

NOT FOR PUBLICATION

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JAN 13 2014

CLERK U.S. BANKRUPTCY COURT
Central District of California
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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

CHRISTOPHER EBERTS

Debtor.

JASON M. RUND, Chapter 7 Trustee,

Plaintiff,

v.

R.F.F. FAMILY PARTNERSHIP, LP and
RONALD TUTOR,

Defendants.

KRISTIN EBERTS,

Intervener and Counter-claimant,

v.

R.F.F. FAMILY PARTNERSHIP, LP and
JASON RUND, Chapter 7 Trustee,

Counter-defendants.

Case No. LA 09-12534 ER

Chapter 7

Adv. No. 10-01559 ER

MEMORANDUM OF DECISION UPON
REMAND

1 On July 10, 2013, the United States District Court entered an
2 Order Reversing and Remanding in Part and Affirming in Part the
3 Bankruptcy Court's Memorandum of Decision and Judgment after trial
4 ("Remand Order"). On August 30, 2013, Kristin Eberts ("K. Eberts")
5 filed a Motion for Determination and Resolution of Issues from
6 Appellate Order ("Motion"); oppositions and replies were subsequently
7 filed. On September 19, 2013, this Court ordered further briefing on
8 the remanded issues and took the matter under submission as of
9 November 15, 2013.
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12 The facts underlying this dispute are set forth in the Court's
13 Memorandum of Decision entered on July 11, 2013 and will not be
14 repeated here. After consideration of the issues upon remand, and
15 for the reasons set forth fully below, the Court finds that title to
16 the real property at issue located at 11496 Orum Road, Los Angeles,
17 CA ("Orum Property") was held in joint tenancy as of October 10, 2007
18 under In re the Marriage of Marsden, 130 Cal.App.3d 426 (1982) and In
19 re the Marriage of Neal, 153 Cal.App.3d 117 (1984), reversed on other
20 grounds by In re Marriage of Buol, 39 Cal.3d 751 (1985). Moreover,
21 Ronald Tutor ("Tutor") had no moral obligation to payoff the liens
22 senior to that of RFF Limited Partnership, LP ("RFF"); therefore,
23 equitable subrogation does not apply herein. Finally, K. Eberts has
24 no contribution rights impacting RFF's lien.
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I
ISSUES ON REMAND

The District Court remanded this matter, in part, for this Court "to make factual finding necessary to determine (1) the Eberts marital community's pro tanto interest in the Orum Property as of October 10, 2007 under the *Moore/Marsden* rule, and (2) whether the Orum Property was community property as of October 10, 2007, based on the reasoning of *In re Marriage of Neal*." Remand Order at 12. The District Court further directed this Court to "determine whether [Tutor] acted pursuant to a moral obligation and whether equitable subrogation is appropriate under the 'dictates of equity, good conscience, and public policy[,]'" and to determine K. Ebert's rights of subrogation, contribution or reimbursement, if any. Remand Order at 15-16.

II
DISCUSSION

A. The Orum Property was not community property under Neal as of October 7, 2007.

The Court shall first address whether the Orum Property is community property under Neal, since resolution of this issue could alone dispose of the declaratory relief claims of the Trustee and K. Eberts. The Court initially notes that by stating that "to the extent [Neal] **should** apply in this case," the District Court did not definitively find that Neal governs herein. Remand Order at 12 (emphasis added). RFF contends that Neal is inapplicable because it relies on a community property presumption set forth in Cal.Civ.C.

1 4800.1 (now Cal.Fam.C. § 2581), which applies only to division of
2 property in dissolution of marriage or legal separation proceedings.

3 The Court agrees with RFF. The Law Revision Commission
4 Comments ("Comments") to Cal.Fam.C. § 2581 provides that this
5 provision "continues former Civil Code Section 4800.1(b) without
6 substantive change." Moreover, the Comments further state that the
7 "community property presumptions created by Section 2581 are
8 applicable only in dissolution and legal separation proceedings."
9 Courts also have limited § 4800.1/2581's community property
10 presumption to division of property disputes. See In re Marriage of
11 Brooks, 169 Ca.App.4th 176, 188 (2008) ("Family Code section 2581 (the
12 recodification of former Civ.Code, § 4800.1) applies only to the
13 'division of property on dissolution of marriage or legal separation
14 of the parties.'" This case involves a dispute between a spouse and a
15 purchaser of the subject property.); Rhoads v. Jordan (In re Rhoads),
16 130 B.R. 565, 567 (Bankr. C.D.Cal. 1991) ("The language of § 4800.1
17 clearly limits its application to dissolution of marriage.");
18 Schwaber v. Reed ("In re Reed"), 89 B.R. 100, 105 (Bankr. C.D.Cal.
19 1988), *aff'd* 940 F.2d 1317 (9th Cir. 1991) (Section 4800.1 "is, by its
20 terms, applicable only in division-of-property disputes that occur
21 upon dissolution of marriage or legal separation.").

22 Consequently, since this action does not involve division of
23 property upon dissolution or legal separation, the presumption of
24 community property in § 2581 and Neal, which relied on this
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1 presumption, does not apply herein. Rather, as set forth in Hanf v.
2 Summers (In re Summers), 332 F.3d 1240, 1243 (9th Cir. 2003)
3 (citations omitted), which also did not involve a dissolution
4 proceeding or legal separation,
5

6 [w]here '[t]he grant deed specifically states the
7 property is joint tenancy property,' this 'rebuts the
8 community property presumption . . . ' '[T]he general
9 community property presumption is rebutted by the
10 affirmative act of specifying joint tenancy title in the
deed. Property taken in joint tenancy is presumed to be
held as joint tenancy property, with each spouse owning
an undivided one-half interest.'¹

11 Id.

12 Consequently, the Orum Property did not become community property
13 when K. Eberts transferred title to herself and the Debtor using the
14 language "husband and wife, as joint tenants," based on the
15 presumption relied upon in Neal. Trial Exhibit ("T.E.") 57. The
16 Court, therefore, further finds that the Orum Property was not
17 community property on October 10, 2007 under Neal.
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19 **B. Even applying the *Moore/Marsden* rule, there was sufficient**
20 **equity in the Debtor's one-half joint tenancy interest in the**
Orum Property to support RFF's \$1 million lien.

21 Notwithstanding, the District Court instructs this Court to
22 apply the *Moore/Marsden* rule and make factual findings to determine
23 whether the marital community acquired an interest (partially or
24

25 ¹ The community property presumption referred to by the Ninth Circuit
26 in Hanf was the general presumption set forth in Fam.C. § 760. See
27 also, Reed, 89 B.R. at 105 (Because dispute regarding
28 characterization of property did not involve dissolution or legal
separation, the relevant provision was not § 4800.1, but Cal.Civ.C. §
5110 (now Fam.C. § 760).).

1 wholly) in the Orum Property by making mortgage payments and capital
2 improvements. Under the *Moore/Marsden* rule,

3 ' [w]here community funds are used to make payments on
4 property purchased by one of the spouses before marriage
5 'the rule developed through decisions in California gives
6 to the community a pro tanto community property interest
7 in such property in the ratio that the payments on the
8 purchase price with community funds bear to the payments
9 made with separate funds.'

10 In re the Marriage of Marsden, 130 Cal.App.3d 426, 436 (1982)
11 (citations omitted).

12 Courts also apply the *Moore/Marsden* rule "with equal force to
13 capital improvements, as a matter of both logic and fairness." Bono
14 v. Clark, 103 Cal.App.4th 1409, 1423 (2003); In re Marriage of Allen,
15 96 Cal.App.4th 497, 501 (2002). However, "care must be taken to
16 include only capital improvements, and then only to the extent that
17 those capital improvements enhance the property's value." Bono, 103
18 Cal.App. 4th at 1427. In addition, "in the case of community
19 improvements, which may not begin immediately upon marriage, equity
20 may dictate awarding the separate estate any market appreciation
21 occurring before the community improvements actually begin." Id. at
22 426.

23 K. Eberts contends that application of the *Moore/Marsden* rule
24 herein requires consideration of the \$3 million payoff of the initial
25 mortgage on the Orum Property, \$2 million spent by the marital
26 community on capital improvements and \$700,000 in improvements from
27 Tutor's gifts to the community. Motion at 16. However, the Court
28 disagrees that the marital community should be credited with the full

1 amount of or any of the foregoing payments/contributions.
2 Specifically, with respect to the \$3 million payoff, while the
3 marital community may have incurred the refinancing debt which paid
4 off the initial mortgage on the Orum Property, community funds were
5 not used to satisfy the new loan. Tutor ultimately paid this loan in
6 full on April 24, 2008 "with his own funds." Pretrial Conference
7 Order ("PTO") at ¶ 6(m). Even if this payment was considered a loan
8 to K. Eberts, (which as discussed below, it is not), it was made
9 after the Postnuptial Agreement which deemed this a loan to K. Eberts
10 and not to the marital community. At best, the community made
11 payments on the loan from the date of the refinancing (March 21,
12 2007) to the date of the Postnuptial Agreement (December 21, 2007),
13 and should be credited with those amounts only. However, there is no
14 evidence of the amounts paid by the marital community during that
15 period. Notwithstanding, as will be demonstrated below, even using
16 the entire \$3 million figure, there was sufficient equity in Debtor's
17 joint tenancy interest in the Orum Property to have given RFF a \$ 1
18 million lien thereon.

22 With respect to the \$2 million in capital improvements, RFF is
23 correct that "there has been no calculation as to the amount of
24 increase in the value of the Orum Property that may have occurred via
25 any amount of community funds used for improvements. In any case,
26 this Court cannot blindly consider 'gross' expenditures as requested
27 by Movants." Supplemental Opposition to Motion at 8. While Exhibit
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202, admitted at trial, and the Debtor's testimony establish that improvements were made to the Orum Property with community funds, there is no evidence that these improvements enhanced the value of the Orum Property and/or by how much. Exhibit C to Supplemental Request for Judicial Notice in Support of Motion ("Supplemental RJN"). K. Eberts' only response to this deficiency is that by using the full increase in the fair market value of the Orum Property and all community contributions, she assigned herself the lowest possible separate interest in the Orum Property and attributed all of the \$950,000 appreciation to the community. Eberts' and Ronald Tutor's Supplemental Reply to Opposition of RFF to Motion ("Supplemental Reply") at 7. This is not evidence of any enhancement to the Orum Property's value resulting from the improvements. Moreover, contrary to K. Ebert's contention, it may not be appropriate to attribute the entire \$950,000 appreciation to the improvements, since Exhibit 202 indicates that the improvements appear to have begun around April of 2006, approximately ten months after Debtor and K. Eberts were married. Since K. Eberts has had an opportunity to provide evidence of any enhancements and/or how much of the actual appreciation is attributable to the improvements in her Reply and Supplemental Reply, but has failed to do so, the Court cannot include capital improvements in its *Moore/Marsden* calculations.

With respect to the \$700,000 in stone provided by Tutor, the record is replete with Tutor's testimony that he gifted all of the

stone to K. Eberts and Debtor. February 13, 2012 Trial Transcript
("Transcript") at 120-129. Consequently, since the stone was a gift
to the community, it was a community contribution to the Orum
Property. However, as with the capital improvements, K. Eberts had
an opportunity to provide evidence of the enhancement in the value of
the Orum Property, and/or of the portion, if any, of the actual
appreciation attributable to the stone contribution, but did not.
Consequently, the Court also cannot include this contribution in
determining the community's interest in the Orum Property.

Even if the Court were to credit the marital community
with the entire \$3 million payoff, which is not appropriate as
discussed above, the value of Debtor's joint tenancy interest
would have been sufficient to allow Debtor to give RFF a \$1
million lien on the Orum Property based on the foregoing
Moore/Marsden calculation, even if the cases were applicable:

Purchase price on April 22, 2005		\$4,750,000
Less community payments (Assuming payoff of first lien from refinance by marital community)	\$3,000,000	(62%)
Joint tenancy interest (\$900,000 each down payment from K. Eberts and Debtor)	\$1,800,000	(38%)
FMV as of 1/31/08		\$5,700,000 ²
Less purchase price	\$4,750,000	
Appreciation during marriage		\$ 950,000
<u>Joint tenancy interest:</u>		
Down payments	\$1,800,000	

² This is the fair market value as of January 31, 2008, which is approximately
three and one-half months after RFF's October 10, 2007 deed. RFF has not objected
to the use of this value.

38% of appreciation aft. Marriage $\$ \frac{361,000^3}{2,161,000}$

Community property interest:

Loan payments \$3,000,000
62% of appreciation aft. Marriage $\$ \frac{589,000}{3,589,000}$

See Marsden, 130 Cal.App.3d at 439-440.

Based on the foregoing, even considering the full amount of the \$3 million payoff (the entirety of which, as discussed above, should not be considered), the value of the joint tenancy interest in the Orum Property around the time of RFF's October 10, 2007 deed was \$2,161,00 under the *Moore/Marsden* rule. Consequently, Debtor's joint tenancy interest was approximately \$1,080,500 ($\$2,161,000/2$), and Debtor could, therefore, encumber the Orum Property with RFF's \$1 million deed of trust acting alone, even though the marital community may have had an interest in the property. The Court finds that RFF's lien is not nullified by the application of the *Moore/Marsden* rule.

C. As a threshold matter, K. Eberts did not preserve any equitable subrogation claim. Notwithstanding, Tutor is not entitled to equitable subrogation based on a moral obligation.

1. Although referred to in the Pretrial Conference Order ("PTO"), K. Eberts did not pursue an equitable subrogation claim at trial or otherwise, and therefore, did not preserve this claim.

As noted in the Remand Order, both Tutor and K. Eberts are claiming to have a lien prior to RFF's lien under a theory of equitable subrogation. Specifically, Tutor gave/loaned K. Eberts

³ The Marsden court further credited the spouse who owned the subject property prior to marriage with the appreciation which accrued from the time of purchase up to the date of marriage, because that spouse had owned the property for nine years prior to marriage. *Id.* The Court shall not include this credit since K. Eberts and Debtor were married approximately six weeks after the Orum Property was purchased.

monies to pay off the liens of Washington Mutual ("WAMU") and judgment creditors, all of which were prior to RFF's lien. In sum, both are claiming equitable subrogation based on the same repayment monies. However, both Tutor and K. Eberts cannot be entitled to equitable subrogation. Remand Order at 16 ("Indeed, this Court does not see how both [Tutor](loans) and K. Eberts (payments from those loans) could be equitably subrogated to the senior position of WAMU and [judgment] liens.").

The Remand Order notes that "the record demonstrates that K. Eberts did not advance [an equitable subrogation argument] at trial." Id. Consequently, the District Court has instructed this Court to determine as a threshold matter whether K. Eberts preserved this claim in this case. Remand Order at 17. K. Eberts argues:

[she] preserved her claim for equitable subrogation because she asserted it in her initial filings in this lawsuit, she raised it in the [PTO], presented the relevant evidence at trial, and argued essentially the same issue in her Post-Trial Brief. Motion at 23.

K. Eberts notes, however, that the relevant facts for her equitable subrogation claim were "discussed in the context of contribution" in her Post-Trial brief. Id. The Ninth Circuit Bankruptcy Appellate Panel has held that where an issue is referenced in a joint pretrial order, but is not raised in the lower court or addressed at trial, such issue cannot be asserted on appeal. Fox v. Karlin (In re Karlin), 112 B.R. 319, 322 (9th Cir. BAP 1990). Consequently, this Court finds that because K. Eberts admittedly did not expressly

1 pursue an equitable subrogation claim before this Court at trial or
2 otherwise, she did not preserve this claim and cannot now raise it.
3 Tutor, therefore, is the only party entitled to advance an equitable
4 subrogation claim.
5

6 **2. The Court finds that Tutor had no moral obligation to pay**
7 **the WAMU and judgment liens which were prior to the RFF lien.**
8 **Consequently, he is not entitled to equitable subrogation**
9 **based on a moral obligation.**

10 With respect to Tutor's equitable subrogation claim, the
11 Remand Order directs this Court "to determine whether [Tutor] acted
12 pursuant to a moral obligation and whether equitable subrogation is
13 appropriate under the 'dictates of equity, good conscience, and
14 public policy.'" Remand Order at 15. Tutor asserts that he had a
15 moral family obligation to pay the WAMU and judgment liens, and
16 relies on excerpts from his trial testimony that he did it for his
17 daughter, K. Eberts, and because he felt he had to bail Debtor out
18 whenever Debtor did something wrong. Motion at 19. Tutor further
19 contends that RFF will "reap a massive and unwarranted benefit
20 because [he] loaned money to pay off the preexisting WAMU mortgages
21 totaling \$5,340,580.53 and \$575,000 to pay off the . . . judgment
22 liens, which would have reduced RFF's recovery in the event it sought
23 to enforce its judgments" Motion at 21.
24

25 The Court first notes that whether RFF reaps a windfall from
26 Tutor's payment of senior liens does not go to the issue of moral
27 obligation, which is the only issue the District Court ordered this
28 Court to consider. In deciding whether Tutor had a moral obligation

1 to pay K. Eberts' loans, the issue before the Court is whether a
2 parent has a moral obligation to pay the debts of his/her competent,
3 adult child. While the Court understands a parent's strong need and
4 desire to help his/her children whenever possible, the Court does not
5 believe that this need and desire translates into a moral obligation
6 to fix all problems, including paying debts. While it was
7 unquestionably helpful to K. Eberts for Tutor to satisfy the
8 foregoing liens, the Court finds that he was under no moral
9 obligation to do so, and therefore, Tutor is not entitled to a lien
10 senior to that of RFF based on equitable subrogation.
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13 **D. K. Eberts did not make any payments entitling her to**
14 **contribution.**

15 **1. K. Eberts has no contribution rights with respect to the**
16 **payoff of the WAMU and judgment liens.**

17 With respect to K. Ebert's contribution claim, the Remand
18 Order directs this Court to "make the predicate determination whether
19 K. Eberts actually made any payment(s) that would entitle her to
20 [contribution]. Specifically, did [Tutor] make payments to satisfy
21 the WAMU and [judgment] liens, or did K. Eberts make these payments
22 with funds borrowed from [Tutor]?" Remand Order at 17. Based on the
23 record, it is undisputed that Tutor was the source of the payments to
24 WAMU and judgment lienors. However, he claims to have loaned these
25 funds to K. Eberts. Transcript at 137-138. The terms of this "loan"
26 are that K. Eberts shall repay it from the sale of stocks held in
27 trust created for her by Tutor, and such payment is due in 2016. Id.
28

1 at 138 and 148, lines 19-25. As of the trial date, the stocks were
2 worth between \$16 and \$17 per share, but Tutor expected/hoped they
3 would increase by the time of payment. Id. at 159, lines 22-24, 160,
4 lines 5-9. Approximately three years ago, the stocks were worth
5 between \$55 and \$60 per share. Id. at 160, lines 14-16.
6

7 Notwithstanding the foregoing testimony, the Court finds that
8 Tutor, not K. Eberts, made the payments for which K. Eberts seeks
9 contribution. First of all, the note evidencing this "loan" was
10 executed in February 3, 2009, approximately ten months **after** Tutor
11 had already satisfied the WAMU and judgment liens, and two days
12 before Debtor filed bankruptcy. Transcript at 147. K. Eberts is not
13 obligated to make any payments until 2016, eight years after Tutor
14 paid the liens, with stocks expected to at least triple in value by
15 the due date. There is no evidence that even at \$60 per share the
16 stocks will be sufficient in value to repay the "loan."
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19 Moreover, Tutor testified that he has previously "loaned" K.
20 Eberts funds to buy a house. Id. at 146. When asked about this
21 transaction, Tutor first stated that he "bought" this house for K.
22 Eberts, but within the same statement, corrected himself and stated
23 that he "lent her the money" to make the purchase. Id. at lines 7-9.
24 Based on Tutor's testimony, it does not appear that K. Eberts repaid
25 this "loan," or that Tutor had any concern whether he would be
26 repaid. Specifically, K. Eberts did not sign a note for this loan,
27 and Tutor did not need a note because he trusted her. In addition,
28

1 they had an understanding that she would repay him from her trust,
2 and "it was not a great deal of money to [him]." Id. at lines 15-25.
3 When asked if he intends to do anything to collect the amounts due
4 from K. Eberts if he is not repaid from the trust fund, Tutor
5 responded that he would "cross that bridge when [he] get[s] to it,
6 and that he believed in his company and the value of its stock. Id.
7 at 160, lines 10-13.

8
9 Moreover, when K. Eberts sold her first house for about \$1.2
10 million, Tutor allowed her to use these proceeds for her part of the
11 down payment on the Orum Property and he made no demand for repayment
12 of the first "loan" from these funds. Transcript at 147 and 177,
13 lines 3-10. There is no testimony that K. Eberts used any of those
14 proceeds to make even a partial payment to her father for this first
15 "loan." In addition, K. Eberts has not repaid any of the \$900,000
16 "loan" for the down payment on the Orum Property. Id. at 155, lines
17 8-10. Tutor further testified that it was correct that the "only
18 amount that any family member has repaid to [him] from the sums
19 [raised at trial] is the sum of less than \$100,000 that [he] received
20 from Tracy Maltas" ⁴ Id. at 158.

21
22
23 Although not classified as a "loan," Tutor also gave K. Eberts
24 a monthly stipend of \$52,000, and approximately \$100,000 per year for
25 five years for K. Eberts' business, the Aura Boutique. Id. at 155-
26 157. Tutor gave her the latter funds even though he believed the
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⁴ Tracy Maltas is Tutor's daughter. Id. at 153, lines 20-22.

1 business would not be successful. Id. at 157, lines 2-5. Tutor also
2 loaned \$3.5 million to his other daughter, Tracy Maltas, to purchase
3 property. Id. at 154, lines 7-13. As noted above, Ms. Maltas has
4 repaid less than \$100,000 of this loan and the remainder is
5 outstanding. Id. lines 14-18.
6

7 Consequently, the record indicates that Tutor has given K.
8 Eberts large sums of money on several occasions and classified some
9 as loans, some as gifts and some as a monthly stipend. The Court
10 finds that the "loan" terms between Tutor and K. Eberts are loose at
11 best, and these transactions are really based on familial trust. In
12 addition, K. Eberts has not made any payments with respect to any of
13 these "loans" from Tutor, and if she fails to do so in 2016, there
14 are no default provisions in place; rather, Tutor's only plan is to
15 cross that bridge when and if he comes to it. There is also no
16 evidence that K. Eberts' shares in her trust fund will have
17 sufficient value to make the payment due in 2016. Tutor has made at
18 least one generous loan to his other daughter, of which she has
19 repaid approximately 3%. Based on the foregoing, despite attempting
20 to couch the payments as "loans" to K. Eberts, the Court finds that
21 Tutor paid off the WAMU and judgment liens for which K. Eberts seeks
22 contribution, and these payments were not loans to K. Eberts.
23 Consequently, K. Eberts cannot seek contribution for the payoff of
24 the WAMU and judgment liens, since she has made no such payments.
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1 **2. Although not raised in the Remand Order, K. Eberts has**
2 **no contribution rights with respect to her payment of**
3 **property taxes and property preservation costs incurred**
4 **between January 2008 and January 2012.**

5 Although not expressly addressed in the Remand Order, K.
6 Eberts also seeks contribution rights for her payment of property
7 taxes for the period between January 2008 and January 2012 and
8 property preservation costs during this same four year period.
9 Motion at 28, footnote 13. However, these payments were made after
10 the Postnuptial Agreement was entered into on December 21, 2007. K.
11 Eberts testified that the purpose of this agreement was to separate
12 the community property and her finances from Debtor, so that she and
13 Debtor would not share anything in that way anymore. Transcript at
14 34, lines 16-20, 44, lines 3-7. Specifically, pursuant to the
15 Postnuptial Agreement, K. Eberts received title to the Orum Property
16 as her separate property and gave up any relationship she had with
17 Debtor's business and income; Debtor gave up rights to her business,
18 income and home as well. Id. at 36, line 3; and 37, lines 1-14.

19 K. Eberts further testified that after the Post-Nuptial
20 Agreement was signed, the mortgage and judgment liens were paid off
21 with monies from her father, which this Court has determined were not
22 loans to her. Id. at 38, lines 2-7, 41, lines 15-24. In addition, K.
23 Eberts paid the real estate taxes, landscaping fees, pool
24 maintenance, utilities, homeowners insurance and the security system
25 charges. Id. at 38-39. The items which K. Eberts bases her alleged
26 charges. Id. at 38-39. The items which K. Eberts bases her alleged
27 charges. Id. at 38-39. The items which K. Eberts bases her alleged
28 charges. Id. at 38-39. The items which K. Eberts bases her alleged

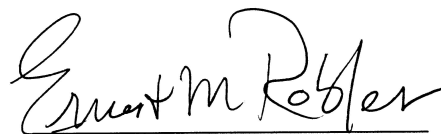
1 contribution rights (property taxes and property preservation costs)
2 were incurred *after* she and the Debtor agreed to separate their
3 finances in the Post-Nuptial Agreement was executed. Consequently, K.
4 Eberts has no contribution rights for these items which at that time
5 they were incurred, Debtor had no obligation to pay.
6

7 **III**
8 **CONCLUSION**

9 Based on the foregoing, after consideration of the issues
10 upon remand, the Court awards judgment in favor of RFF with
11 respect to the declaratory relief claims of the Trustee and K.
12 Eberts. The Court shall prepare a judgment consistent with this
13 memorandum of decision.
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25 Date: January 13, 2014

26 
27 Ernest M. Robles
28 United States Bankruptcy Judge