

PT: SELECTED ANSWER 1

Note: Abbreviations list -

Community Property - CP

Separate Property - SP

In re Marriage of Burke -

MEMORANDUM

TO: Andrew Washington

FROM: Applicant

DATE: July 25, 2023

Timeline of Events:

1983 -Cofounded

Married 1989 - Value of 0

2009 (At time of Dissolution) - Value of 200 million

After Reviewing the material as asked, I would recommend not accepting the offer. It appears that under wither the Pereira Method or Court Discretion, there is reason to award Wendy 100 million (50 percent). I have discussed below in detail.

1. Characterization of Harlan's DigitalAudio Shares (CP or SP) -

Community Property v Separate Property –

Under CP Law, Property that either spouse acquires during marriage, belongs to the marital community as Community Property (Family Code, Section 760). At dissolution CP is awarded to each spouse in an equal 50 percent share. Id. SP is Property that either spouse acquired before marriage and it belongs to that spouse - it is his or her separate property. See id. Section 770. The proceeds of property that either spouse acquired before marriage also belong to that spouse as their separate property, even if acquired during marriage Id. At dissolution, separate property is confirmed in its entirety to the owning spouse. Id.

Here, it is undisputed that Harlan co-founded Digital Audio with Pamela Gardner where each made contributions of \$5,000 receiving 50 percent shares in the stock each. As such, since Harlan did NOT acquire the property during the marriage, and the stock is characterized as Harlan's SP. As a result, the community would need to acquire an interest based on effort.

2. Whether community devoted sufficient effort during marriage to acquire an interest in increase value, during marriage, of the shares resulting in CP.

Community Effort -

As the court notes, under Columbia law, marriage is an egalitarian partnership (Rand). During the period of the economic community the value had risen to 200 million dollars. In Rand, the Court points out that where the community devotes

more than minimal effort involving a spouse's separate property marriage, the community acquires an interest in any increase in value during marriage of the separate property, and that interest is community property (Dekker). In other words, at dissolution, the court must apportion the increase in value, during marriage, of one spouse's separate property **whenever the community devotes more than minimal effort** involving the separate property during marriage.

Here, as in Rand - the community made an extreme impact on enabling the unsuccessful venture and turning it into a 200-million-dollar profit. In Rand, the Court found that the SP was met with sufficient community effort that would allow for the property during to marriage to later be apportioned at dissolution. There, the value was similarly at 0 upon marriage. Moreover, Charles had worked day for RIC day and night during that time (which coincides with his marriage). While the court doesn't expand beyond him working "day and night" in describing the effort made and later concluding the community devoted more than minimal effort.

Here, the facts similarly suggest that Harlan devoted more than minimal effort. He too similarly worked "night and day." Moreover, unlike where Charles in Rand did all the work by himself for time, which appears Wendy similarly devoted effort toward the community (at the very least, like in Rand, the increase in value comes into effect upon the Marriage). Further, also like in Rand, Harlan was working alone initially without the help of Pamela Gardner so not only was he

devoting more than minimal effort he was devoting all efforts put forth between him and Pamela. In fact, as Pamela "alludes" this 200 million would not be here without him as she states, "would not have come into existence without him" and further mentions he was ... always working ... always at 100 percent ... one of the most skilled computer scientists ... and electrical engineers to Digital audio. Thus, despite testimony that it is Pamelas belief that the increase in 2009 was based on Pro-audio, which Harlan did not work on, it is apparent he similarly exercised sufficient effort that an increase in value should be apportioned to Wendy as CP.

3. Apportionment of the \$200 million increase in value during the marriage of Harlan's Digital shares -

Apportionment Methods -

The Pereira of apportionment applies when the increase in value, during marriage, of one spouse's separate property is principally due to community efforts-i.e., when such efforts are the predominant cause of the increase. Id. The increase in value goes to the the community estate (with the remainder as the spouse's separate estate). Here, during the marriage as discussed above under (2.), the community effort during the marriage appears sufficient to allow for a portion to be apportioned to Wendy.

Opposition will likely argue that Van Camp should apply. Under Van Camp, where the increase in value, during marriage, of one spouse's SP is principally

due to factors other than community efforts. Note, as the court states in Rand, this is when such efforts are the predominant cause of the increase. Here, the owning spouse keeps mainly keeps this increase. In Rand, the court noted that the increase after was based on Market Factors (e.g. that was the predominant cause) it should be noted that at the time, the man was NO longer working and was rather busy spending money. In fact, he had left the business and essentially left it on auto pilot.

Here, that is not the case. As stated above, Pamela's very own testimony said that "would not have come into existence without him" and further mentions he was ... always working ... always at 100 percent ... one of the most skilled computer scientists ... and electrical engineers to Digital audio. Thus, Harlan was active throughout. As a result, this method should not be used because it is inconsistent with the facts and the very importance that Pamela describes Harlan as to the company.

Alternative Methods -

Nonetheless, the Family Court is not required to adopt either Pereira or Van Camp, however the court must nevertheless divide the property in such a way as to achieve substantial justice between the spouses. Here, if the court believed that Van Camp was for some reason more appropriate, they would be keen to consider this alternative method. The facts state Wendy is barely getting by and is and always has been a great mother and wife. As the court states in Rand,

"The community acts whenever either of the spouses acts. Thus, too bypass attributing this effort to community effort (which coincided with the increase in value at the time of the marriage) this should be viewed as community labor that should be apportioned to Wendy as Well.

Results -

When considering the discussion, the court would be keen to attribute the Periera method. Under such - because the value of property was at zero Wendy should be entitled to 1/2 of the increase during the marriage which went up to 200 million leaving Wendy with 100 million of the dollars. Again, "The community acts whenever either of the spouses acts," so it simply doesn't matter whether Wendy personally participated.