

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re:

Case No. 17-12781-A-7

DALIP SINGH NIJJAR,

Debtor.

JAMES E. SALVEN,

Adv. No. 17-1066-A

Plaintiff,

GMJ-6, FW-11

V.

MEMORANDUM

VIRPAL K. NIJJAR et al.,

Defendants.

Argued and submitted on September 25, 2019

at Fresno, California

Honorable Fredrick E. Clement, Bankruptcy Judge Presiding

Appearances: Gabriel J. Waddell and Peter A. Sauer,
 Fear Waddell, P.C., for James E. Salven;
 David M. Gilmore and Timothy V. Logoluso,
 Gilmore Magness Janisse for Virpal Nijjar,
 VK Nijjar Farms, LLC, and Nijjar Farms,
 Inc.

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1 "What is once well done is done forever." Henry David Thoreau.
2 The converse is also true. Acting without counsel, a husband and wife
3 attempted to transmute four parcels of land held as community property
4 into wife's separate property. Eight years later, husband filed
5 Chapter 7 bankruptcy and his trustee asserts a community property
6 interest in those parcels. Having failed to comply with California
7 transmutation rules, wife's real property will be subject to husband's
8 creditors' reach.

9 **I. FACTS**

10 Dalip Singh Nijjar ("Dalip") and Virpal K. Nijjar ("Virpal")
11 married in 1989.¹

12 During the marriage, the parties acquired four parcels of real
13 property (10072 East Elkhorn, Laton, California; 11663 South Fowler
14 Avenue, Selma, California; 13283 South Highland Avenue, Selma,
15 California; and 14233 South Highland Avenue, Selma, California) and a
16 business known as "Highland Transport, LLC." The couple's home was
17 located on one of these parcels.

18 In 2007, Dalip and Virpal began contemplating divorce.

19 In 2008, in anticipation of that divorce, Dalip and Virpal
20 negotiated a property settlement. Under that settlement Dalip agreed
21 to transfer all of his interest in the four parcels to Virpal and, in
22 exchange, Virpal transferred her interest in Highland Transport, LLC,
23 to Dalip and pledged one of those parcels to secure a \$200,000
24 business loan for Dalip. To effectuate that agreement, Dalip executed
25 and delivered four quitclaim deeds, one for each parcel, to Virpal.
26 Each quitclaim deed recited that "For valuable consideration, receipt

27 ¹ For clarity the Nijjars are referred to by their first names. The court
28 intends neither disrespect, nor familiarity.

1 of which is hereby acknowledge (sic), Dalip S. Nijjar hereby
2 remise(s), release(s), and forever quitclaim(s) to Virpal K. Nijjar
3 the following real property." Those quitclaim were deeds recorded.
4 Virpal purportedly transferred her interest in Highland Transport,
5 LLC,² and encumbered 10072 East Elkhorn, Laton, California, by a deed
6 of trust for \$200,000 for Dalip's loan from Fresno Truck Center. No
7 other community property was addressed in this purported property
8 settlement.

9 Later in 2008, Virpal filed a petition for divorce in the State
10 of Nevada. *Nijjar v. Nijjar*, No. CV08-02132 (NV Washoe County 2008).
11 That court granted the Nijjars' divorce and found "[t]hat there are no
12 community property and community debts or obligations that the parties
13 are requested (sic) to be adjudicated by the court." *Id.* at Findings
14 of Fact, Conclusions of Law, Judgment and Decree of Divorce ¶ 6,
15 December 5, 2008.

16 **II. PROCEDURE**

17 Eight years later, Dalip sought the protections of a Chapter 7
18 bankruptcy. James E. Salven ("Salven") was appointed the trustee.

19 Salven filed an eight-count adversary proceeding. Among the
20 relief sought was a request for declaratory relief under 28 U.S.C. §
21 2201 that "all community property of the marriage of the Debtor and
22 Virpal Nijjar" remains property of the bankruptcy estate. Second
23 Amended Complaint at 38, January 31, 2018, ECF # 151. The second
24 count appears to seek declaratory relief as to two discrete sub-
25 issues: (1) that whatever community property the Nijjars acquired was
26 not transmuted by the pre-divorce settlement and that the Nevada
27 marital dissolution proceeding did not divide the community property,

28 ² The mechanics of that transfer are not clear from the record.

1 *Id.* at ¶¶ 143-152 (transmutation/division issues"; and (2) to define
2 the precise contours of the Nijjars' community property on the date of
3 Dalip's Chapter 7 bankruptcy, *Id.* at ¶¶ 153-154 ("scope issues").

4 Salven and the Nijjar defendants offer cross-motions for summary
5 judgment on that issue.³ Virpal argues that Virpal and Dalip's 2008
6 property settlement worked a transmutation, changing the four parcels
7 into her separate property or, in the alternative, that the trustee's
8 action is barred by a three-year statute of limitations, Cal. Family
9 Code § 1101, that expired long ago. Salven disagrees, asserting a
10 right to all community property, including those properties that the
11 couple thought they had divided between themselves, a la *Henn v. Henn*,
12 26 Cal.3d 323, 330 (1980).

13 **III. JURISDICTION**

14 This court has jurisdiction. 28 U.S.C. § 1334(a)-(b); see also
15 General Order No. 182 of the Eastern District of California. This
16 adversary proceeding presents both core and non-core proceedings. 28
17 U.S.C. § 157(b),(c). The parties have consented to final orders and
18 judgments by this court. Scheduling Order § 2.0, June 1, 2018, ECF #
19 194.

20 **IV. LAW**

21 **A. Summary Judgment**

22 Federal Rule of Civil Procedure 56 requires the court to grant
23 summary judgment on a claim or defense "if the movant shows that there
24 is no genuine dispute as to any material fact and the movant is
25 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a),

26 ³ Virpal has filed extensive objections to some of the evidence, particularly
27 the declaration of Gurpreet Bhangoo, proffered by Salven. Objection to
28 Plaintiff's Evidence, August 14, 2019, ECF # 388. Because the court did not
rely on that evidence in ruling on this matter, it need not rule on those
objections.

1 *incorporated by Fed. R. Civ. P. 56. "[T]he mere existence of some*
2 *alleged factual dispute between the parties will not defeat an*
3 *otherwise properly supported motion for summary judgment; the*
4 *requirement is that there be no genuine issue of material fact."*
5 *California v. Campbell, 138 F.3d 772, 780 (9th Cir. 1998) (citing*
6 *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986)). "A*
7 *fact is 'material' when, under the governing substantive law, it could*
8 *affect the outcome of the case." Thrifty Oil Co. v. Bank of Am. Nat'l*
9 *Trust & Sav. Ass'n, 322 F.3d 1039, 1046 (9th Cir. 2003) (citing*
10 *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).*

11 "The court must view the evidence in the light most favorable to
12 the non-movant and draw all reasonable inferences in the non-movant's
13 favor." *Swoger v. Rare Coin Wholesalers, 803 F.3d 1045, 1047 (9th*
14 *Cir. 2015) (citing Clicks Billiards Inc. v. Sixshooters Inc., 251 F.3d*
15 *1252, 1257 (9th Cir. 2001)).*

16 A shifting burden of proof applies to motions for summary
17 judgment. *In re Oracle Corp. Sec. Litig., 627 F.3d 376, 387 (9th Cir.*
18 *2010). "The moving party initially bears the burden of proving the*
19 *absence of a genuine issue of material fact." Id.*

20 "Where the non-moving party [e.g., a plaintiff] bears the burden
21 of proof at trial, the moving party need only prove that there is an
22 absence of evidence to support the non-moving party's case. Where the
23 moving party meets that burden, the burden then shifts to the non-
24 moving party to designate specific facts demonstrating the existence
25 of genuine issues for trial." *Id.* (citation omitted). The Ninth
26 Circuit has explained that the non-moving party's "burden is not a
27 light one. The non-moving party must show more than the mere
28 existence of a scintilla of evidence." *Id.* "In fact, the non-moving

1 party must come forth with evidence from which [the factfinder] could
2 reasonably render a verdict in the non-moving party's favor." *Id.*

3 When the moving party has the burden of persuasion at trial
4 (e.g., a plaintiff on claim for relief or a defendant as to an
5 affirmative defense), the moving party's burden at summary judgment is
6 to "establish beyond controversy every essential element of its . . .
7 claim. *S. California Gas Co. v. City of Santa Ana*, 336 F.3d 885, 888
8 (9th Cir. 2003) (internal quotation marks omitted). In such a case,
9 there is no need to disprove the opponent's case "[i]f the evidence
10 offered in support of the motion establishes every essential element
11 of the moving party's claim or [affirmative] defense." Hon. Virginia
12 A. Phillips & Hon. Karen L. Stevenson, *Federal Civil Procedure Before*
13 *Trials*, Calif. & 9th Cir. Edit., Summary Judgment, Burden of Proof ¶
14 14:126.1 (Rutter Group 2019).

15 A party may support or oppose a motion for summary judgment with
16 affidavits or declarations that are "made on personal knowledge" and
17 that "set out facts that would be admissible in evidence." Fed. R.
18 Civ. P. 56(c)(4). The assertion "that a fact cannot be or is
19 genuinely disputed" may be also supported by citing to other materials
20 in the record or by "showing that the materials cited do not establish
21 the absence or presence of a genuine dispute, or that an adverse party
22 cannot produce admissible evidence to support the fact." Fed. R. Civ.
23 P. 56(c)(1).

24 "A motion for summary judgment cannot be defeated by mere
25 conclusory allegations unsupported by factual data." *Angel v.*
26 *Seattle-First Nat'l Bank*, 653 F.2d 1293, 1299 (9th Cir. 1981) (citing
27 *Marks v. U.S. Dep't of Justice*, 578 F.2d 261, 263 (9th Cir. 1978)).
28 "Furthermore, a party cannot manufacture a genuine issue of material

1 fact merely by making assertions in its legal memoranda." S.A.
2 *Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co.*, 690 F.2d
3 1235, 1238 (9th Cir. 1982).

4 **B. Community Property**

5 As a rule, property of the estate includes "all legal and
6 equitable interests of the debtor in property as of the commencement
7 of the case." 11 U.S.C. § 541(a)(1). Community property is included
8 in property of the estate.

9 All interests of the debtor and the debtor's spouse in
10 community property as of the commencement of the case that
is--

11 (A) under the sole, equal, or joint management and control
12 of the debtor; or

13 (B) liable for an allowable claim against the debtor, or
14 for both an allowable claim against the debtor and an
allowable claim against the debtor's spouse, to the extent
that such interest is so liable.

15 11 U.S.C. § 541(a)(2).

16 Bankruptcy courts look to state law to determine whether a
17 debtor's interest is property under § 541(a) and the nature and extent
18 of the debtor's interest. *Butner v. United States*, 440 U.S. 48, 54
19 (1979); *In re Coupon Clearing Service, Inc.*, 113 F.3d 1091, 1099
20 (1997).⁴

21 "Except as otherwise provided by statute, all property, real or
22 personal, wherever situated, acquired by a married person during the
23 marriage while domiciled in this state is community property." Cal.
24 Fam. Code § 760; see also, Cal. Civ. Code § 687; *Marriage of Bonds*, 24
25 Cal.4th 1, 12 (2000). Property acquired during marriage is presumed
26 to be community property. Cal. Family Code § 760; *Brace v. Speier* (*In*

27 ⁴ Salven and Virpal have each argued the application of California law,
28 notwithstanding that the marital dissolution action occurred in Nevada.
Following suit, the court also applies California law.

1 *re Brace*), 566 B.R. 13 (9th Cir. 2017), *rev'd*, *In re Brace*, 900 F.3d
2 531 (9th Cir. 2018) (certifying question of whether presumption of
3 title overcame presumption of community property).

4 **1. Transmutation during marriage**

5 The character of community property may be changed during
6 marriage or as a part of a marital dissolution proceeding. During
7 marriage, spouses may change the character of community property to
8 the separate property of one particular spouse. Cal. Family Code §
9 850(a). "A transmutation of real or personal property is not valid
10 unless made in writing by an express declaration that is made, joined
11 in, consented to, or accepted by the spouse whose interest in the
12 property is adversely affected." Cal. Fam. Code § 852(a); *see also*,
13 Cal. Fam. Code § 1500; *Estate of MacDonald* (1990) 51 Cal.3d 262, 267-
14 268 (1990). Extrinsic evidence of intent is inadmissible. *In re*
15 *Marriage of Benson*, 36 Cal.4th 1096, 1106 (2005); *Marriage of*
16 *Campbell*, 74 Cal.App.4th 1058, 1062 (1999).

17 An enforceable transmutation agreement need not use the word
18 "transmutation" or any other particular locution." *Estate of*
19 *MacDonald*, 51 Cal. 3d at 273." As the *MacDonald* court stated, "For
20 example, the paragraph signed by decedent here would have been
21 sufficient if it had included an additional sentence reading: "I give
22 to the account holder any interest I have in the funds deposited in
23 this account." *Id.* But the use of the word "transfer" alone is
24 insufficient:

25 [U]se of the word "transfer," without more, does not
26 satisfy § 852(a) and thus does not effect a transmutation.
27 "[W]hile the term 'transfer' could refer to a change in
28 ownership, it does not necessarily do so." [*Marriage of*
Barneson, supra, 69 CA4th at 590-591, 81 CR2d at 731
(emphasis in original)]; *see also Marriage of Begian &*
Sarajian (2018) 31 CA5th 506, 509, 516-518, 242 CR3d 692,

1 694, 699-701—Trust Transfer Deed purporting to “grant” real
2 property to W and stating said transfer was “gift” deemed
3 invalid transmutation susceptible to at least two different
4 interpretations.

5 Hogoboom and King, *California Practice Guide—Family Law*, Marital
6 Property, Property Characterization § 8:479.1 (Rutter Group June
7 2019).

8 In some instances, California courts have accepted quitclaim
9 deeds as an express declaration under § 852. *Marriage of Haines*, 33
10 Cal.App.4th 277, 293-294 (1995); *In re Marriage of Mathews*, 133
11 Cal.App.4th 624 (2005); *In re Marriage of Starr*, 189 Cal.App.4th 277
12 (2010).

13 Interspousal property transactions are subject to the fiduciary
14 duty standards in California Family Code § 721. That section
15 provides:

16 **[I]n transactions between themselves, spouses are subject**
17 **to the general rules governing fiduciary relationships that**
18 **control the actions of persons occupying confidential**
19 **relations with each other.** This confidential relationship
20 imposes a duty of the highest good faith and fair dealing
21 on each spouse, and **neither shall take any unfair advantage**
22 **of the other.** This confidential relationship is a fiduciary
23 relationship subject to the same rights and duties of
24 nonmarital business partners....

25 Cal. Family Code § 721(b) (emphasis added).

26 Moreover, a transmutation that unfairly disadvantages one spouse
27 is presumed to be the product of undue influence and is invalid.

28 [A] transmutation that unfairly advantages one spouse (or
29 registered domestic partner) over the other is presumed to
30 have been induced by undue influence. **As a result, when the**
31 **“disadvantaged” party contests the alleged transmutation,**
32 **the advantaged party has the burden of proving by a**
33 **preponderance of the evidence that the transaction was not**
34 **consummated in violation of his or her fiduciary duties**
35 **(i.e., evidence showing the transaction was freely and**
36 **voluntarily consummated, with full knowledge of all the**
37 **facts and a complete understanding of the effect of the**
38 **transfer).** [*Marriage of Haines*, supra, 33 CA4th at 296-297,
39 39 CR2d at 685-686; see also *Marriage of Balcof* (2006) 141

1 CA4th 1509, 1519-1522, 47 CR3d 183, 190-192; *Marriage of*
2 *Lund* (2009) 174 CA4th 40, 55, 94 CR3d 84, 97

3 Hogoboom and King, *California Practice Guide-Family Law* at § 8:471.6
4 (emphasis added).

5 Transmutation must occur, if at all, prior to the date marital
6 dissolution proceedings begin. *In re Marriage of Dellaria & Blickman-*
7 *Dellaria*, 172 Cal.App.4th 196, 204 (2009), as modified on denial of
8 reh'g (April 2, 2009).

9 The burden of proving that the transaction did not violate the
10 fiduciary duty that exists between spouses falls to the advantaged
11 spouse. *Marriage of Haines*, 33 Cal.App.4th at 297; *Marriage of*
12 *Fossum*, 192 Cal.App.4th 336, 345 (2011). Where, as here, the common
13 law presumption of title (Cal. Evid. Code 662) and community property
14 presumption of undue influence (Cal. Fam. Code § 721(b)) conflict, the
15 presumption of title yields to the presumption of undue influence.
16 *Marriage of Fossum*, 192 Cal.App.4th at 344; *Marriage of Haines*, 33
17 Cal.App.4th at 300-302. To sustain that burden the advantaged spouse
18 must prove that the other spouse entered into the transaction "freely
19 and voluntarily," "with a full knowledge of all the facts," and "a
20 complete understanding of the effect of the transfer." *Brown v.*
21 *Canadian Indus. Alcohol Co.*, 209 Cal. 596, 598 (1930); *In re Marriage*
22 *of Haines*, 33 Cal. App. 4th at 296.

23 **2. Division of community property as a part of marital**
24 **dissolution proceedings**

25 There are three methods by which community property may be
26 divided as part of a marital dissolution proceedings: oral stipulation
27 in open court, written stipulation or decree of the family court.

28 Except upon the **written agreement of the parties**, or on

1 **oral stipulation of the parties in open court, or as**
2 **otherwise provided in this division, in a proceeding for**
3 **dissolution of marriage or for legal separation of the**
4 **parties, the court shall, either in its judgment of**
5 **dissolution of the marriage, in its judgment of legal**
6 **separation of the parties, or at a later time if it**
7 **expressly reserves jurisdiction to make such a property**
8 **division, divide the community estate of the parties**
9 **equally.**

6 Cal. Family Code § 2550 (emphasis added).

7 Moreover, the Family Court retains jurisdiction to adjudicate
8 undivided community property. "In a proceeding for dissolution of
9 marriage, for nullity of marriage, or for legal separation of the
10 parties, the court has continuing jurisdiction to award community
11 estate assets or community estate liabilities to the parties that have
12 not been previously adjudicated by a judgment in the proceeding."

13 Cal. Family Code § 2556; see also *Hogoboom and King*, California
14 Practice Guide-Family Law at § 8:1513. Long-standing precedent makes
15 clear that a dissolution judgment does "not affect the disposition of
16 community property as to which the judgment is silent." *Marriage of*
17 *Huntley*, 10 Cal.App.5th 1053, 1059-60 (2017); see also, *Henn v. Henn*,
18 26 Cal.3d 323, 330 (1980). Division may be accomplished in the
19 marital dissolution action by motion or otherwise by separate action.
20 *In re Marriage of Moore & Ferrie*, 14 Cal. App. 4th 1472, 1483 n. 9
21 (1993).

22 As a rule, only parties to the marital dissolution proceeding may
23 file a motion under § 2550. *Marriage of Braendle*, 46 Cal.App.4th
24 1037, 1043 (1996). But this court finds that the trustee, who
25 succeeds to all legal and equitable interests held by Dalip on the
26 petition date could bring a separate action. 11 U.S.C. § 541(a)(1);
27 *Henn*, 26 Cal.3d at 330 (authorizing recovery by separate action).

1 **V. DISCUSSION**

2 **A. Transmutation/Division of Community Property**

3 Salven's second count for a declaration is that "all community
4 property" of the Nijjar marriage is property of the estate. Second
5 Amended Complaint ¶¶ 143-54 & prayer, January 31, 2018, ECF # 151.
6 That includes the Nijjars' real properties and personal properties.
7 Id. The Nijjar defendants' suggestion that the second count includes
8 only the four real properties subject to the quitclaim deeds mis-read
9 the Second Amended Complaint.

10 **1. Four Real Properties**

11 Because Dalip alienated four parcels of real property he is the
12 disadvantaged spouse. Cal. Fam. Code § 721(b). As the estate
13 representative, Salven stands in Dalip's shoes and argues his position
14 (notwithstanding Dali's preference that Salven not do so). 11 U.S.C.
15 §§ 323, 541(a). As a consequence, Virpal has the burden of showing
16 that Dalip entered into the transaction "freely and voluntarily,"
17 "with a full knowledge of all the facts," and "a complete
18 understanding of the effect of the transfer." *Brown v. Canadian Indus.*
19 *Alcohol Co.*, 209 Cal. at 598 (1930); *In re Marriage of Haines*, 33 Cal.
20 App. 4th at 296.

21 As the party favored by the presumption of undue influence,
22 Salven needs to do nothing more than point to the four quitclaim deeds
23 and the presumption of § 721(b), shifting the burden of proof on the
24 issue to Virpal. Virpal's best evidence is her own declaration and
25 the declaration of Dalip. She declared:

26 I believe at that time that the division of our community
27 property assets was fair and equitable upon the value of
28 the assets and encumbrances and consistent with our elders'
advice. No undue pressure or influence was exerted over me
or by me against Dalip relating to the community property

1 decision. The decision was freely made and voluntarily
2 executed.

3 Virpal K. Nijjar decl. ¶ 6, July 17, 2019, ECF # 355.

4 After reciting the terms of the property settlement, Dalip
5 declared: "I believed at the time that the division of our community
6 property assets was a fair and equitable division based on the value
7 of the assets and encumbrances and consistent with our elders'
8 advice." Dalip S. Nijjar decl. ¶ 6, July 17, 2019, ECF # 357. It also
9 stated, "I transferred, via Quitclaim Deeds, the parcels freely and
10 voluntarily with no reservation." *Id.* at ¶ 7. Dalip's decision to
11 enter into a property settlement with Virpal was free and voluntary.
12 But Virpal has offered this court no evidence that she moved forward
13 "with a full knowledge of all the facts," and "a complete
14 understanding of the effect of the transfer." *Brown*, 209 Cal. at 598;
15 *In re Marriage of Haines*, 33 Cal. App. 4th at 296. That Dalip
16 consulted with the "elders" of his community does not demonstrate that
17 he had "full knowledge of the facts" or had "a complete understanding
18 of the effect of the transfer." Nor does it give rise to a competing
19 inference of knowledge or understanding of effect. That is true
20 because there is no evidence that the "elders" themselves had such
21 knowledge and understanding or that they communicated that specific
22 information to Dalip. As a consequence, the presumption of undue
23 influence, Cal. Fam. Code § 721, has not been rebutted and Salven's
24 motion for summary judgment will be granted as to 10072 East Elkhorn,
25 Laton, California; 11663 South Fowler Avenue, Selma, California; 13283
26 South Highland Avenue, Selma, California; and 14233 South Highland
27 Avenue, Selma, California.
28

1 **2. All Other Community Property**

2 During a marital dissolution action, property may only be divided
3 by written stipulation, oral stipulation offered in court or decree.
4 Cal. Fam. Code § 2550. None of those occurred here. As a
5 consequence, any unresolved community property remained community
6 property. *Marriage of Huntley*, 10 Cal.App.5th at 1059-60; *Henn*, 26
7 Cal.3d at 330. Dalip and Virpal made one, and only one, effort to
8 divide their community property prior to the marital dissolution
9 action. And this court has just ruled that effort was ineffectual.
10 As a consequence, property owned by Dalip and Virpal remained
11 community property.

12 **3. Statute of Limitations**

13 California law provides the rule of decision for a transmutation
14 brought in violation of the fiduciary duty rules.

15 **(a) A spouse has a claim against the other spouse for any**
16 **breach of the fiduciary duty that results in impairment to**
17 **the claimant spouse's present undivided one-half interest**
18 **in the community estate**, including, but not limited to, a
19 single transaction or a pattern or series of transactions,
20 which transaction or transactions have caused or will cause
21 a detrimental impact to the claimant spouse's undivided
22 one-half interest in the community estate.

23 **(b) A court** may order an accounting of the property and
24 obligations of the parties to a marriage and **may determine**
25 **the rights of ownership in, the beneficial enjoyment of, or**
26 **access to, community property, and the classification of**
27 **all property of the parties to a marriage.**

28 **(d)(1) Except as provided in paragraph (2), any action**
under subdivision (a) shall be commenced within three years
of the date a petitioning spouse had actual knowledge that
the transaction or event for which the remedy is being
sought occurred.

(2) An action may be commenced under this section upon the
death of a spouse or in conjunction with an action for
legal separation, dissolution of marriage, or nullity
without regard to the time limitations set forth in
paragraph (1).

1 (3) The defense of laches may be raised in any action
2 brought under this section.

3 The trustee's action is in the manner of *Henn v. Henn*, 26 Cal.3d 323,
4 330 (1980), and falls within California Family Law § 1101(d)(2). See
5 *Patrick v. Alacer Corp.*, 201 CA4th 1326, 1337 fn. 4 (2011); *Yeh v.*
6 *Tai*, 18 Cal.App.5th 953, 957 (2017). No statute of limitations
7 applies; actions may be barred by laches.⁵ As a consequence, the
8 action is not time barred.

9 B. Scope of Community Property

10 Plaintiff's request to trace community property assets into other
11 real properties, e.g., 8373 Saginaw property, 8610 Saginaw property,
12 Floral property, Mountain View property and Conejo property will be
13 denied on procedural grounds.

14 First, a motion must state the legal basis for relief. Fed. R.
15 Bankr. P. 9013 ("The motion shall state with particularity the grounds
16 therefor..."). Local Bankruptcy Rules provide:

17 **The application, motion, contested matter, or other request**
18 **for relief shall set forth the relief or order sought and**
19 **shall state with particularity the factual and legal**
20 **grounds therefor. Legal grounds for the relief sought means**
21 **citation to the statute, rule, case, or common law doctrine**
22 **that forms the basis of the moving party's request but does**
23 **not include a discussion of those authorities or argument**
24 **for their applicability.**

25 LBR 9014-1(d)(3)(A)(emphasis added).

26 Salven has not set forth the legal grounds for his motion. See,
27 Motion, July 17, 2019, ECF # 362; Memorandum of Points & Authorities,
28 July 17, 2019, ECF # 365.

Second, Rule 10(b) limits the different theories a party may
bundle into a single count.

A party must state its claims or defenses in numbered

⁵ Virpal has not so argued here.

1 paragraphs, each limited as far as practicable to a single
2 set of circumstances. A later pleading may refer by number
3 to a paragraph in an earlier pleading. **If doing so would
4 promote clarity, each claim founded on a separate
5 transaction or occurrence--and each defense other than a
6 denial--must be stated in a separate count or defense.**

7 Fed. R. Civ. P. 10(b), *incorporated by* Fed. R. Bankr. P. 7010
8 (emphasis added).

9 While such an issue is ordinarily raised at the pleading stage,
10 it need not be. Fed. R. Civ. P. 12(e), *incorporated by* Fed. R. Bankr.
11 P. 7012. Amalgamating the transmission/division issue and the scope
12 of community property issues, including the tracing of community
13 property to 8373 Saginaw, 8610 Saginaw, Floral, Mountain View and
14 Conejo, coupled with a lack of argument on the issue, has made ruling
15 on this aspect of the motion extraordinarily confused. As a result,
16 the court will deny without prejudice any request to define the scope
17 of community property, except as to 10072 East Elkhorn, Laton,
18 California; 11663 South Fowler Avenue, Selma, California; 13283 South
19 Highland Avenue, Selma, California; and 14233 South Highland Avenue,
20 Selma, California, and a business known as Highland Transport, LLC.

21 VI. CONCLUSIONS

22 As to the second count, the court finds that (1) no transmutation
23 of community property occurred; (2) community property was not divided
24 as a part of the Nevada divorce proceedings; (3) any property that was
25 community property of the marriage remains so; and (4) community
26 property of the marriage includes (A) 10072 East Elkhorn, Laton,
27 California; (B) 11663 South Fowler Avenue, Selma, California; (C)
28 13283 South Highland Avenue, Selma, California; (D) 14233 South
Highland Avenue, Selma, California, and (E) Highland Transport, LLC,
was, and is, community property and part of the estate.

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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked _____, via the U.S. mail.

All Attorneys for Plaintiff(s)	All Attorneys for the Defendant(s) (if any)
Bankruptcy Trustee (if appointed in the case)	Office of the U.S. Trustee 2500 Tulare St, Ste 1401 Fresno, CA 93721