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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re Marriage of TIMOTHY ARMOUR
and NINA RITTER.

B190301

(Los Angeles County
Super. Ct. No. BD 390510)

TIMOTHY ARMOUR,

Respondent,

v.

NINA RITTER,

Appellant,

THE CAPITAL GROUP COMPANIES,
INC.,

Intervener and Respondent.

COURT OF APPEAL - SECOND DIST.

FILED

MAY 26 2010

JOSEPH A. LANE Clerk

Deputy Clerk

APPEAL from a judgment of the Superior Court of Los Angeles County, John H. Sandoz, Judge. Affirmed in part; reversed in part.

Akin Gump Strauss Hauer & Feld, Rex S. Heinke, Edward P. Lazarus, L. Rachel Helyar; Law Offices of Vicki J. Greene and Vicki J. Greene for Appellant.

Greines, Martin, Stein & Richland, Robin Meadow, Edward L. Xanders; Jaffe and Clemens and Bruce A. Clemens for Respondent.

Latham & Watkins, Pamela S. Palmer, Ernest J. Hahn, Richard P. Bress and Jeffrey A. Pojanowski for Intervener and Respondent.

* * * * *

In an appeal principally involving characterization and distribution of martial property, Nina Ritter (Nina) challenges the trial court's in-kind division of stock that she and her former husband, Tim Armour (Tim), owned in his employer. Nina also disputes the court's characterization of Tim's postseparation profit sharing points and stock purchases as being his separate property instead of community property. We affirm in part and reverse in part.

FACTS AND PROCEEDINGS

Tim and Nina met in their teens. They married in 1984 shortly after Tim's graduation from college. Throughout their marriage, Tim worked for one of the largest money management companies in the country, Capital Group Companies, Ltd. (CGC), whose flagship funds are the American Funds.

CGC is a privately held Delaware corporation. It has about 7,000 employees, but about 350 currently active employees own 80 percent of the company's stock; retirees and employees moving toward retirement own most of the other 20 percent, which they sell back to CGC in orderly installments as they dissolve their ties to CGC.

Tim bought his first CGC stock in 1989. He purchased it subject to a Stock Restriction Agreement (SRA) that applied to all employees.¹ He and Nina knew that under the SRA, only CGC employees could own stock, and that Tim could keep his stock only while he continued to work at the company. The SRA gave CGC the right to

¹ A handful of shareholders who appear to have had ties of one sort or another to the founders of CGC got their stock before the SRA took effect, and their ownership interests were grandfathered-in. Neither Tim nor Nina argues that these founding shareholders' holdings or status is pertinent to this appeal.

redeem at a formula price any shares held by nonemployees, including retirees, widows, and ex-spouses.

In the years following his first stock purchase in 1989, Tim's position in CGC rose and he bought all the shares CGC offered to him as he ascended through its ranks. In 1998, he and Nina transferred their stock to a living revocable trust they had established for themselves. CGC permitted the stock transfer conditioned on Tim's and Nina's agreement that the SRA applied to their trust's interest in the stock. In addition, Nina signed a "Joinder Agreement" prepared by CGC in which she stated she read and understood the SRA.

In 2003, Tim filed a petition for dissolution of his marriage to Nina. By that time, he sat in the upper echelons of company management. He was executive vice president of CGC's affiliate Capital Research & Management Company, and sat on the management committee and board of directors of CGC itself. He was among the company's most highly compensated employees.

After Tim filed for divorce, CGC filed in May 2004 a complaint against Tim and Nina in Delaware Chancery court for declaratory relief. CGC sought a declaration that the SRA bound Tim and Nina, thereby prohibiting them from transferring any CGC stock to Nina as part of a property settlement in their divorce and permitting CGC to redeem by repurchase any stock Nina might receive. At that time, Tim and Nina owned through their trust 50,511 shares of CGC stock, constituting 80 to 90 percent of their total wealth. In a written decision in March 2005, the Delaware court upheld the SRA's enforceability against the couple, declaring that CGC had the right to redeem any stock awarded to Nina in the divorce.

The dissolution action proceeded to trial in October 2005 before the Honorable John Sandoz, whose pending retirement was then imminent. The trial was set to last 15 days, but the parties feared three weeks might not be enough to cover all disputed issues. Wanting to avoid a mistrial if they ran out of trial time without getting a final judgment

before Judge Sandoz retired, the parties agreed to let Judge Sandoz enter a bifurcated judgment on the issues they managed to adjudicate during the allotted time.²

Following the trial, the court entered a judgment of dissolution. It reserved jurisdiction on spousal support and child support and custody because the trial had not reached those issues. As to the issues the court tried, the court equally divided Tim and Nina's CGC stock between them, giving each 25,255.5 shares. The court awarded to Tim as his separate property an additional 12,349 shares of CGC class A stock and 10,000 shares of class nB voting stock that he bought in 2004 after the couple separated. In addition, the court divided in half the profit sharing points Tim had received before his separation from Nina in June 2003 under CGC's "Special Compensation Plan" and awarded to Tim all profit sharing points he received after June 2003.

The trial court certified the parties could appeal from its judgment, and Nina took an appeal. (Fam. Code, § 2025, Cal. Rules of Court, rule 5.180.) That portion of the judgment dissolving the marriage was itself directly appealable; the remainder of the judgment was an otherwise nonappealable interlocutory judgment. We found good cause, however, to permit Nina to appeal from the entire judgment, and she has done so. In the meantime, CGC told Nina it intended to redeem the stock the court had awarded her within 90 days after she received it. Nina asked the trial court to issue a preliminary injunction barring redemption of her stock pending her appeal. In response, the court stayed its judgment and barred Tim from transferring the stock to Nina, thereby forestalling CGC's right to redeem the stock. The court thereafter issued a preliminary injunction prohibiting CGC from redeeming Nina's stock until further court order. This appeal followed.

² According to the trial court, "The parties, through their counsel, stipulated in open court that, in the event that it was not possible to try all issues within the time allotted for trial, those issues for which trial had been completed would be bifurcated from all remaining issues and that the court may enter a separate judgment on those issues."

DISCUSSION

1. *In-Kind Division of CGC Stock*

The court was obligated to divide Tim and Nina's community property equally. (Fam. Code, § 2550; *In re Marriage of Cream* (1993) 13 Cal.App.4th 81, 87-88.) If a court can divide property equally in kind without impairing the property, in-kind division is ordinarily the preferred distribution. (*In re Marriage of Behrens* (1982) 137 Cal.App.3d 562, 572 [in-kind division is presumed appropriate unless "economic circumstances" warrant a different division].) Publicly traded stock is, for example, easily divided in kind between former spouses. In-kind division is usually inappropriate, however, if division will impair the property's function or value. A family run business, for example, or a building such as a family home ordinarily cannot be divided in kind. (*In re Marriage of Brigden* (1978) 80 Cal.App.3d 380, 391-392.) If the court cannot achieve an equal division of the couple's community property by dividing property in kind, then it must allocate the property using some method other than in-kind division. (*In re Marriage of Duncan* (2001) 90 Cal.App.4th 617, 631; *In re Marriage of Andresen* (1994) 28 Cal.App.4th 873, 880.) Deciding whether circumstances warrant deviating from in-kind division rests in the trial court's discretion. (*Behrens*, at p. 572.)

Here, the trial court divided Tim and Nina's 50,511 shares of CGC stock exactly in half between them. The court knew it held the power to allocate the stock some way other than an equal division in-kind if necessary to divide the couple's community property equally. It nevertheless concluded in-kind division was proper. In its statement of decision, the court explained it had "weighed carefully all of the competing factors in favor of in-kind division and in favor of the economic circumstances exception. The court has considered the various economic consequences that would flow from the positions advanced by the parties. This court exercises its discretion and concludes that none of that evidence provides a satisfactory basis for bringing this case within the economic circumstances exception and that this is an appropriate case for an in-kind division of [Tim and Nina's] CGC shares."

We conclude the court erred because in-kind division fell short of Nina's entitlement to receive half the value of the couple's community property. The court was obligated to achieve more than a numerically equal division of community property; it was also obligated to reach an equal result. (*In re Marriage of Brigden, supra*, 80 Cal.App.3d at p. 390 ["equal division [is] the general rule both in terms of the method of division and the result to be achieved"]; see also *In re Marriage of Fink* (1979) 25 Cal.3d 877, 886 ["the result of any division, with certain exceptions, must be equal."]; Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2009) § 8:1070, p. 8-249 (rev. # 1, 2006) [same].) In-kind division did not lead to an equal result because CGC's promised redemption of Nina's shares meant she ended up with appreciably less than Tim.

Nina's receipt of less than half the community's value flows from losing two economic benefits of stock ownership: share price appreciation, and future dividends. (*In re Marriage of Hug* (1984) 154 Cal.App.3d 780, 792 [distribution of marital property must take into account that some portion of growth in community investment may arise from postseparation efforts while another portion arises from fact that many investments usually grow and that latter growth must be allocated].) CGC's stated intention to redeem Nina's CGC shares at a price set by CGC's internal formula denies her the benefits Tim will receive from his being allowed to keep his half of the marital shares.

CGC's SRA and its self-derived formula price serve legitimate internal governance purposes. And the Delaware Chancery court recognized as much when it noted CGC's right of redemption served two purposes: (1) limiting CGC's ownership to fewer than 500 shareholders in order keep the company below reporting and disclosure requirements of more widely owned companies; and, (2) attracting and retaining talented high performers whose family's economic interests align with the company. Allowing a former spouse to own CGC stock after divorcing a CGC employee could undermine those purposes.

While the SRA serves legitimate corporate governance purposes, its formula for calculating a redemption price does not pretend to reflect the price those shares would

command on an open market. Economic theory teaches, and the law provides, that a stock's value reflects in part its future dividends. (See Rev. Rul. 59-60, 1959 Cum. Bull. 237 [dividends one component of a closely held stock's value].) The SRA formula price lops off the future dividend stream from the share price, however. Nina's valuation expert assumed Tim, who was in his mid-40's, would continue working for at least 10 more years. So long as Tim continued to work at CGC, he retained his CGC stock, thus continuing to earn dividends and enjoy increases in the stock's price. The expert calculated that Tim's dividend income during those 10 years from his half of the community shares would range between \$3.5 to \$9.5 million annually. After 10 years, Tim could begin in 2018 to sell his stock back to CGC as he moved toward retirement. According to the expert, Tim's total projected income stream would be \$97.8 million, which had a present discounted value of \$40 million.

Nina's valuation expert analyzed her losses from forced redemption using two methods. One method was calculating the stock's "investment value," which he testified was a stock's "value to a particular person based on their expectations and investment requirements." He used Revenue Ruling 59-60 to determine investment value. That ruling states one ought to look to the following:

"(a) The nature of the business and the history of the enterprise from its inception. [¶] (b) The economic outlook in general and the condition and outlook of the specific industry in particular. [¶] (c) The book value of the stock and the financial condition of the business. [¶] (d) The earning capacity of the company. [¶] (e) The dividend-paying capacity. [¶] (f) Whether or not the enterprise has goodwill or other intangible value. [¶] (g) Sales of stock and the size of the block of stock to be valued. [¶] (h) The market price of stocks of corporations engaged in the same or a similar line of business having their stocks actively traded in a free and open market, either on an exchange or over-the-counter." (Rev. Rul. 59-60, § 4.01; see also *In re Marriage of Hewitson* (1983) 142 Cal.App.3d 874, 883, fn. 9.)

The second method Nina's valuation expert used was discounted cash flow. The expert assumed Tim would retire at 55 and sell back his stock over six years at the formula price. The expert calculated the discounted present value of Nina's one half of

shares to be \$36,359,170, more than double the \$18 million in proceeds she received from the court's proposed division in kind.

Tim criticizes each valuation method. He contends the discounted cash flow method is flawed because it applies to valuing a company and the cash flow it generates, not stock and the cash flow the stock generates from dividends. Tim additionally argues Revenue Ruling 59-60 applies to valuing an *entire* company, not a partial interest, let alone, as was Tim and Nina's position in CGC, a minority interest. Nina counters that her expert properly relied on the factors identified in the IRS ruling. That ruling identifies its purpose as aiding in the valuation of closely held stock. The ruling states:

"The purpose of this Revenue Ruling is to outline and review in general the approach, methods and factors to be considered in valuing shares of the capital stock of closely held corporations for estate tax and gift tax purposes. The methods discussed herein will apply likewise to the valuation of corporate stocks on which market quotations are either unavailable or are of such scarcity that they do not reflect the fair market value." (Rev. Rul. 59-60, § 1.)

But whatever the limitations or possible weaknesses in the valuation opinion of Nina's expert, Tim acknowledges the SRA price formula does not include future dividends in its calculation. He also concedes that including future dividends increases the value of stock. He argues "Nina's valuation methodology . . . valued her half-interest at the present value of her 'ability to make [*sic*] dividends and appreciation in the future' if she were not forced to redeem her shares as the SRA required and the Delaware court adjudicated." Despite not taking dividends into account, the formula price did not abuse CGC employees because they nevertheless received dividends as long as they remained employed. Moreover, because CGC employees bought and sold their company stock based on the formula price, its artificially low level beneath its open market value was a wash because they nevertheless captured share price appreciation spanning the difference between the (artificially low) formula *purchase* price and (equally artificially low) formula *redemption* price. Share owners such as Nina, however, who were not employees and thus not allowed to keep their stock were abused by their loss of future

dividends, and their enjoyment of share price appreciation between the time they bought the stock until the time they were forced to sell did not alleviate that abuse.

Tim does not dispute the court's obligation to divide community property equally. He asserts the court satisfied that obligation because he and Nina each got one half of what they bought, which was restricted stock subject to the SRA. Tim suggests Nina's description of the in-kind division as unequal rests on her ignoring the SRA's restrictions. He asserts that "Nina argues that this is not an equal division because CGC will likely redeem her half-interest after her divorce is final, while Tim will get to keep his shares if he stays at CGC. But her contention ignores the nature of what the marital community actually acquired -- it acquired *restricted* stock, not freely tradeable unrestricted stock. [¶] Nina wants to treat CGC's stock as though it were the unrestricted common stock of a publicly-traded company."

In fact, Nina accepts the SRA's restrictions and CGC's right to redeem the stock -- she just wants Tim to bear its consequences equally with her. Nina and Tim bought their restricted stock in CGC as a couple. When they bought the stock, they functionally entered as a marital unit into a contract with CGC. Under that contract, CGC is entitled to redeem from Nina after her divorce her half of the stock at a formula price set out in the SRA. The Delaware Chancery Court upheld CGC's right to redeem stock from Nina, and on appeal she concedes CGC's right to do so. But, in-kind division forces onto Nina the entire burden of redemption. Divorce means the formerly married couple's pool of erstwhile community assets loses value, but only Nina bears the loss. Such is not an equal result, and violates the court's obligation to ensure an outcome of equal division of community property. As the court in *In re Marriage of Rives* (1982) 130 Cal.App.3d 138, explained, "The equality of a division of community property is often intimately tied to the valuation of that property. In many cases an apparently equal division is in reality an inherently unequal division when economic circumstances are considered in light of the situation of the parties." (*Id.* at p. 155; see also *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 603 ["In particular cases, strict 'in[-]kind' divisions, such as wife now urges, may cause, rather than avoid, financial inequalities"].) Tim and Nina together bought

restricted stock; together they must absorb the cost of doing so, and not let the consequences of their choice as a couple fall completely on Nina as the unlucky half of that couple.

In-kind division, although seemingly equal on its face, was unequal in substance because it disregarded economic realities. We acknowledge there is a limit to how far down the road a court must cast its eyes in considering how the vagaries of life, health, retirement, and economic fortune can affect a formerly married couple's community assets and individual finances. At some point, the contingencies of life become too uncertain or speculative to take into account. But here, CGC's redemption of Nina's shares was almost as certain as night follows day. CGC traveled to Delaware's Court of Chancery to get a declaratory judgment confirming its right of redemption. CGC has told Nina and Tim it will redeem Nina's shares as soon as the SRA allows. CGC has never wavered in its insistence in its right to redeem, and CGC articulated before the Chancery Court sound business reasons, which the court accepted, for wanting to redeem. This redemption is going to happen; the trial court could not pretend it wasn't or ignore its consequences. By not taking into account the redemption's effect on the community's pool of assets, the court's in-kind division was an abuse of discretion.

That the court may not have accepted Nina's valuation evidence does not relieve the court of its obligation to divide the community property equally. Nor does the difficulty in valuing the stock provide an excuse for the court to avoid an equal division. (*In re Marriage of Andresen, supra*, 28 Cal.App.4th 873, 880 [court may not delegate or avoid its duty to value marital assets and may appoint independent appraiser if unsatisfied with parties' valuation evidence]; *In re Marriage of Hargrave* (1985) 163 Cal.App.3d 346, 355 [court must ask for more evidence or appoint its own expert if dissatisfied with parties' valuation evidence].) We therefore remand for the court to divide the CGC stock in a way that takes into account the effect of the redemption on the value of the former marital assets so as to ensure an equal result for Tim and Nina.

2. Postseparation Stock

After Tim separated from Nina, he bought more company stock. He purchased 12,349 shares of CGC stock (also known as Class A shares), and 10,000 shares of non-dividend paying class nB voting stock, which were worth only a fraction of the dividend paying shares. He did not tell Nina about the purchases when he bought the stock. The trial court awarded Tim all the postseparation stock he bought as his separate property. The court erred.

Property that a spouse buys during a couple's marital separation is community property if the spouse used community property to obtain a loan to buy the postseparation property. (*In re Marriage of Grinius* (1985) 166 Cal.App.3d 1179, 1187; *In re Marriage of Stoner* (1983) 147 Cal.App.3d 858, 864.) Tim concedes he used community property as collateral to buy his 10,000 nB shares. At trial in response to the following question, "when you purchased the nB shares . . . is it correct that at the outset of that transaction . . . all the shares were collateralized by community property?" he answered, "I believe that is correct."

Tim later testified that he used the community property by mistake, an error he tried to correct by substituting his separate property for the community collateral. But his attempted remedy was unavailing because we look to the creditor's intent in making the loan. If the creditor relied on community assets in deciding to extend credit, the loan is presumptively community property; the loan proceeds are separate property only if the creditor relied solely on separate property as collateral or as a source of repayment. (*In re Marriage of Grinius, supra*, 166 Cal.App.3d at p. 1187; *In re Marriage of Stoner, supra*, 147 Cal.App.3d at p. 864.) Tim himself correctly states the legal rule: "The character of credit acquisitions is 'determined according to the intent of the [lender] to rely upon the separate property of the purchaser or upon a community asset.'" Tim's self-described "mistake" in using community assets, which he later tried to correct, does

not change the lender's intent at the time it made the loan for buying the 10,000 nB shares.³

Tim bought the Class A shares with a 10 percent down payment of slightly more than \$430,000 from a \$1 million dollar line of credit from Bank of America that he had opened after he separated from Nina.⁴ In extending the credit line, Bank of America insisted Tim maintain at least \$1.5 million in unencumbered liquid assets. Tim agreed to do so, and signed a document attesting to his promise, entitled "Agreement to Maintain Liquid Assets." He represented that he had \$3.9 million in unencumbered liquid assets, but in identifying those assets he named only community property: an American Funds account worth \$3.3 million, a cash management trust account holding \$347,000, and an emerging market fund worth \$194,000. At trial, Tim could not identify any separate assets that would have satisfied his commitment to Bank of America to maintain at least \$1.5 million in liquid assets. Indeed, in applying for the line of credit, he told Bank of America: "I am in the middle of a divorce. Most of my assets are held in trust with my wife and I as trustees. The vast majority of my assets are community property."

Tim testified he tried to structure his purchase of Class A stock to use only his separate property in the transaction. In ordinary circumstances, a CGC employee bought his first shares in the company with a 10 percent down payment and financed the balance with a low interest loan from CGC. The employee repaid the loan by letting CGC withhold a portion of the employee's future stock dividends and profit sharing points. For additional stock purchases after the first one, CGC required no further down payment, but instead let the employee use his existing shares as collateral for the new

³ Tim cites *State Farm Fire & Casualty Co. v. Jioras* (1994) 24 Cal.App.4th 1619, 1626, and footnote 5, but that decision stands for the proposition that he corrected his mistake; it does not say that his correction changes the property's character after the fact.

⁴ Tim held the funds from Bank of America in a bank account registered under his and Nina's names, although evidence suggested only he used the account.

shares and added the cost of the new shares to the total loan amount. But for his postseparation stock here, Tim and CGC arranged the purchases differently. First, he arranged for CGC to record his new shares in an account for his sole benefit separate from his and Nina's community account. Next, CGC let him use his new postseparation shares as collateral for further stock purchases, instead of using his community shares with Nina as collateral. Finally, Tim and CGC entered into a mutually satisfactory arrangement for Tim to repay the loan with which he bought his postseparation stock.

In addition to the foregoing arrangements Tim made with CGC, he told Bank of America that his line of credit needed to be against his separate property because he was getting divorced. To that end, he indicated on every document he signed for the line of credit that he signed solely on his own behalf as an individual, not as a married man. (But see, e.g., *In re Marriage of Stitt* (1983) 147 Cal.App.3d 579, 584 [married spouse cannot unilaterally transform community property into own separate property].) He further testified that he believed Bank of America expected him to use his separate property to repay his draws from the line of credit. The court did not, however, let Tim testify about the intent of the Bank of America loan officer. In so ruling, the court apparently concluded the loan documents, and not Tim's belief about what the Bank of America loan officer thought, governed the transaction and established which of Tim's assets -- community or separate -- Bank of America intended to rely upon for repayment if Tim defaulted on his line of credit. And the key document on that point -- Tim's "Agreement to Maintain Liquid Assets" -- identified only community assets. Because Bank of America extended its line of credit based on Tim's community property, the proceeds from that credit line were community assets. And because Tim used those proceeds to make his down payment on his postseparation stock, the stock is also community property. Hence, the court erred in awarding all of the postseparation stock to Tim as his separate property.

In a fallback position, Tim contends that even if the loan proceeds were a community asset, the loan equaled only a 10 percent down payment and therefore only 10 percent of the shares are community assets. According to him, the other 90 percent of the

shares are his separate property because he used postseparation earnings to repay CGC's loan to him for the other 90 percent of the shares. His fallback position is unavailing, however, because he used the first postseparation shares he bought as collateral for his future purchases of the remaining shares that he acquired. In addition, the dividends of community shares that Tim purchased with the Bank of America down payment are themselves community property. (See *In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 851 ["It is well settled in California that income produced by an asset takes on the character of the asset from which it flows. Thus, rents, issues and profits are community property if derived from community assets, and separate property if derived from separate assets"].) And to the extent those community dividends paid off the loan for Tim's postseparation shares, those dividends are another reason the postseparation shares are community property.

3. Postseparation Points from Special Compensation Plan

Each year, CGC's executive committee awarded to about 10 percent of CGC's most highly valued employees participation points in CGC's profit sharing plan. Beginning in 1998 and continuing during his marriage and separation, Tim received such Special Compensation Plan (or SCP) points. In 1988, he started with a few points. In the following years, the number of points he received rose. By 2000, his number of points had multiplied more than one hundred times to an amount close to his all time high. And in the spring of 2003, he received his highest number of points, which he continued to receive each year after his separation from Nina.

Tim acknowledges the points he earned before separation are community property. The court found, however, that the points Tim earned after separation are his separate property because the court concluded CGC awards SCP points as compensation for an employee's current work. Applying the general rule that a separated spouse's earnings after separation are that spouse's separate property, the court thus awarded Tim all of the postseparation SCP points. (*In re Marriage of Iredale & Cates* (2004) 121 Cal.App.4th 321, 331.)

Nina contends the court erred in giving all the postseparation SCP points to Tim because, in her view, CGC awarded them based in part on Tim's past services for CGC, which encompassed the years he and Nina were married. Thus, she contends, some portion of the points were community property. In support, Nina points to evidence in the record showing CGC did not calculate anew each year from a blank slate the number of points to award annually to Tim and other participants in the profit sharing plan. CGC witnesses testified that SCP points took into account an employee's long-term contributions to the company beyond the current year. One witness testified, for example, that "payments were based upon the individual's long-term contributions." That same witness also testified that "one of the important ways that [CGC] recognizes the scope and level of the associate's responsibilities and long-term contributions is through participation [in] the SCP program." Another witness testified, "The objective of the SCP program is to recognize and reward an individual's current and long-term contributions to the organization." From these witnesses' characterizations of CGC's profit sharing plan, Nina concluded CGC awarded points based on long-term factors such as an employee's reputation, experience, and skill. According to Nina, Tim acquired a great deal of his reputation, skill, and experience during the 19 years they were married between 1984 until they separated in 2003. (See e.g. *In re Marriage of Fenton* (1982) 134 Cal.App.3d 451, 463 ["experience, reputation, and skill was developed over the years he was married to wife and it is a community asset"].) As one senior CGC executive testified, Tim's points rose along with his standing and longevity with CGC:

"Q Is it correct that the payment to the particular SCP recipient is based on that individual's long-term contributions to that point in time? [¶] A . . . I think we look at what a person's contributions to the organization is. Long-term in our thought process here means that someone like Mr. Armour, over his employment with [CGC] and perhaps any other relevant experience, has reached a level of maturity, of talent, of judgment, of respect, within the organization, and that that has accumulated over a certain period of time, and that helps us arrive, given his responsibilities, at the level of points that we award to him."

CGC's purpose in awarding SCP points is a largely, if not entirely, factual question. We affirm a trial court's factual findings if substantial evidence supports them. Here, substantial evidence supported the court's award of all postseparation SCP points to Tim. CGC had no expressly written plan document for the SCP. Instead, the plan's details existed "in the heads" of certain key executives, and only they could explain it. Those executives testified that they annually awarded SCP points as compensation for current work. The court found their explanation credible and persuasive. The court stated it "considered all of the conflicting testimonial and documentary evidence concerning the characterization of the these [*sic*] two SCP payments to Petitioner. The court found the evidence of Philip de Toledo and James Rothenberg to be credible and persuasive as to the nature of the SCP, the manner in which SCP points are awarded and the reasons for the SCP payments. The court found the evidence adduced by Respondent to be less credible and that it does not support any claim to the SCP payments of August 2004 and August 2005 on behalf of the community property estate."⁵

4. Status Judgment

One spouse may move for an early judgment of marital status under Family Code section 2337. That statute permits the court to enter a judgment dissolving the marriage before resolving other, possibly more contentious, matters. (§ 2337, subd. (a).) It allows a soon-to-be ex-husband and ex-wife to get on with their personal lives even if they find themselves embroiled in litigating other disputes, such as distribution of property. When one spouse moves for early dissolution, the other spouse may seek court imposed conditions that indemnify the nonmoving spouse from adverse consequences of early dissolution. Those consequences may include tax liabilities and loss of medical insurance and retirement benefits. (§ 2337, subd. (c)(1), (2), (5)-(7).)

⁵ Nina asserts CGC started referring to an employee's "current efforts" in awarding SCP points to accommodate Tim's interests after Tim petitioned for divorce. Even if true, her assertion at most creates a conflict in the evidence, which the trial court resolved against her.

Tim did not file a motion for early dissolution. The court nevertheless entered a status judgment granting his petition for dissolution of his marriage with Nina. Nina contends that in the absence of a Family Code section 2337 motion, the court committed reversible error by entering a judgment of dissolution before a final judgment. We see no basis for reversal.

First, Nina may not appeal from the court's status judgment unless she objected in the trial court to the judgment of dissolution. Family Code section 2341, subdivision (b) states: "No party may make such an objection to the termination of the marriage status unless such an objection was also made at the time of trial." At trial, Nina did not dispute the existence of irreconcilable differences between her and Tim, and the court found irreconcilable differences had caused the marriage to breakdown. When irreconcilable differences exist, a spouse is entitled to a divorce. (Fam. Code, § 2333.) And indeed, Nina's counsel stated Nina did not oppose dissolution of the marriage.⁶

Although Nina does not challenge on appeal the ultimate propriety of dissolution, she requests that if we do not reverse the judgment of dissolution for the court's failing to comply with Family Code section 2337, that we nevertheless remand the matter to the trial court for a hearing to impose conditions as allowed under section 2337. The trial

⁶ Nina's counsel stated: "I am not going to oppose the status. What I'm going to oppose is that if Mr. Clemens seeks a bifurcation of status from the issues of support and the reimbursement issues, then he must articulate what conditions he's willing to agree to. Because of prime importance to our side is that the condition that she be indemnified and held harmless in connection with tax consequences." And again: "Well, here's the problem. What is to prevent CGC -- the court says I'm going to grant a divorce now and prepare the judgment. What prevents CGC from coming in and redeeming, since she will then be an ex-wife? I'm afraid of that. . . . I don't want Your Honor today to say I'm ending the marriage, you're now an ex-wife, because that could have repercussions with CGC and tax. If it is going to be at the same time that the court signs the judgment on the division of the stock, I probably can't oppose it. There may be other conditions. We'll take a look at the conditions in the statute. But certainly today is not the time to decide status." Nina never identified those "other conditions."

court had previously invited Nina to bring to its attention any conditions she thought she needed to protect herself from adverse consequences of early dissolution while other issues were pending. She did not file anything in response to the court's invitation. Her plea for remand thus seems to be a roundabout way of protecting her interests by ensuring CGC does not redeem its stock. In issuing an injunction barring Tim from transferring stock to Nina and prohibiting CGC from redeeming it, the trial court has already addressed that one matter of seemingly greatest import to Nina. The court ordered: "The Court has entered a judgment/order which, amongst other things, divides the parties' community interest in their shares of CGC stock. Unless enforcement of this judgment/order is stayed CGC will be able to redeem [Nina's] shares of CGC stock. [Nina] has therefore requested a stay of enforcement of the judgment/order under Code of Civil Procedure section 918 so that CGC can not redeem her stock until she has exhausted her rights to appellate review. Under the circumstances here, the Court concludes such a stay is warranted and IT IS HEREBY ORDERED."

Nina asks that we direct the trial court to join CGC as a party so that the court may exercise jurisdiction over CGC without Nina's needing to rely on an injunction to prevent redemption. She cites no authority that the court's current injunction is inadequate to protect her interest against premature redemption. She notes, however, that the injunction by its own terms permits CGC to move for its modification, creating the risk for her of further litigation. That risk has not arisen yet and she does not substantiate her fear other than to say CGC has informed her "it will seek to have the injunction lifted if circumstances change." But she cites no inadequacy in the current injunction, and we presume CGC will honor it; indeed CGC's purported statement that it may move to lift the injunction is itself CGC's indirect acknowledgment that it must honor the injunction while it remains in place.

DISPOSITION

The judgment is reversed and the matter is remanded for further proceedings in the following areas: (1) The court is to characterize the 12,349 shares of CGC stock and 10,000 shares of nB stock purchased by Tim during separation as community property.

(2) The trial court is to value the community's postseparation stock and the community's prepreparation 50,511 shares of CGC stock, taking into account CGC's anticipated redemption of any shares Nina receives. The court is thereafter to allocate the stock and other marital assets in such a way as to ensure Tim and Nina receive equal amounts of the community estate notwithstanding CGC's redemption of Nina's shares. In carrying out this court's directive, the trial court's current injunction, barring Tim from transferring stock to Nina and prohibiting CGC from redeeming that stock, is to remain in place with the trial court directed to enjoin the parties and CGC from any act in derogation of that stock's value pending the trial court's further order after remand. In all other respects, the judgment is affirmed.

The parties are to bear their own costs on appeal.

FLIER, J.

We concur:

BIGELOW, P. J.

LICHTMAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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