did not dispute that the  
28 community property presumption applied; instead they argued that

1 the fact that they took title as joint tenants rebutted the  
2 community property presumption, citing Summers. There, the Ninth  
3 Circuit held that, under California law, the community property  
4 presumption is rebutted when a married couple acquires property  
5 from a third party as joint tenants and that the written  
6 transmutation requirements of CFC § 852(a) apply only to  
7 interspousal transactions and not to transactions whereby a  
8 married couple acquires property from a third party. In re  
9 Summers, 332 F.3d at 1245. In its ruling on Appellants' motion  
10 to amend, the bankruptcy court pointed out to Appellants that the  
11 holding in Summers had recently been explicitly rejected by the  
12 California Supreme Court in Valli.

13 On appeal, and in response to the bankruptcy court's amended  
14 judgment that relied on Valli in rejecting Summers, Appellants  
15 have modified their argument to assert that the bankruptcy court  
16 should have applied the record title presumption of Cal. Evid.  
17 Code § 662 in the first instance. Importantly, they assert that  
18 no transmutation took place, only that the form of taking title  
19 establishes their intent to hold their interests in the  
20 Properties separately. Nevertheless, we examine the Ninth  
21 Circuit's analysis in Summers and the California Supreme Court's  
22 rejection of the Summers analysis to explicate fully the issues  
23 presented here.

1 **C. The Transmutation Doctrine in California Courts**

2 **1. In re Summers: The Ninth Circuit's Pre-Valli**  
3 **Interpretation of California's Transmutation**  
4 **Requirements**

5 In Summers, the Ninth Circuit held that under California  
6 law, the community property presumption is rebutted when a  
7 married couple acquires property from a third party as joint  
8 tenants. 332 F.3d at 1243-44. In that case, the spouses and  
9 their daughter acquired real property, taking title as "[husband  
10 and wife], husband and wife and [daughter], an unmarried woman,  
11 all as joint tenants." Id. at 1242. All three parties  
12 eventually filed separate bankruptcy petitions, with the wife  
13 filing first. The trustee in wife's bankruptcy case argued that  
14 the property was community property and was thus property of  
15 wife's bankruptcy estate. The bankruptcy court applied the  
16 community property presumption and found that it had been  
17 rebutted because the spouses had taken title as joint tenants;  
18 thus only the wife's interest was property of her bankruptcy  
19 estate. This Panel affirmed, as did the Ninth Circuit Court of  
20 Appeals.

21 Citing several California Courts of Appeal decisions, the  
22 Ninth Circuit held that under California law the transmutation  
23 requirements applied only to interspousal transactions. In so  
24 holding, the Summers court relied on the California courts'  
25 definition of "transmutation" as "an **interspousal transaction or**  
26 **agreement** that works a change in the character of the property."  
27 In re Summers, 332 F.3d at 1244 (citing In re Marriage of Cross,  
28 94 Cal. App. 4th 1143, 1147 (2001) (emphasis added)). The court

1 noted that seemingly contrary California cases all involved  
2 interspousal transactions and thus did not mandate a different  
3 outcome.<sup>7</sup>

4 **2. Valli: The California Supreme Court rejects Summers.**

5 In Valli, the California Supreme Court expressly rejected  
6 the Ninth Circuit's interpretation of California law, holding  
7 that California's transmutation statutes also applied to  
8 transactions in which spouses acquired property from a third  
9 party. 58 Cal. 4th at 1405-06.

10 The relevant facts in Valli are not complex. During a  
11 marriage husband had used community funds to purchase a life  
12 insurance policy on his life, naming wife as the sole owner and  
13 beneficiary. At dissolution, husband argued that the insurance  
14 policy was community property because it was purchased with  
15 community funds and because the transmutation requirements of  
16 CFC § 852 had not been complied with. Wife argued that the  
17 policy was her separate property because husband had put the  
18 policy solely in her name, changing the policy's character from  
19 community property to separate property. She contended that the  
20 transmutation requirements did not apply to the purchase of the  
21 life insurance policy because it was not an interspousal  
22 transaction. The California Supreme Court rejected this  
23 argument.

24 The California Supreme Court observed that the California  
25 legislature adopted the written transmutation requirements  
26

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27 <sup>7</sup> See Bolton v. MacDonald (Estate of MacDonald), 51 Cal. 3d  
28 262; McGirr v. Barneson (In re Marriage of Barneson), 69 Cal.  
App. 4th 583 (1999); Bibb v. Bibb (Estate of Bibb), 87 Cal. App.  
4th 461 (2001).

1 because, under prior law, spouses' ability to transmute property  
2 by oral or implied agreement generated extensive litigation in  
3 dissolution proceedings and "encouraged spouses to transform a  
4 passing comment into an agreement or even to commit perjury by  
5 manufacturing an oral or implied transmutation." Valli, 58 Cal.  
6 4th at 1401 (citation omitted). Thus, the legislature adopted  
7 the written requirements to "remedy problems which arose when  
8 courts found transmutions on the basis of evidence the  
9 Legislature considered unreliable." Id. (citation omitted).

10 Next, the California Supreme Court observed that  
11 interpreting the transmutation statutes to apply only to  
12 interspousal transactions would "produce arbitrary and irrational  
13 results that the Legislature could not have intended." Id. It  
14 gave hypothetical examples to illustrate the point. Id. at 1401-  
15 04. The California Supreme Court expressly rejected the  
16 definition of transmutation relied upon by the Ninth Circuit  
17 Court of Appeals in Summers: "an **interspousal** transaction or  
18 agreement which works a change in the character of the property."  
19 (emphasis added). The California Supreme Court noted that none  
20 of the cases relied upon in Summers for this definition involved  
21 the question of whether a transaction in which property was  
22 acquired from a third party was subject to the transmutation  
23 requirements. In fact, Summers was the first case to consider  
24 the question, followed by In re Marriage of Brooks & Robinson,  
25 169 Cal. App. 4th 176, 191-92 (2008), in which a California Court  
26 of Appeal also concluded that the transmutation requirements did  
27 not apply to property acquired by a spouse in a transaction with  
28 a third person. The California Supreme Court found neither case

1 persuasive insofar as they purport to exempt from the  
2 transmutation requirements purchases made by one or  
3 both spouses from a third party during the marriage.  
4 Neither decision attempts to reconcile such an  
5 exemption with the legislative purposes in enacting  
6 those requirements, which was [sic] to reduce excessive  
7 litigation, introduction of unreliable evidence, and  
8 incentives for perjury in marital dissolution  
9 proceedings involving disputes regarding the  
10 characterization of property. Nor does either decision  
11 attempt to find a basis for the purported exemption in  
12 the language of the applicable transmutation statutes.

13 Valli, 58 Cal. 4th at 1405.

14 The California Supreme Court expressly rejected the argument  
15 that the title presumption of Cal. Evid. Code § 662 applied in  
16 the circumstances in light of the important policies advanced by  
17 the community property presumption and transmutation  
18 requirements: "We need not and do not decide here whether [Cal.  
19 Evid. Code § 662] ever applies in marital dissolution  
20 proceedings. Assuming for the sake of argument that the title  
21 presumption may sometimes apply, it does not apply when it  
22 conflicts with the transmutation statutes." Id. at 1406.

23 **3. Subsequent bankruptcy decisions have applied Valli in  
24 bankruptcy disputes concerning ownership of marital  
25 assets.**

26 California bankruptcy courts have interpreted Valli to  
27 require application of the community property presumption outside  
28 the marital dissolution context. See In re Obedian, 546 B.R. 409  
(Bankr. C.D. Cal. 2016); Wolf v. Collins (In re Collins), 2016 WL  
4570413 (Bankr. S.D. Cal. Aug. 29, 2016).

In Obedian, a married couple purchased real property during  
the marriage, taking title as joint tenants. Thereafter, a  
judgment was entered against husband only. During wife's

1 subsequent chapter 7 proceeding, she moved to avoid the judgment  
2 lien, which required the bankruptcy court to determine whether  
3 the real property was held in joint tenancy or as community  
4 property. Relying on Valli's holding that the transmutation  
5 statutes override the title presumption, the bankruptcy court  
6 applied the community property presumption, finding that the  
7 presumption was not rebutted even though the parties had taken  
8 title as joint tenants. The bankruptcy court rejected the  
9 chapter 7 trustee's contention that the title presumption under  
10 Cal. Evid. Code § 662 applied. In so doing, the bankruptcy court  
11 implicitly recognized that the policies embodied in California  
12 community property statutes, as articulated in Valli, applied  
13 equally to disputes over marital property that arise in the  
14 bankruptcy context.

15 In this matter the bankruptcy court expressly considered  
16 whether it was bound to follow the Ninth Circuit Court of  
17 Appeals' holding in Summers, or whether it should follow the  
18 intervening and contrary California Supreme Court holding in  
19 Valli. In determining that it need not follow Summers, the  
20 bankruptcy court relied on Miller v. Gammie, 335 F.3d 889 (9th  
21 Cir. 2003). In that case, the Ninth Circuit held that the goal  
22 of preserving the consistency of the circuit's decisions

23 must not be pursued at the expense of creating an  
24 inconsistency between our circuit decisions and the  
25 reasoning of state or federal authority embodied in a  
26 decision of a court of last resort.

27 We hold that the issues decided by the higher  
28 court need not be identical in order to be controlling.  
Rather, the relevant court of last resort must have  
undercut the theory or reasoning underlying the prior  
circuit precedent in such a way that the cases are  
clearly irreconcilable.



1 Id. at 900. In such a circumstance, the circuit instructed that  
2 any future three-judge panel of the court of appeals and **district**  
3 **courts** "should consider themselves bound by the intervening  
4 higher authority and reject the prior opinion of this court as  
5 having been effectively overruled." Id.

6 In deciding to apply Valli to the present dispute, rather  
7 than to rely on Summers, or to await a subsequent decision by the  
8 Ninth Circuit that would have followed Valli, the bankruptcy  
9 court followed the directive of Miller v. Gammie in the same  
10 manner that a district court would undoubtedly have done. We see  
11 no error in this analysis.<sup>8</sup>

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12  
13 <sup>8</sup> The bankruptcy court in Obedian reached a similar  
14 conclusion, relying on different authority. The court noted  
15 that, as a general rule, Ninth Circuit published authority is  
16 binding within the Circuit to the same extent as Supreme Court  
17 precedent. However, if state courts subsequently disagree with  
18 the prior panel, the later Ninth Circuit panel is not bound to  
19 follow the prior panel; in interpreting state law, the Ninth  
20 Circuit must follow the decisions of the state's highest court.  
21 Obedian, 546 B.R. at 421 (citing Johnson, 520 U.S. at 916; Muniz,  
22 738 F.3d at 219).

23 The bankruptcy court in Obedian noted that Valli involved a  
24 marital dissolution proceeding between the spouses and not with a  
25 third party. However,

26 the California Supreme Court in Valli stated its  
27 express disagreement with the Ninth Circuit's reasoning  
28 in Summers, observing that Summers, in exempting a  
spousal purchase from a third party from the marital  
property transmutation requirements of California law,  
failed to reconcile the exemption in the property  
transmutation statutes with their legislative purposes,  
failed to find a basis for the exemption in the  
statute's language, and was inconsistent with three  
California Court of Appeals decisions that stated or  
held that the transmutation statutes applied to one  
spouse's purchases from a third party during marriage.

(continued...)

1 **D. California case law, principles of statutory construction,**  
2 **and public policy all support the conclusion that the**  
3 **community property presumption may apply in contexts other**  
4 **than disputes between spouses.**

5 Appellants contend that Summers and Valli are irrelevant to  
6 our analysis because those cases involved transmutation  
7 questions, whereas here, Appellants do not contend that any  
8 transmutation took place; rather, they argue that under the  
9 record title presumption, the fact that they took title as joint  
10 tenants establishes the presumption that the spouses held their  
11 interests in the Properties separately. In support of their  
12 position, Appellants cite principles of statutory construction,  
13 state and bankruptcy cases decided prior to Valli, and the  
14 concurrence in Valli.

15 We find none of these arguments persuasive.

16 **1. Principles of statutory construction do not support**  
17 **Appellants' argument.**

18 As an initial matter, Appellants argue that the record title  
19 presumption should apply as a matter of statutory construction,  
20 based on their interpretation of the inter-workings of sections  
21 of the California Family Code. We disagree, for numerous  
22 reasons.

23 Appellants note that CFC § 750 authorizes spouses to hold  
24 title to property as community property, or as joint tenants or

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26 <sup>8</sup>(...continued)  
27 Id. at 421-22 (citing Valli, 58 Cal. 4th at 1405). The  
28 bankruptcy court thus concluded that it should follow the  
California Supreme Court's holding in Valli in interpreting  
California law rather than Summers. Id. (citing Muniz, 738 F.3d  
at 219).

1 tenants in common.<sup>9</sup> And CFC § 2581 provides that, regardless of  
2 how a couple takes title, for purposes of property division in a  
3 dissolution or legal separation, all property is presumed to be  
4 community property.<sup>10</sup> Appellants contend that the "specific"  
5 provision of CFC § 2581 takes precedence over the "general"  
6 community property presumption of CFC § 760. Put another way,  
7 Appellants interpret the "except as otherwise provided by  
8 statute" language in CFC § 760 as a reference to CFC § 2581, thus  
9 limiting the community property presumption to litigation  
10 regarding property division in a dissolution or legal separation.

11 We cannot agree. A specific statutory provision does  
12 prevail over a general one relating to the same subject. Pac.  
13 Lumber Co. v. State Water Res. Control Bd., 37 Cal. 4th 921, 942  
14 (2006). However, this canon of statutory construction actually  
15 supports the conclusion that the community property presumption  
16 prevails over the title presumption. See Valli, 58 Cal. 4th at  
17 1412-13 (Chin, J., concurring) ("[T]he [community property]  
18 presumption is a specific statutory presumption found within  
19 California's community property law, not the more general  
20 presumption found in section 662."). The concurrence also noted

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22 <sup>9</sup> CFC § 750 provides that "[s]pouses may hold property as  
23 joint tenants or tenants in common, or as community property, or  
24 as community property with a right of survivorship."

25 <sup>10</sup> CFC § 2581 provides:

26 For the purpose of division of property on dissolution  
27 of marriage or legal separation of the parties,  
28 property acquired by the parties during marriage in  
joint form, including property held in tenancy in  
common, joint tenancy, or tenancy by the entirety, or  
as community property, is presumed to be community  
property.

1 that CFC §§ 760 and 2581 are not in conflict: CFC § 760 is the  
2 “familiar presumption that property acquired during marriage is  
3 community property,” while CFC § 2581 “is a presumption, found in  
4 a statute within the community property law and fully consistent  
5 with the general presumption, that specifically governs real  
6 property designated as joint tenancy. . . . Both of these  
7 presumptions favor a finding of community property, and thus they  
8 are compatible.” Id. at 1412. Moreover, if the community  
9 property presumption applied only for purposes of property  
10 division in a dissolution or legal separation, CFC § 760 would be  
11 unnecessary; and we do not construe statutory provisions so as to  
12 render them superfluous. Shoemaker v. Myers, 52 Cal. 3d 1, 22  
13 (1990).

14 Moreover, two other provisions of the Family Code bolster  
15 the conclusion that the Legislature intended the community  
16 property presumption to apply in disputes with parties outside  
17 the marital couple: first, CFC § 852 provides that a  
18 transmutation of real property is not effective as to third  
19 parties without notice unless it is recorded; and second, CFC  
20 § 851 provides that “[a] transmutation is subject to the laws  
21 governing fraudulent transfers.” These provisions presuppose  
22 that, as a general rule, third parties are entitled to rely on  
23 the community property presumption in transactions involving  
24 marital property.

25 Appellants’ contrary interpretation--that CFC § 760 applies  
26 only in the dissolution or separation context--is also belied by  
27 the Law Revision Commission Comments to CFC § 760, which reveal  
28 that the phrase “except as otherwise provided by statute”

1 replaced specific statutory provisions enumerated in former Cal.  
2 Civ. Code § 5110, and that the “major exceptions to the basic  
3 community property rule are those relating to separate property”  
4 such as CFC §§ 130 (“separate property” defined in Section 760 et  
5 seq.), 770 (separate property of married person), 771 (earnings  
6 and accumulations while living separate and apart), 772 (earnings  
7 and accumulations after judgment of legal separation), and 781  
8 (cases where damages for personal injury are separate property).  
9 CFC § 760, L. Revision Comm’n Cmt. Notably, there is no mention  
10 of CFC § 2581 as a limitation on the community property  
11 presumption.

12 Nor, candidly, can we readily discern the significance of  
13 Appellants’ reference to CFC § 750’s enumeration of the different  
14 forms in which married couples may hold property as supporting an  
15 argument that CFC § 760’s presumption is limited to dissolution  
16 contexts. CFC § 750, like § 2581, is not “in conflict” with  
17 § 760--indeed, it is not in conflict with anything. Rather, its  
18 recitation of the manner in which property may be held is merely  
19 descriptive--it might as well say, “some numbers may be even, and  
20 some numbers may be odd, depending on the number.”

21 For all of these reasons, we find Appellants’ statutory  
22 construction arguments unpersuasive.

23 **2. Prior case law does not compel a different result.**

24 Appellants cite Hansford v. Lassar, 53 Cal. App. 3d 364  
25 (1975), overturned on other grounds due to legislative action,  
26 and Fadel v. DCB United LLC (In re Fadel), 492 B.R. 1 (9th Cir.  
27 BAP 2013), in support of their argument that the record title  
28 presumption should apply. In both of these cases, which were

1 non-dissolution cases decided before Valli, the courts applied  
2 the record title presumption to marital property rather than the  
3 community property presumption. Importantly though, in both of  
4 these cases, one spouse had taken title as "sole and separate  
5 property" and the other spouse had executed and recorded a  
6 document relinquishing his or her interest in the subject  
7 property. Thus, in In re Fadel, the spouses effectively  
8 transmuted the character of the property when it was acquired  
9 (thereby satisfying the requirements of CFC § 852); the title  
10 documents reflected an unequivocal intent to hold the properties  
11 separately. In that circumstance, applying the record title  
12 presumption was appropriate. Moreover, Hansford, and the  
13 authorities cited therein, have largely been superceded by  
14 subsequent statutes and case law; to the extent they conflict  
15 with Valli, they are no longer good law.

16 **3. The Valli concurrence does not compel the conclusion**  
17 **that the community property presumption is limited to**  
18 **the marital dissolution context.**

19 Lastly, Appellants attempt to bolster their argument that  
20 Valli cannot be applied outside of the marital dissolution  
21 context by pointing to language in the concurring opinion in  
22 which three of the justices recognized in dicta the possibility  
23 that Cal. Evid. Code § 662 might apply in litigation between  
24 spouses and third parties:

25 Significantly, the statutory presumption regarding  
26 property in the form of joint tenancy applies "[f]or  
27 the purpose of division of property on dissolution of  
28 marriage." (Fam. Code, § 2581; see Civ. Code, former  
§ 5110.) This language suggests that rules that apply  
to an action between the spouses to characterize  
property acquired during the marriage do not  
necessarily apply to a dispute between a spouse and a  
third party.

1 Valli, 58 Cal. 4th at 1413 (Chin, J., concurring).

2 We do not agree that the quoted language either limits the  
3 holding in Valli strictly to marital dissolutions or makes the  
4 policies inherent in the Valli decision inapplicable to the  
5 disputes concerning property ownership that arise in bankruptcy.

6 As an initial matter, we note that the decision in Valli was  
7 unanimous and that the comments on which Appellants rely are set  
8 forth in a concurrence joined by less than a majority of the  
9 court. Thus, even were the concurring justices expressing  
10 concerns with the holding in Valli--and for the reasons set forth  
11 below, we do not believe that they were--such concerns would not  
12 have limited the holding of this decision by the highest  
13 authority in California.

14 Second, we note the inescapable facts that in Valli the  
15 California Supreme Court expressly addressed and rejected the  
16 interpretation of California law relied on in Summers--and that  
17 Summers clearly arose in a bankruptcy context. Surely, if the  
18 California Supreme Court were concerned to limit the scope of its  
19 holding regarding the applicability of presumptions concerning  
20 marital property, it could easily have done so when rejecting the  
21 rationale for a decision that dealt with a dispute concerning a  
22 bankruptcy estate's interest in marital property.

23 Third, we are reluctant to read the quoted comment as  
24 broadly as Appellants suggest, i.e., that the community property  
25 presumption of CFC § 760 could never apply in circumstances other  
26 than marital dissolution. We note that while the concurring  
27 justices in Valli did not describe with specificity the types of  
28 matters in which the record title presumption should continue to

1 apply, they did reinforce a fundamental distinction that the  
2 opinion also noted, i.e., the difference between the purposes of  
3 the general evidentiary title presumption of Cal. Evid. Code  
4 § 662 and the policies behind the default presumptions of CFC 750  
5 et seq. See discussion at subsection A, supra.

6 **4. The policies expressed in Valli compel the conclusion**  
7 **that the community property presumption must apply**  
8 **here.**

9 As noted in both the majority opinion and the concurrence in  
10 Valli, the purpose behind the property ownership presumptions of  
11 the California Family Code is to create a uniform and reliable  
12 set of "rules of the road," application of which will serve to  
13 avoid the unsavory but all too common circumstance in which one  
14 member of the community seeks through unreliable or even  
15 perjurious evidence to bolster an unfair and inaccurate assertion  
16 of property ownership during a dispute. See Valli, 58 Cal. 4th  
17 at 1405. That the California Family Code presumptions are  
18 entirely consistent with the expectation that, in most instances,  
19 a married couple in this state acquiring property during a  
20 marriage, except in certain enumerated instances, will intend to  
21 hold and will hold the property as a community asset, is hardly  
22 surprising. Further, the fact that such presumptions are  
23 rebuttable by written evidence of intent to hold property as  
24 other than a community asset preserves the ability of a married  
25 couple to deviate from the expectation of community ownership for  
26 any number of legitimate, but necessarily verifiable, reasons.

27 In light of the relatively light burdens imposed by such  
28 requirements, we find it hard to agree with Appellants' dire



1 predictions expressed during argument in this matter that our  
2 ruling will wreak havoc on marital communities throughout the  
3 state.

4       A rule that the community property presumption generally  
5 applies in disputes over rights to marital property is not in  
6 conflict with the policy of stability of titles expressed in Cal.  
7 Evid. Code § 662. In fact, uniform application of the community  
8 property presumption in matters involving marital property  
9 promotes stability of titles more reliably and predictively than  
10 would a rule that the community property presumption applies only  
11 in interspousal disputes. Parties examining record title will  
12 know that when record title indicates that property is held by  
13 married persons, it is community property regardless of the  
14 designation of form of title, unless there is also a written  
15 statement conforming with the transmutation statutes that  
16 indicates the parties intended to hold property in a different  
17 form.

18       Moreover, we believe that the Appellants' implied reliance  
19 on a distinction that they contend the court in Valli drew  
20 between the presumptions that should govern in a marital  
21 dissolution and those that should pertain to a dispute involving  
22 either or both members of the community and third party creditors  
23 misconceives the issues that arise when one or both members of a  
24 community files a bankruptcy.

25       As we are all aware, immediately upon the filing of a  
26 bankruptcy, an estate is created, comprised of all assets of the  
27 debtor, wherever located; and a trustee is appointed whose duty  
28 it is promptly to collect and hold those assets, and to maximize

1 their value for the benefit of the debtor's creditors. In taking  
2 such actions the trustee is, in the first instance, stepping into  
3 the shoes of the debtor, and succeeds to the property interests  
4 of the debtor, as provided by nonbankruptcy (state) law.<sup>11</sup> While  
5 the trustee may act for the benefit of creditors, he is in the  
6 first instance merely exploiting the existing property rights of  
7 the debtor. To suggest that different presumptions of marital  
8 property ownership must apply in bankruptcy is to ignore a  
9 fundamental purpose of the bankruptcy system: to permit the  
10 trustee to assert the rights of the debtor in property for the  
11 benefit of the debtor's creditors.<sup>12</sup>

12 Appellants point to no policy that would be furthered by  
13

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14  
15 <sup>11</sup> To be sure, the trustee may also exercise certain  
16 special rights created by, or incorporated into, the Bankruptcy  
17 Code, including, for example, the right to recover fraudulent  
18 transfers. See §§ 544 and 548. And in this context, it bears  
19 repeating that CFC § 852 contains an explicit requirement that  
20 certain transmutations be made in writing, and be recorded, to  
21 avoid the reach of California's Uniform Fraudulent Transfer Act.  
22 See Subsection A, supra.

23 <sup>12</sup> And, not to belabor the point, but it would be difficult  
24 to imagine a starker example of the need for consistent, reliable  
25 "rules of the road" to aid in the characterization of marital  
26 property in a dispute in bankruptcy than this case. Although not  
27 elaborated in this Opinion, our companion Memorandum describes in  
28 great detail the pre-bankruptcy conduct of the Appellants that  
the trial court found was taken with intent to defraud creditors,  
as well as the trial court's conclusion that Appellants'  
evidentiary presentation concerning their bona fides was not  
credible in any respect. Clearly, were Appellants proceeding on  
a theory that they had effected a transmutation of the ownership  
of the Properties, the trial court would have had ample  
justification to reject any such assertion, whether operating  
under the written documents requirements of CFC § 852 (enacted in  
1985) or its predecessor rule, which still required credible  
evidence of a pre-existing arrangement or understanding.

1 treating marital property differently in disputes with a  
2 bankruptcy trustee. The community property presumptions and the  
3 transmutation statutes acknowledge that spouses stand in a  
4 confidential relationship, with its attendant risk of undue  
5 influence; these presumptions and provisions are intended to  
6 protect against that risk. And the transmutation statutes  
7 further protect married persons from the risk of unreliable  
8 evidence and incentives for perjury. As the Valli court held,  
9 these policy concerns apply equally in actions between spouses  
10 and in actions between spouses and third parties.

11 Because the bankruptcy trustee succeeds to the married  
12 debtor's interests and thus also to any dispute over the  
13 characterization of that marital property, failure to apply the  
14 community property presumption in such matters would produce  
15 inconsistent results without furthering any of the policies  
16 embodied in the relevant California Family Code provisions. In  
17 short, Appellants have demonstrated no convincing authority or  
18 plausible policy reason to conclude that the record title  
19 presumption should trump the community property presumption under  
20 the facts presented here.

21 Based on the foregoing, we hold that the bankruptcy court  
22 correctly applied the community property presumption. It is  
23 undisputed that the Properties were acquired during the marriage  
24 with community funds. Despite Appellants' assertion that there  
25 was no transmutation, the act of taking title as joint tenants  
26 was (if their testimony is to be believed) an attempt to  
27 recharacterize their interests in the Properties from community  
28 to separate. Under Summers and the California cases cited

1 therein, the act of taking title as joint tenants would have been  
2 effective to do so. But Valli explicitly abrogated Summers'  
3 holding that the transmutation requirements do not apply to  
4 transactions where property is acquired from a third party by a  
5 married couple. As such, Appellants had to provide additional  
6 evidence that they intended to hold their interests separately.  
7 Because the bankruptcy court found not credible Appellants'  
8 assertion that they intended to hold the Properties separately,  
9 Appellants failed to overcome that presumption notwithstanding  
10 that they originally took title to the Properties as joint  
11 tenants.<sup>13</sup>

#### 12 **CONCLUSION**

13 For all of these reasons, the bankruptcy court did not err  
14 in concluding that upon avoidance and recovery, the Properties  
15 were property of the estate subject to administration by Trustee.  
16 Accordingly, we AFFIRM.

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21 <sup>13</sup> We note that Valli interpreted the community property  
22 presumption in light of CFC § 852's requirement of a written  
23 express declaration to prove a transmutation, finding that in  
24 light of that requirement, the manner in which a married couple  
25 takes title is insufficient by itself to rebut the presumption  
26 and that the record title presumption should not be applied when  
27 it conflicts with the transmutation statutes. Here, the writing  
28 requirement may not apply because CFC § 852 became effective in  
1985. However, even if CFC § 852 does not apply, this does not  
mean that Valli is inapplicable: the only impact of the  
codification of the writing requirement was to modify the manner  
in which a party may rebut the community property presumption.