No. 17-60032

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re CLIFFORD BRACE, JR.,
Debtor.

ANH N. BRACE and CLIFFORD BRACE, JR.,
Appellants,

– v. –

STEVEN SPEIER,
Appellee.

On Appeal from the Bankruptcy Appellate Panel for the United States Ninth Circuit Court of Appeals No. 16-1041

BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AND NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER IN SUPPORT OF APPELLANTS AND SEEKING REVERSAL OF THE BANKRUPTCY APPELLATE PANEL'S DECISION

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Brace v. Speier, No. 17-60032

Pursuant to Fed. R. App. P. 26.1, Amicus Curiae, the National Association of Consumer Bankruptcy Attorneys, and the National Association of Consumer Bankruptcy Attorneys make the following disclosure:

1) Is party/amicus a publicly held corporation or other publicly held entity? **NO**

2) Does party/amicus have any parent corporations? **NO**

3) Is 10% or more of the stock of party/amicus owned by a publicly held corporation or other publicly held entity? **NO**

4) Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? **NO**

This 5th day of October, 2017.

/s/ Tara Twomey
Tara Twomey, Esq.
Attorney for Amicus Curiae

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STATEMENT OF INTEREST OF AMICUS CURIAE

NCBRC is a nonprofit organization dedicated to preserving the bankruptcy rights of consumer debtors and protecting the bankruptcy system's integrity. The Bankruptcy Code grants financially distressed debtors rights that are critical to the bankruptcy system's operation. Yet consumer debtors with limited financial resources and minimal exposure to that system often are ill-equipped to protect their rights in the appellate process. NCBRC files *amicus curiae* briefs in systemically-important cases to ensure that courts have a full understanding of the applicable bankruptcy law, the case, and its implications for consumer debtors.

NACBA is also a nonprofit organization of approximately 3,000 consumer bankruptcy attorneys nationwide. NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

NCBRC, NACBA and its membership have a vital interest in the outcome of this case. Married couples often hold title to property as joint tenants for estate planning and asset protection purposes. Under California’s property laws, community property and joint tenancies have a crucial difference when one spouse files for bankruptcy and the other does not. In bankruptcy, community property

becomes property of the bankruptcy estate in its entirety, while when property is owned as joint tenants, only the bankruptcy debtor's interest in the property becomes part of the estate. If affirmed, the *Brace Decision* will deprive a non-debtor spouse of valuable personal and property rights by subjecting their interest in a joint tenancy to liability to the debtor's creditors.

AUTHORSHIP AND FUNDING OF AMICUS BRIEF

Pursuant to Fed. R. App. P. 29(c)(5), no counsel for a party authored this brief in whole or in part, and no person or entity other than NCBRC or NACBA, their members, and their counsel made any monetary contribution toward the preparation or submission of this brief.

I. INTRODUCTION

This case involves a determination of the extent to which real Properties ("Properties") held by a married couple as joint tenants may be sold for the benefit of creditors when only one spouse files for bankruptcy. Under the Bankruptcy Code (and in debtor-creditor law generally) joint tenancy property is treated much differently than community property. The bankruptcy court decision below wreaks havoc with this distinction by holding that although the recorded deed to the Properties recites they are held in joint tenancy, the Properties should nevertheless be treated as community property because they were acquired during the marriage. More specifically, the bankruptcy court held that the Properties at issue were presumed to community property under California law and that the recorded deeds listing the spouses as joint tenants were insufficient writings to rebut the presumption.

This determination eviscerates the integrity of record title and has significant and untenable consequences in the bankruptcy context. Here, for example, Ms. Brace's property interests may be liquidated by the bankruptcy trustee and the proceeds used to pay Mr. Brace's creditors. That is, under the bankruptcy court's decision, Ms. Brace stands to lose her property interest and the value of her property interest even though she is not a bankruptcy debtor (i.e., she has not filed for protection under the Bankruptcy Code) and she will not receive any benefits

from the Bankruptcy Code (i.e., discharge, exemptions, etc.). Record title is critical to debtors and creditors alike, it must be sufficient in the bankruptcy context to rebut any presumption of community property. This Court should accordingly reverse the bankruptcy court.

II. STATUTORY FRAMEWORK

Bankruptcy is a balancing act. It has two main purposes: to provide a fresh start for the debtor and to facilitate the fair and orderly repayment of creditors to the extent possible. *Kokoszka v. Belford*, 417 U.S. 642, 645 (1974); *In re Sanchez*, 372 B.R. 289, 296-98 (Bankr. S.D. Tex. 2007). To achieve these twin objectives, the Bankruptcy Code employs a mechanism by which all the debtor's non-exempt assets in a chapter 7 case may be liquidated by a bankruptcy trustee. *See* 11 U.S.C 704(a)(1). In turn, the bankruptcy trustee distributes the liquidation proceeds to creditors in accordance with an elaborate system that dictates the order in which claims are paid and in what amount. *See, e.g.,* 11 U.S.C. 506, 507.

To achieve the dual goals of bankruptcy, the Bankruptcy Code creates the bankruptcy estate upon commencement of a case. Section 541(a) defines the bankruptcy estate and contains an expansive definition of property that includes all legal or equitable interests in property whether tangible or intangible, real or personal. 5-541 COLLIER ON BANKRUPTCY 541.01 (A. Resnick and H. Sommer, eds. 16th ed.). Some property, such as that described in section 541(b), is

specifically excluded from becoming property of the estate. *See, e.g.*, 11 U.S.C. 541(b)(5) (excluding certain funds placed in an education savings accounts). Other property initially considered part of the bankruptcy estate may be removed from the estate through the exemption process. 11 U.S.C 522(b)(l). Certain property may also be added to the bankruptcy estate after the commencement of the case. For example, property acquired by inheritance by the debtor within 180 days of the filing of the petition may become property of the estate. *See* 11 U.S.C. 541(a)(5).

Section 541 defines what interests of the debtor must be transferred to the bankruptcy estate, however it does not address "the threshold question of the existence and scope of the debtor's interest in a given asset…[r]ather, bankruptcy courts are required to look to state property law…to determine the property which is to be included in the bankruptcy estate." *Dumas v. Mantle*, 153 F.3d 1082, 1084 (9th Cir. 1998) citing *State of California v. Farmers Markets, Inc.* (*In re Farmers Markets, Inc.*), 792 F.2d 1400, 1402 (9th Cir. 1986) and *Butner v. United States,* 440 U.S. 48, 55 (1979). At the outset of the bankruptcy case, the scope of the debtor's interest in property is not always clear, and sometimes the bankruptcy court is called upon to determine the nature and extent of the debtor's, and the estate's interest, if any, in a certain asset. *See Mantle*, 153 F.3d at 1083 (whether under California law, proceeds from sale of marital home, which had been

purchased using down payment from wife's separate property, were property of the estate); *MacKenzie v. Neidorf,* 534 B.R. 369, 371-72 (B.A.P. 9th Cir. 2015) (post-petition payment on account of national mortgage settlement was not property of the estate). Once the nature and extent of the estate's property is determined, the Bankruptcy Code authorizes the trustee to collect and reduce to cash any non-exempt property of the estate for distribution to creditors. *See* 11 U.S.C. 704(a)(1); *In re Vandeventer*, 368 B.R. 50, 53 (Bankr. C.D. Ill. 2007)("a trustee is limited to collecting and reducing to money 'property of the estate'").

Where property is jointly owned, Bankruptcy Code sections 363(h) and (j) allow the bankruptcy trustee to sell the property under certain circumstances, with the proceeds apportioned between the bankruptcy estate and non-debtor joint owners. 11 U.S.C. 363. But where property is treated as community property instead of joint tenancy property, it can also be sold by the bankruptcy trustee however, instead of the non-debtor joint owner getting a portion of the sales proceeds, all of the sales proceeds are distributed by the bankruptcy trustee to the debtor's creditors.

Here, the bankruptcy court was called upon to determine the nature and extent of the non-debtor's and the bankruptcy estate's interests in certain real Properties. Even though, the real Properties, as a matter of title, were held in joint tenancies, the bankruptcy court nevertheless held that the Properties were

community property. The result is that the Properties in their entirety become part of the bankruptcy estate instead of only the debtor's one-half portion of the joint tenancy. That is, based on the bankruptcy court's decision, Ms. Brace's one-half interest in the Properties is subject to sale by the bankruptcy trustee, with the sale proceeds distributed to Mr. Brace's creditors instead of apportioned between the bankruptcy estate and Ms. Brace, even though Ms. Brace is not a bankruptcy debtor.

III. SUMMARY OF ARGUMENT

If affirmed, the bankruptcy court's decision will deprive married persons holding title to property as joint tenants from valuable personal and property rights in their relations with creditors, particularly when only one spouse files for bankruptcy. This Court should reverse the bankruptcy court decision, which was affirmed on appeal by the Bankruptcy Appellate Panel, because it erroneously departed from Ninth Circuit precedent articulated in *Hanf v. Summers* (*In re Summers)*, 332 F.3d 1240 (9th Cir. 2003) (in bankruptcy case, community property presumption rebutted by deed naming spouses as joint tenants).

Married persons often decide to hold title to property as joint tenants for various reasons, and in California this form of joint ownership is considered separate property, not community property. Classification as separate property, as opposed to community property, is significant in a bankruptcy case. Where one

spouse seeks protection under the Bankruptcy Code, the interest of both spouses in community property becomes property of the debtor spouse's bankruptcy estate. 11 U.S.C 541(a)(2). Where, however, property is held in a joint tenancy, only the debtor's one-half interest (the debtor's separate property) is included in the debtor's bankruptcy estate; the non-debtor joint tenant (referred to as the "non-debtor spouse" in the case of a married couple) retains their separate property one-half interest in the property.

In California, there is a rebuttable presumption that all real and personal property acquired by either spouse during their marriage is generally considered community property. *Summers*, a bankruptcy case decided by this Court in 2003, held that this community property presumption was rebutted when a married couple acquired property from a third party as joint tenants. This Court further held that the written transmutation requirements of California Family Code, § 852(a), only applied to inter-spousal transactions and not to transactions whereby a married couple acquired property from a third party.

In 2014, the California Supreme Court decided *In re Marriage of Valli*, 58 Cal. 4th 1396 (2014), a family law proceeding. *Valli* found *Summers* was not persuasive insofar as it purported to exclude property purchased from third parties from the written transmutation requirements of California Family Code § 852(a). *Valli* also found California Evidence Code § 662, which creates a rebuttable

presumption that the owner of the legal title to property is presumed to be the owner of full beneficial title, did not apply in the context of a family law proceeding.

Here, the bankruptcy court took *Valli* a giant leap further from family law to the broader world of debtor-creditor relations, despite a concurring opinion in *Valli* questioning the wisdom of doing so. Rather than reconcile *Valli* with S*ummers*, the bankruptcy court concluded that *Valli* overruled *Summers*. It, therefore, applied *Valli* to a bankruptcy case where the debtor held title to a property in joint tenancy with his non-debtor spouse. But *Valli* can be reconciled with *Summers*, because the presumption of California Evidence Code § 662 can and should be applied in bankruptcy cases to validate the joint tenancy deed as the required transmutation. The goals, policies, and procedures of a bankruptcy case are after all different from those of a family law proceeding.

Although there was no dispute between the debtor and non-debtor spouse as to the separate property character of the Properties, and the Properties were titled as joint tenancy in a recorded deed, the bankruptcy court imposed an additional burden on the debtor and non-debtor spouse to prove these Properties were transmuted from community to separate simultaneously with its acquisition. The *Brace* decision is silent however, as to the content of a writing sufficient to reaffirm their intentions to hold these Properties as their separate property, and

equally silent on how spouses other than the Braces can express their continuing intent to hold property as their separate property. And because a transmutation must be in writing under California law, once the bankruptcy proceeding was filed the Braces were precluded from doing so. 11 U.S.C. 541, 549 (in general, the rights of debtors and the estate are fixed at the time the petition is filed).

IV. ARGUMENT

A. California Law Provides Important Differences between Joint Tenancy Property and Community Property.

In California, a married person may hold property as a joint tenant or tenant in common, or as community property, or as community property with a right of survivorship. Cal. Fam. Code § 750. Property held in joint tenancy is separate property. Cal. Fam. Code §§ 750, 770. A married couples' decision to hold property in joint tenancy has important estate planning implications and impacts the couples' relations with their creditors.

With respect to estate planning, a married person holding property in joint tenancy has valuable state law personal and property rights, the most important of which is the right of survivorship. *Estate of Mitchell*, 76 Cal. App. 4th 1378, 1385 (1999). The right of survivorship provides that when one joint tenant dies, the entire property automatically belongs to the surviving joint tenant(s). *Santoro v. Carbone*, 22 Cal. App. 3d 721, 729 (1972), overruled on other grounds in *Tenzer v.*

Superscope, Inc., 39 Cal. 3d 18, 30 (1985). Nothing "passes" from the deceased joint tenant to the survivor; rather, the survivor takes from the instrument by which the joint tenancy was created. *Grothe v. Cortlandt Corp*., 11 Cal. App. 4th 1313, 1317 (1992). This avoids the need for probate with respect to joint tenancy property.

With respect to creditor relations, under California law, property owned in joint tenancy is owned jointly in undivided equal shares. 5 Harry D. Miller and Marvin B. Starr, California Real Estate §12:22 (3d ed. 2004). However, also under California law, for determination of the rights of creditors of one spouse against an interest in property held in joint tenancy with the other spouse, only the debtor's separate one half interest in the joint tenancy property is answerable for the debtor's debts. *Schoenfeld v. Norberg*, 11 Cal. App. 3d 755, 764 (1970); *Dieden v. Schmidt*, 104 Cal. App. 4th 645, 651 (2002)

B. The Distinction between Community Property and Joint Tenancy Property is Equally Important in a Bankruptcy Proceeding

When only one spouse in a community property[1] state such as California files for bankruptcy, both spouses' interests in community property become property of the bankruptcy estate of the filing spouse. Under the Bankruptcy Code,

[1] The Bankruptcy Code does not define "community property," though it does identify "community claim" in 11 U.S.C. 101(7).
[2] In *Valli*, the California Supreme Court expressly rejected the Ninth Circuit's interpretation of California law, and held that California's transmutation statutes

property of the bankruptcy estate includes:

> (2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the [bankruptcy] case that is –
>
> > (A) under the sole, equal, or joint management and control of the debtor; or
> >
> > (B) liable for an allowable claim against the debtor, or 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.

11 U.S.C. 541(a)(2) (emphasis added); *see Dumas v. Mantle (In re Mantle)*, 153 F.3d 1082, 1084 (9th Cir. 1998)

Heretofore, when a debtor who owns property in joint tenancy files bankruptcy, only the debtor's joint tenancy interest becomes property of the bankruptcy estate. Although the joint tenancy interest may run to the entire property, the bankruptcy estate does not obtain an interest in the entire property, but instead obtains the debtor joint tenant's undivided one-half interest. Thus, the Ninth Circuit has recognized that the bankruptcy estate has a one-half interest in jointly held property, while the non-debtor joint tenant retains the other one-half interest. *See Dumas v. Mantle (In re Mantle)*, 153 F.3d 1082 (9th Cir. 1998); *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1322-23 (9th Cir. 1991). That longstanding understanding of the character of property owned by spouses is upended by *Brace*.

C. The California Supreme Court's Decision in *Valli* Can be Reconciled with the Ninth Circuit's Decision in *Summers*

While section 541(a) defines what interests of the debtor are transferred to the bankruptcy estate, it does not address "the threshold questions of the existence and scope of the debtor's interest in a given asset." *State of California v. Farmers Markets, Inc.* (*In re Farmers Markets, Inc.*), 792 F.2d 1400, 1402 (9th Cir. 1986). Rather, bankruptcy courts are required to look to state property law, in this case California law, to determine the property which is to be included in the bankruptcy estate. *See Butner v. United States*, 440 U.S. 48, 55, 59 L. Ed. 2d 136, 99 S. Ct. 914 (1979). The Bankruptcy Appellate Panel framed the issue this way:

> In this appeal, we are concerned with two California presumptions affecting determinations of the ownership of property. The first is Cal. Evid. Code § 662 (the "record title presumption"), which provides generally that "[t]he owner of the legal title to property is presumed to be the owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof."
>
> The second is CFC §760 (the "community property presumption"), which provides, "except as otherwise provided by statute, all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property. . . The community property presumption may be rebutted by evidence that the spouses agreed to recharacterize, or "transmute" the property from community to some other form of ownership."

Brace v. Speier (In re Brace), 566 B.R. 13, 19 (B.A.P. 9th Cir. 2017).

Prior to the California Supreme Court's decision in *Valli*, the Ninth Circuit's decision in *Summers* answered this question. *Summers* held the community property presumption is rebutted when a married couple acquires property from a third party as joint tenants, and that the written transmutation requirements of Cal. Fam. Code § 852(a) apply only to inter-spousal transactions and not to transactions whereby a married couple acquires property from a third party. *Summers*, 332 F.3d at 1245. The bankruptcy court and BAP found that *Valli* disapproved of the holding in *Summers*, at least in the context of a marital dissolution proceeding.[2] *Brace,* 566 B.R. at 21. The *Brace* courts then took the next step and found that in the bankruptcy context the community property presumption prevailed over the Properties' record title. In other words, the recorded deed was insufficient to satisfy the written transmutation requirement necessary to rebut the community property presumption.

In determining not to follow *Summers* as binding precedent after *Valli*, the *Brace* courts relied on *Miller v. Gammie*, 335 F.3d 889 (9th Cir. 2003)(*en banc*), which articulates an "extremely narrow exception" to the rule that no three-judge panel has the power to overrule existing Ninth Circuit precedent. That extremely narrow exception requires invocation of "clearly irreconcilable" higher authority

[2] In *Valli*, the California Supreme Court expressly rejected the Ninth Circuit's interpretation of California law, and held that California's transmutation statutes also applied to transactions in which spouses acquired property from a third party. *Valli*, 58 Cal. 4th at 1405-06.

for one panel to overrule the prior decision of another. *See Gammie*, 335 F.3d at 893.

The *Brace* courts relied on the fact that*Valli* found two decisions—*Summers* and *In re Marriage of Brooks & Robinson*, 169 Cal. App. 4th 176 (2009)—were not persuasive insofar as they purport to exempt from the transmutation requirements purchases made by one or both spouses from a third party during the marriage. *Valli* found unpersuasive the broad holding of *Summers* that under California law the transmutation provisions of Cal. Fam. Code §852 did not apply when spouses took title to property from a third party during marriage. *Valli* reasoned the broad holding in *Summers* could subvert the purpose of the Family Code's protection of spouses from undue influence:

> Neither decision attempts to reconcile such an exemption with the legislative purposes in enacting those requirements, which was to reduce excessive litigation, introduction of unreliable evidence, and incentives for perjury in marital dissolution proceedings involving disputes regarding the characterization of property. Nor does either decision attempt to find a basis for the purported exemption in the language of the applicable transmutation statutes. Also, these decisions are inconsistent with three Court of Appeal decisions stating or holding that the transmutation requirements apply to one spouse's purchases from a third party during the marriage. (*In re Marriage of Buie & Neighbors*, supra, 179 Cal.App.4th at pp. 1173–1175; *Cross*, supra, 94 Cal.App.4th at pp. 1147–1148; *In re Marriage of Steinberger*, supra, 91 Cal.App.4th at pp. 1463–1466.) Our examination of the statutory language leads us to

> reject the purported exemption for spousal purchases from third parties. *Valli*, 58 Cal. 4th at 1405.

In making this determination, the *Valli* decision found the policy in favor of the general stability of titles embodied in the record title presumption is "largely irrelevant to characterizing property acquired during the marriage in an action between the spouses" *Valli*, 58 Cal. 4th at 1410. This important distinction was noted in the concurring opinion in *Valli*:

> Significantly, the statutory presumption regarding property in the form of joint tenancy applies, '[f]or the purposes of division of property on dissolution of marriage' (Citations) ***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***."

Id. at 1412 (emphasis added)

This concurring opinion in *Valli* recognizes that in debtor-creditor relations, when non-family law courts (such as bankruptcy courts) examine title to property, these courts are not engaging in the exercise to equitably divide the property between the spouses. For bankruptcy courts, the purpose of the inquiry is to determine whether property is property of the bankruptcy estate so that it can be sold for the benefit of creditors. Central to that inquiry when dealing with property is the record title.

Valli determined the Cal. Fam. Code § 760 presumption controls in characterizing property acquired during the marriage *in an action between the spouses*, and California Evidence Code § 662 plays no role *in such an action*. *Valli*, *Id.* at 1407, 1410. As this is not an action between spouses, a bankruptcy court should respect the form of record title, as recognized in *Summers*. To hold otherwise needlessly impairs a married person's personal and property rights of how to hold title to property when they seek federal bankruptcy protection.

D. *Brace* Imposes an Unfair Burden on Married Persons That Hold Property in Joint Tenancy and File for Bankruptcy Protection

If the bankruptcy court is affirmed, a married person who files for bankruptcy and her non-debtor spouse must rebut the presumption that property acquired during the marriage and held as joint tenancy property is community property.

This community property presumption may be rebutted by evidence that the spouses agreed to recharacterize, or "transmute" the property from community to some other form of ownership. Cal. Fam. Code § 850; *Brace*, 566 B.R. at 19. A transmutation is not valid unless "made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." Cal. Fam. Code § 852(a). The party challenging the community property presumption bears the burden of showing that the assets were not community property." Cal. Fam. Code § 802; *see also In re Marriage of*

Weaver, 127 Cal. App. 4th 858, 864 (2005). Under California law, community property can only be transmuted into separate property by an instrument in writing. Cal. Fam. Code § 852; *Estate of MacDonald*, 51 Cal. 3d 262, 267-268 (1990).

California Evidence Code § 662 states:

> "The owner of the legal title to property is presumed to be the owner of full beneficial title. This presumption may be rebutted by clear and convincing proof."

California courts have long recognized "Section 662 is concerned primarily with the stability of titles, which obviously is an important legal concept that protects parties to a real property transaction, as well as creditors." *In re Marriage of Haines*, 33 Cal. App. 4th 277, 294 (1995)

The *Brace* decision not only subverts the form of record title, it also promotes misuse of the bankruptcy process. Take for example a married couple where the husband owes debts for which the community is liable, but for which his wife's separate property is not liable. The husband could file for bankruptcy, take advantage of the community property presumption as expanded by the *Brace* decision, and his non-debtor wife's (formerly) separate property interest in joint tenancy property would become liable for the husband's separate property debts. Making matters worse, this would take place without any of the protections available to her in the California family court.

V. CONCLUSION

California law has long recognized that the goals of a division of property in a dissolution of marriage are different than other non-marital property contests. The chief example is California Family Code § 2581:

> For the purpose of division of property *on dissolution of marriage or legal separation of the parties*, 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. (Emphasis added)

Individuals in a marriage are fiduciaries for one another, and neither spouse is permitted to unilaterally dispossess the other of a community property interest in assets acquired during marriage by taking title in a single name. That was the factual predicate of *Valli* (where one spouse acquired a personal property asset during marriage in a single name), and explains the California Supreme Court's rationale in holding a unilateral act is not sufficient to overcome the community property presumption.

In bankruptcy and in the broader context of debtor-creditor relationships, the special concerns of a division of marital property don't exist. Rather, when dealing with real property titles reflected in written deeds and recorded to provide notice to the world of the character of the property, the presumption created by record title

should prevail over the community property presumption that is paramount in dissolutions.

The *Brace* decision upsets a long established understanding in the world outside of family law about the character of real property with a recorded title. If the character of real property held by spouses is not presumptively what the title says it is, then estate plans, taxation, and creditors rights are all put in doubt. *Valli* should be confined to family law matters, and *Brace* should be reversed.

Respectfully submitted,

/s/ Tara Twomey
Tara Twomey
Attorney for Amici Curiae

STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Local Rule 28-2.6, Amicus hereby states that there are no related cases in this Court.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and Ninth Circuit Local Rule 29(d) because this brief contains 4,403 words, excluding parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This filing complies with Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point type.

3. This brief has been scanned for viruses pursuant to Rule 27(h)(2).

/s/ Tara Twomey
Tara Twomey
Attorney for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 5, 2017. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Tara Twomey
Tara Twomey
Attorney for Amici Curiae