

THE CONFLICT IN THE APPLICATION OF THE LENDER INTENT RULE: *GRINIUS V. GUEDELJ*

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General Community Property Principles

Except as otherwise provided by statute, all property acquired by a married person during the marriage is community property. (Fam. Code § 760.) There are statutorily defined instances in which property acquired during marriage by a spouse is not community property, and is instead separate property of the acquiring spouse:

1. property acquired by the person during marriage by gift, bequest, devise, or descent (Fam. Code § 770(a)(2)); and
2. The rents, issues, and profits of separate property (Fam. Code § 770(a)(3)).
3. In reconciling these two property definitions, the courts have developed a presumption that, in the

absence of a separate property source (Fam. Code § 770(a)(2) and (a)(3).), all property acquired during marriage is community property. (See *Rozan v. Rozan* (1957) 49 Cal.2d 322, 328.)

Logically, if property is (A) acquired (B) during marriage, then (C) it is community property, unless (D) there is a separate property source, in which case (E) it is separate property. Simplified:

If A and B then C, unless A and B and D then E

The assignment and application of each aspect of this analysis is explained further below.

Property acquisitions usually occur in one of two forms:

1. An acquisition from the exchange of consideration (e.g., a purchase); or
2. An acquisition without any consideration (e.g., a gift).

As to the first category, a change in form is not a change in character. (See *Marriage of Weaver* (1990) 224 Cal.App.3d 478, 484 – “Property purchased with separate property funds is likewise the separate property of the acquiring spouse. [Citation.]”) Thus, tracing an acquisition to a separate source rebuts the community property presumption.

As to the second category, a gift is by definition separate in nature. Tracing the acquisition to a donative transfer rebuts the community property presumption.

However, there is a third acquisition that does not fit neatly into the previous two categories. This is an acquisition of loan proceeds during marriage. Loan proceeds are acquired with a promise – not from an exchange of monetary consideration – so the proceeds aren't purchased in the normal sense (tracing) and aren't acquired by donative intent (gifting).

The Loan Proceed Presumption

To handle this third category of acquisitions – loan proceeds – California courts struggled to devise a different presumption rule, since tracing to a source or a gift does not satisfy the court's question of character in a lending transaction. Instead, the courts developed the rule that the court should rely on the lender's intent to be repaid. Generally, where the lender intends to be repaid from separate funds, then the loan proceeds are separate in nature. This is problematic, of course,

since a lender conceivably wants to be repaid from any and all sources, whether they are separate or community in nature, or exist now or in the future.

In grappling with creating a rule for this scenario, the California Supreme Court set forth a rule for characterization of loan proceeds acquired during marriage in *Gudelj v. Gudelj* (1953) 41 Cal.2d 202. The California Supreme Court stated the lender intent rule as follows:

There is a rebuttable presumption that property acquired on credit during marriage is community property. [Citations.] But “funds procured by the hypothecation of separate property of a spouse are separate property of that spouse.” [Citations.] The proceeds of a loan made on the credit of separate property are governed by the same rule. [Citations.] In accordance with this general principle, the character of property acquired by a sale upon credit is determined according to the intent of the seller to rely upon the separate property of the purchaser or upon a community asset. [Citations.] In the absence of evidence tending to prove that the seller primarily relied upon the purchaser’s separate property in extending credit, the trial court must find in accordance with the presumption. (*Id.*, at p. 210; emphasis added.)

As to the facts before it, the *Gudelj* court stated:

No testimony was offered concerning the intent of the seller in extending credit to [Husband]. [Husband] asserts, however, that shortly before the credit transaction, he and his mother sold real property for some \$ 30,000, and the seller must have relied upon [his] interest in the proceeds. Furthermore, he contends, his previous failures in attempts to operate cleaning businesses demonstrate that the basis for credit could not have been his personal ability and capacity. However, even if these facts be accepted as true, there is no evidence that the seller had knowledge of their existence. **There being no satisfactory evidence to contradict the presumption, it must prevail.** (*Id.*, at pp. 210–211; emphasis added.)

However, the Court of Appeal in *Marriage of Grinius* (1985) 166 Cal.App.3d 1179 took exception with the *Gudelj* court’s use of the word “primarily” in its enunciation of the rule. The *Gudelj* rule would allow loan proceeds to be separate property even if the lender relied upon some portion of community estate for repayment so long as the lender “primarily” relied on the separate property estate or separate credit in lending the funds. For instance, if the lender testifies she relied on the husband’s separate property real estate for security and his separate income in making the loan, but also considered repayment from a any (e.g., community) source if necessary (as would be her right under Fam. Code § 910(a)), then the court could find the loan proceeds were separate property due to the primary reliance on separate property. Not so under *Grinius*, where any reliance on community repayment, no matter how remote, would make all the loan proceeds community property.

The *Grinius* court believed that the word “solely” should have been used by the *Gudelj* court instead to set forth the proper rule:

In early cases, the Supreme Court required a showing the lender relied entirely on the existing separate property of a spouse in extending the loan to characterize the loan proceeds as separate property. [Citations.] The more modern and oft-cited formulation found in *Gudelj v. Gudelj*... , apparently relaxes the standard: “In the absence of evidence tending to prove that the seller primarily relied upon the purchaser’s separate property in extending credit, the trial court must find in accordance with the [community property] presumption.” [Citation.] The *Gudelj* opinion cited no authority for this apparent change and had no opportunity to apply the standard since no evidence of lender reliance on separate property was proffered. * * *

With the above review in mind, we restate the applicable standard: Loan proceeds acquired during marriage are presumptively community property; however, this presumption may be overcome by showing the lender intended to rely solely upon a spouse’s separate property and did in fact do so. Without satisfactory evidence of the lender’s intent, the general presumption prevails. (*Id.*, at pp. 1186-1187; emphasis added.)

The *Grinius* Court of Appeal attempted to circumvent the California Supreme Court’s opinion in *Gudelj*. First, the *Grinius* court attempt to discredit the *Gudelj* decision as dictum. This raises two questions:

- May a California Court of Appeal disregard California Supreme Court dictum; and
- Was the *Gudelj* rule dictum to begin with.

Second, the *Grinius* opinion came to a conclusion that is not supported by the case law it cites, and the *Grinius* decision is itself dictum.

A Court of Appeal Generally May Not Disregard Dictum From the California Supreme Court

Grinius disregarded the *Gudelj* lender intent rule, stating that the *Gudelj* court “had no opportunity to apply the standard.” The implication is that the *Gudelj* rule was mere dictum and did not require the Court of Appeal to follow the *Gudelj* rule.

It is axiomatic that it is only the *ratio decidendi* of a California Supreme Court opinion that is fully binding as precedent on the lower courts of this state. “The *ratio decidendi* is the principle or rule that constitutes the ground of the decision, and it is this principle or rule that has the effect of a precedent. It is therefore necessary to read the language of an opinion in the light of its facts and the issues raised, to determine (a) which statements of law were necessary to the decision, and therefore binding precedents, and (b) which were arguments and general observations, unnecessary to the decision, i.e., dicta, with no force as precedents”. (9 Witkin, Cal. Procedure (5th ed. 2010) Appeal § 509.)

“To say that dicta are not controlling ... does not mean that they are to be ignored; on the contrary, dicta are often followed. A statement that does not possess the force of a square holding may nevertheless be considered highly persuasive, particularly when made by an able court after careful

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consideration, or in the course of an elaborate review of the authorities, or when it has been long followed. In short, while a court is free to disregard a dictum that it strongly disapproves, it is quite likely to rely on a dictum where no contrary precedent is controlling and where the view commends itself on principle." (9 Witkin, Cal. Procedure (5th ed. 2010) Appeal, § 511.)

"A dictum is generally regarded as only persuasive. . . . However, a dictum of the Supreme Court has been considered binding on the Court of Appeal in the same manner as an express holding." (9 Witkin, Cal. Procedure (5th ed. 2010) Appeal, § 511.)

"Even when stated in footnotes, our Supreme Court's decisions bind us, and its dicta command our serious respect." (*Dyer v. Superior Court* (1997) 56 Cal. App. 4th 61,66.)

In *Hickman v. Mulder* (1976) 58 Cal.App.3d 900, the Court of Appeal followed dictum of the California Supreme Court in *Cornelison v. Kornbluth* (1975) 15 Cal.3d 590. In *Cornelison*, the court stated, in dictum, that the dissenting opinion in *Schumacher v. Gaines* (1971) 18 Cal.App.3d 994 was the rule in California. Nevertheless, the *Hickman* court found that, even if dictum, the California Supreme Court had identified the accepted rule and indicated to the lower courts what the law of California is and how to apply it.

In *Marriage of Witt* (1987) 197 Cal.App.3d 103, 106–107, the court observed:

[Husband] seeks to avoid the clear import of *Fabian* by characterizing the court's discussion of Civil Code section 4800.2 as mere dictum. [Husband's] approach ignores that even dicta of the Supreme Court should not be disregarded by an intermediate court without a compelling reason.

In *California Coastal Comm. v. Office of Admin. Law* (1989) 210 Cal.App.3d 758, 763, the court noted:

A holding need not be wholly relevant to the ultimate decision of a case to be binding upon a lower court. [Citation.] Moreover, even dicta of the Supreme Court should not be disregarded by an intermediate court without a compelling reason.

In *Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914, 925, the court noted:

Fresno proposes that we reject the [California Supreme Court's] discussion as dicta. Even if the court's conclusions technically constitute dicta, we will not reject dicta of the Supreme Court without a compelling reason, not present here.

It appears well-accepted that a Court of Appeal may not disregard a California Supreme Court opinion merely because the opinion is dictum. The Court of Appeal has consistently taken the position that dictum is binding unless there is a "compelling" reason to not follow it. The *Grinius* court never states there is a compelling reason to disregard *Gudelj*, nor provides any compelling analysis of why the California Supreme Court's statement of a rule – which was directly relevant to the case before it – should be disregarded. The

Grinius court is actually criticizing the *Gudelj* opinion as being poorly reasoned.

No Court of Appeal case dealing with (supposedly) California Supreme Court dictum, other than *Grinius*, has taken the position that the California Supreme Court used poor reasoning in order to disregard the opinion as dictum. It appears dicta is only disregarded when there are circumstances present in a Court of Appeal case that were not present in a California Supreme Court case and there is a "compelling reason" not to apply the rule. In *Grinius* and *Gudelj*, the courts were analyzing an identical set of circumstances – how to characterize loan proceeds that are acquired during marriage. The *Grinius* Court of Appeal disregarded a rule enunciated by the California Supreme Court that directly applied to the circumstances before the *Grinius* court.

The *Gudelj* Primary Intent Rule Was Not Dictum

Recall that the *Grinius* court stated that the *Gudelj* court had "no opportunity to apply [its] standard since no evidence of lender reliance on separate property was proffered." (*Grinius, supra*, at p. 1187.) This is analogous to the following:

There is a presumption that a letter placed in the mail is presumed to have been delivered unless there is evidence to the contrary. After evidence of mailing was put on at trial, no evidence to the contrary was presented, thus the presumption of mailing was not applied.

The *Grinius* court misinterpreted how the application of a presumption works. The court mistook a lack of rebuttal evidence as a lack of the application of the presumption rule. However, missing rebuttal facts at the trial level does not indicate the lack of application of an evidentiary presumption. The application of a presumption rule always includes the stated, or implied, rule for rebuttal (identifying the rebutting fact). The presence or non-presence of the rebutting facts at trial is an inherent part of the application of the rule.

In *Gudelj*, in stating the lender intent rule, the court also identified the rebutting fact to the presumption – "primary" reliance on separate property. The rule in *Gudelj* can be restated as follows:

If A + B then C; unless A + B + D then E
Or

If loan proceeds are acquired (A) during marriage (B), then it is community property (C), unless the lender relied "primarily" upon separate property for repayment (D), then it is separate property (E)

Grinius incorrectly stated that *Gudelj* did not apply its own rule. This flaw was crucial for the *Grinius* court to deviate from the *Gudelj* standard and apply a different standard. Thus, the underlying rationale for *Grinius* to disregard a California Supreme Court case was lacking.

Gudelj Had it Right

The court in *Grinius* incorrectly stated that "the California courts have consistently and uncritically applied the intent-of-the-lender rule," although "they have inconsistently espoused the applicable test." (*Grinius*, at p. 1186.) Actually, earlier California credit acquisition cases presented three tests for

rebutting the community presumption when loan proceeds are acquired:

1. the mutual understanding of the transacting parties;
2. the intent of the borrower, and
3. the intent of the lender. (See *Estate of Holbert* (1881) 57 Cal. 257 which presents the three alternatives.)

It is not clear why California courts settled on the intent of the lender as the proper test. The test might have been the best way to characterize loan proceeds because of poor evidence of the borrower's intent or of an agreement between the transacting parties. Of the three rules, the lender intent rule might be more reliable because:

- Evidence of the borrower's intent might be fluid, and will surely change as he/she approaches trial and learns what might happen if the proceeds were separate vs. community; and
- Evidence of the borrower/lender agreement is dependent on the circumstances and the lender will likely not to ever waive the right to reach community property, and the parties to the transaction do not discuss separate vs. community nature of the loan since it has no bearing on the transaction.

Irrespective of the evolution of the method of characterization, intent of the lender became the established rule. *Gudelj* signified the emergence of the "primary" intent of the lender test as the only rule to be applied in determining the character of loan proceeds.

Grinius Had it Wrong

Notwithstanding that *Grinius* misinterpreted *Gudelj* as dictum and as flawed, an analysis of *Grinius* reveals that the *Grinius* opinion itself rests on a flawed reading of precedent. *Grinius* supported its "solely" rule based on direct and indirect precedent.

A. Grinius' Direct Authority Is Flawed

To support the contention that the lender must rely "solely", or "entirely", upon the separate estate, *Grinius* cited first to *Estate of Holbert* (1881) 57 Cal. 257. Interestingly, *Holbert* suffered from the evidentiary flaw that the *Grinius* court criticized the *Gudelj* opinion for. As in *Gudelj*, the *Holbert* court noted that the community property presumption was not rebutted because there was "no evidence to go to the jury upon which they were authorized to find that Holbert borrowed money upon the strength of credit created entirely by his separate property." (*Holbert*, at p. 259.) However, the *Holbert* court went on to espouse a borrower intent rule too, stating there was "nothing to show that the borrower intended to allow a debt to be created other than one of the ordinary character, for which the whole [community] estate was liable." (*Ibid.*) If the lender's intent was the only rule – as *Grinius* would have one believe – then why did *Holbert* go on to refer to a borrower's intent rule, unless it was because there were multiple rules at that time?

The *Holbert* court did not stop there. It went on to state another, third rule:

It may be, that, if Holbert had borrowed the money of Johnson with the distinct understanding

between them that the separate property of Holbert was to be liable for the debt created, and the funds so borrowed had gone to pay for the land purchased, the land would have been the separate estate of Holbert; but no such case is before us.

Thus, *Holbert* set forth the three theories of loan proceeds characterization in existence at that time. *Holbert* was not a lender intent case. It was a case – like many in its day – that applied multiple rules on a single set of circumstances. The *Grinius* court selected only one of the multiple rules and then stated that early cases "consistently and uncritically applied the intent-of-the-lender rule," which is an erroneous statement. (*Grinius*, at p. 1186.)

Grinius court also cited *Estate of Ellis* (1928) 203 Cal. 414 as support for the rule that a lender must "entirely" rely on separate property for repayment in order for loan proceeds to be considered separate property. In *Ellis*, the trial court held that stock purchased with loan proceeds from a bank was the separate property of the husband because the loan had been made upon the faith and credit of his separate property and his financial standing with the bank. In affirming the trial court on appeal, the *Ellis* court distinguished the facts before it from those in *Holbert*, where the property was held to be community, on the grounds that in *Holbert* "there was no evidence showing that the loan was made on the personal credit of the spouse owning the separate property." (*Ellis*, at p. 416.) *Ellis* found the loan proceeds to be separate property because the "personal credit" of the husband was what the lender relied upon. Not once in the opinion does the court state the "entirely" or "solely" rule that *Grinius* attributed to it.

Ellis presents an interesting issue under modern community property principles. The "personal" credit of either spouse during marriage means the lender intends to rely upon marital earnings for repayment. Where a loan is made on the personal credit of either spouse, the proceeds are normally regarded as community property. (For example, see *Marriage of Aufmuth* (1979) 89 Cal. App.3d 446, 455 – though there was no direct evidence of lender intent, it was "apparent that the credit was extended on the strength of the community earnings.")

The *Ellis* court confused loans made on the personal credit of the spouse with loans made on the credit of his or her separate property. If, by testifying that the bank took the personal guarantee of Mr. Ellis, who was a man "of large financial interests," the loan officer meant that he was relying on the separate property assets of the husband, then the court was correct in finding the loan was separate property. The *Ellis* court states, however, that the lender also relied on the husband's personal credit, which means the lender was also relying on the community earnings for repayment. In order for the *Ellis* court to find that the stock was the separate property of the husband (where there was evidence that the lender looked to his personal credit), the court must have been concentrating

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on the intent of the lender to rely "primarily" on the separate property of the husband, since some consideration was made to community earnings.

Holbert and *Ellis* do not support the proposition that, prior to *Gudelj*, the California Supreme Court had "consistently and uncritically applied the intent-of-the-lender rule". (*Grinius*, at p. 1186.)

B. Grinius' Indirect Authority Was Not Correctly Applied

The *Grinius* court also attacked the *Gudelj* opinion on indirect grounds. *Grinius* states that cases after *Gudelj* "have been decided on seemingly different standards," and in all of them "loan proceeds were characterized as a spouse's separate property only when direct or circumstantial evidence indicated the lender relied solely on separate property in offering the loan." (*Grinius*, at p. 1187.) In its string citation, the *Grinius* opinion relies upon several Court of Appeal cases – not California Supreme Court cases – as authority. In other words, the *Grinius* court was stating: Even if *Gudelj* were right, subsequent lower courts have not followed it, so we will not either. Not only does this not comport with the hierarchy of the courts, but the seven cases string-cited by *Grinius* do not support this conclusion.

Additionally, three of the cases which *Grinius* string-cites to (*Ford v. Ford* (1969) 276 Cal.App.2d 9, *Somps v. Somps* (1967) 250 Cal.App.2d 328, *Howard v. Howard* (1954) 128 Cal.App.2d 180) were decided under outdated community property principles.

1) Stoner Was Not a Lender Case

Grinius cites to *Marriage of Stoner* (1983) 147 Cal. App.3d 858, which is not a lender intent case. In *Stoner*, the property at issue was a residence purchased by the wife with the proceeds of a loan to her. The husband executed a quitclaim deed for the property at the time of the loan and property acquisition, and it was the quitclaim deed – not the lender's intent – that was dispositive. The decision does not support or contradict the intent-of-the-lender rule as fashioned by *Gudelj* or *Grinius* since the deed was the fact supporting the decision.

2) Ford Found a Loan to Both Spouses was Really Husband's Separate Property

In *Ford*, *supra*, the property was acquired from a loan made to both spouses by the bank. Both spouses signed a promissory note and a mortgage hypothecating the husband's separate property. The *Ford* court noted that "[n]o one from the [bank] testified as to the intention of that institution in making the loan." (*Id.*, at pp. 12-13.) Thus, no evidence of lender intent was provided at trial (which was cited as a flaw by the *Grinius* court about the *Gudelj* opinion).

In analyzing the *Gudelj* opinion, the *Ford* court noted that two earlier opinions found that a spouse signing a note and mortgage would not affect the

rights of the "parties." (Citing to *Flournoy v. Flournoy* (1890) 86 Cal. 286 and *Martin v. Martin* (1877) 52 Cal. 235.) If the *Ford* court had not done so, then wife's signature upon the note and mortgage in *Ford* would have supported an implied finding (since there was direct evidence) that the lender in some way relied upon the credit of the community. The *Ford* court ignored the fact that *Flournoy* was a lending case between spouses involving the intent of the parties test, and that *Martin* found, under antiquated views, that a wife was not a party to a loan transaction in which she co-signed the note.

The *Grinius* court relied on *Ford* to support the contention that the community property presumption may be overcome only by a showing that "the lender intended to rely solely upon a spouse's separate property and did in fact do so." (*Grinius*, at p. 1187.) However, there was no evidence at all of the lender's intent in *Ford* – there was no evidence the lender relied "primarily" or "solely" on the husband's separate. If anything, the lender relied upon wife's obligation on the note as well.

3) Somps Was a Primary Intent Case

In *Somps*, *supra*, the court found that the community presumption was rebutted and the property in question was purchased with the husband's separate property. The loan to obtain the property was extended on the faith of *both* community and separate property repayment.

The *Somps* decision was based on (1) the lender's testimony that he had made the loan based on the husband's personal credit, (2) the lender's testimony as to the husband's business credit (it was his separate property business), and (3) the husband's testimony that the loan was personal in nature and was granted because the venture for which he borrowed the money was sound. The lender testified it relied on the husband's personal credit, which was community property, and the wife showed the bank knew of husband's and wife's community property assets when making the loan.

If *Somps* were correct in characterizing the loan proceeds as the separate property of the husband, then the court must have based its determination on the intent of the lender to rely "primarily" on the husband's separate property, since some community property was considered.

4) Howard

Howard, *supra*, was a dispute over the proper characterization of property, titled only in the husband's name, that was purchased by him during marriage with the proceeds of a loan from his brother. Though, at one point, the court articulated a "sole" reliance standard, its analysis and result were wrong. The court found that the husband had rebutted the community presumption as follows:

Since the money was loaned, according to the testimony of his brother, solely upon [the husband's]

credit, the loan was the separate obligation of the [husband] and not a community obligation.

This conclusion was erroneous, since the proceeds of a loan made on the personal credit of either spouse are community property – there is no general separate or community obligation distinction under modern law (e.g. the credit card is in husband's name and he bought his golf clubs with the credit). Moreover, the degree of lender's intent – whether primary or sole intent – was irrelevant in *Howard* because there was no evidence the lender relied on any separate property of the borrowing spouse and the court applied an incorrect rule.

5) The Other Cases Are Actually in Line With *Gudelj*

The remaining three cases cited by *Grinius* (*Bank of California v. Connolly* (1973) 36 Cal.App.3d 350; *Hicks v. Hicks* (1962) 211 Cal.App.2d 144; *Marriage of Aufmuth, supra*) are intent of the lender cases that are well-reasoned, yet follow *Gudelj*.

Connolly, supra, is cited by *Grinius* as an errant post-*Grinius* case in which the lender relied upon the nature of the hypothecated property. That is a true factual statement but is misleading as to the legal effect of such reliance. No case, pre- or post-*Gudelj*, has stated that the character of the underlying property cannot, or must, be considered; it is merely one factor in looking to the lender's intent. More puzzling is the fact that the *Connolly* court found that the lender relied primarily on the "general credit of [the husband]" in extending the loan. (*Connolly*, at p. 375.) The *Connolly* court found that the community property presumption had not been rebutted. In reaching this decision, *Connolly* cited to *Gudelj* – the primary reliance rule.

In *Hicks, supra*, the court found the loan proceeds to be separate property where the lender relied on separate and community property in extending the loan. The court reasoned that the loans were made "on the credit of [the husband's] separate property as, at the time they were obtained, he had been married less than a year and his community earnings were not then of "paramount" significance, whereas his separate property approximated \$ 500,000 in value." (*Hicks*, at p. 155.) Impliedly, the lender did not rely solely on separate property – community earnings were not of "paramount" concern though were considered.

Aufmuth, supra, did not deviate from the primary rule in *Gudelj*. The court found that, although no direct evidence was presented concerning the intent of the lender, it appeared as though credit was extended based on the "strength" of the community earnings. (*Aufmuth*, at p. 456.)

None of the cases cited by *Grinius* prove the lender must rely solely on the borrower's separate property, and the *Grinius* court's historical analysis was flawed. The *Gudelj* rule should remain the rule in California with an inquiry into

whether the lender relied "primarily" on the separate property of the borrower in making a loan.

The *Grinius* Opinion Was Dictum

The *Grinius* court maintained that the *Gudelj* rule was dictum. This criticism was unjustified since the facts in *Grinius* did not provide a reason to change the *Gudelj* rule. If the husband in *Grinius* could not rebut the community presumption under the *Gudelj* primary rule, then any change to the *Gudelj* intent of the lender rule made by the *Grinius* court was itself mere dictum. More simply stated: if an easier evidentiary rule (primary intent) cannot be satisfied under the circumstances, then a more stringent rule (sole intent) need not be applied. Why say a rule is wrong when it cannot be met anyway?

The question is whether the lender in *Grinius* actually relied "primarily" on separate property in making the loan. The *Grinius* court found that the husband had failed to rebut the presumption that the property in question was community property. The purchase money for the property was obtained from two loans acquired during the marriage.

Though there was no direct evidence of lender intent, the *Grinius* court found that a review of the SBA loan conditions did not support the husband's claim the SBA loan was premised "solely" on his posting of his separate property collateral. Instead, of all the many SBA lending conditions, the *Grinius* court found the most important were those regarding the future income, operation and management of the restaurant business which was being purchased with the SBA loan. The husband's earnings during marriage and future earning potential were of primary importance to the lender in extending credit. The *Grinius* court found that "the loan was extended on both the ability of the community to repay the note and to manage the restaurant." (*Grinius*, at p. 1189.) Based on those findings, the husband could not have successfully rebutted the community presumption under the less stringent *Gudelj* primary reliance standard. *Grinius*' rejection of the *Gudelj* rule in favor of the more stringent sole reliance standard was unnecessary, and was dictum.

Conclusion

A lender's intent is to be repaid. A lender will not limit her/his/itself to community or separate sources. Lenders will not testify they would not want to repaid only from a separate property source. *Grinius* does not present a viable rule in the world of lending and repayment. *Grinius* does not present a rule that is practical or supportable by prior case authority.

A trial court should apply the rule enunciated by the *Gudelj* court: characterization of loan proceeds acquired during marriage should be determined on whether the lender primarily relied on separate or community property for repayment. This rule is not only in keeping with California Supreme Court jurisprudence, but it also is more easily applied in real world situations where a lender will look to any and every source of repayment. If a lender relied more heavily on the community to repay the loan, then the loan proceeds should be community in nature. ■