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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

COURT OF APPEAL – SECOND DIST.

**FILED**

**Dec 20, 2017**

JOSEPH A. LANE, Clerk

OCarbone Deputy Clerk

In re Marriage of KIRK and  
BLISS WENDELBURG.

B270355

(Los Angeles County  
Super. Ct. No. BD547487)

KIRK WENDELBURG,

Appellant,

v.

BLISS WENDELBURG,

Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark Juhas, Judge. Affirmed.

Lawrence E. Leone, Joel S. Seidel and Garrett C. Dailey for Appellant.

Law and Mediation Office of Mitchell A. Jacobs and Mitchell A. Jacobs; Greines, Martin, Stein & Richland LLP, Robin Meadow and David E. Hackett for Respondent.

In a marital dissolution action, Kirk Wendelburg sought a determination that the community had property rights in a business that his wife, Bliss Wendelburg, owned with her father. Kirk argued the business was community property because it had been incorporated during the marriage. The trial court, however, found the property was separate in character because the evidence established that the business had merely continued the operations of an identical business Bliss had owned and run with her father prior to the marriage. Alternatively, the court found that even if the business was deemed to have been started during the marriage, the evidence showed Bliss had received her interest in the business as a gift. On appeal, Kirk argues there is insufficient evidence to support either finding.

We affirm, concluding that substantial evidence supports the court's finding that Bliss received her interest in the business as a gift.

## **FACTUAL BACKGROUND**

### ***A. United Parcel Insurance***

In 1989, Marvin Landon and Barry Keyes started a parcel insurance business named "Universal Parcel Insurance Coverage, Inc." (UPIC). Landon's daughter, Bliss Wendelburg,<sup>1</sup> served as the chief executive officer of the company. Landon and Keyes each owned 30 percent of the company, Bliss owned 25 percent and several other individuals collectively owned the remaining 15 percent. In 1999, UPIC used its assets to secure a \$200,000 line of credit from Imperial Bank.

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<sup>1</sup> As is customary in family law matters, we refer to the parties by their first names for convenience and clarity.

In 2000, Landon and Keyes became involved in a dispute regarding the management of UPIC. In May of 2000, Keyes filed a fraud action naming UPIC, Landon, Bliss and others as defendants. The complaint sought damages and an order dissolving the company. The defendants filed a motion to stay the proceedings, and requested that the court appoint an appraiser to determine the value of Keyes's share in UPIC. The court granted the motion.

As a result of the ongoing litigation between Landon and Keyes, Imperial Bank requested that UPIC repay its \$200,000 promissory note. UPIC, however, did not have sufficient funds to pay the debt. Landon directed BJM, a company he controlled through the Landon Family Trust,<sup>2</sup> to purchase the note from Imperial Bank. After BJM had acquired the note, the court completed its appraisal of UPIC, which valued Keyes's share of the business at \$524,000.

Landon believed the valuation was too high, and elected to foreclose on UPIC's promissory note. In response to the notice of foreclosure, Keyes filed a second action against Landon and UPIC seeking (among other things) a restraining order prohibiting the sale of UPIC's assets. The court denied the request, and a foreclosure sale was held on October 29, 2001. BJM submitted the winning bid, purchasing UPIC's assets for \$194,023. Shortly after the sale, Landon and Bliss informed the court they were declining to purchase Keyes's share of UPIC at the appraised value of \$524,000. The court then appointed a receiver to oversee the dissolution of the company.

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<sup>2</sup> Landon and his wife served as the trustees of the Landon Family Trust, which is the sole member of BJM. Landon also served as the manager of BJM in his individual capacity.

The receiver submitted a report informing the court that, as of November 1, 2001, UPIC's license to sell insurance had been cancelled, all of its employees had been terminated and its website had been disabled. On May 7, 2002, the court approved the receiver's final report and ordered the receiver to proceed with dissolution. The receiver filed a certificate of dissolution. UPIC's shareholders did not receive any compensation in the dissolution proceedings.

***B. Creation of PIC***

While the receiver was overseeing the dissolution of UPIC, Landon established a new corporation, "Package In-transit Corporation" (PIC), to continue UPIC's business. PIC was incorporated on November 5, 2001, and Landon and Bliss were designated as its directors. On November 15, 2001, BJM assigned all the assets it had acquired in UPIC to the newly formed PIC.

Five days later, Landon and Bliss signed a document entitled "consent without meeting of board of directors" (the Consent) that included the following directive regarding the issuance of stock in PIC:

"It is deemed to be in the best interest of the corporation that 1,000 shares of its stock be issued and sold in the following manner:

ISSUEE	NO. OF SHARES	CONSIDERATION
Marvin Landon [as trustee of the Landon Family Trust]	500	\$50,000*
Bliss Wendelburg	500	\$50,000*

\* The consideration of \$100,000 is contribution by the share-holders of furniture, equipment, accounts and receivable to the corporation, having a total value of \$100,000.”

The Consent included a separate provision authorizing a \$200,000 loan from BJM to PIC:

#### “LOAN TO CORPORATION

To provide for additional startup funds and customer contacts for the corporation, it is deemed in the best interest of the corporation that the corporation acquire accounts receivable from BJM Enterprises, . . . with a minimum payable value of \$200,000. The receivables are due from potential customers of the corporation and having the customers pay the corporation will be beneficial for further business contacts. The corporation, not having the funds to pay BJM for the receivables and based on BJM’s agreement to accept payment over a period of time, and it being in the best interest of the corporation to evidence the indebtedness by a note, it was: [¶] RESOLVED, that the . . . corporation shall execute a Note payable to BJM Enterprises, in the principal sum of \$200,000 payable interest only quarterly at the rate of 10% with the Note being all due and payable within two years.”

That same day, Bliss, acting in her capacity as president of PIC, and Landon, acting in his capacity as treasurer, executed a \$200,000 promissory note payable to BJM under the terms set forth in the Consent.

Bliss, who ran the day-to-day operations of PIC, then hired UPIC’s former employees to continue their work for PIC, which

operated out of UPIC's former office space, and used UPIC's former furniture and equipment.

### ***C. Restructuring of BJM's Loans to PIC***

In August of 2002, Landon's accountant, Leonard Esmond, notified Landon that PIC had an operating loss of \$203,000 in 2001. Esmond advised Landon that for PIC's shareholders (Bliss and the Landon Family Trust) to claim the loss on their individual taxes, the promissory note between PIC and BJM had to be "recast" so that PIC would become indebted to Bliss and the Trust for the money it owed to BJM, and Bliss and the Trust would become indebted to BJM for that same amount. As of December 31, 2001, PIC owed BJM \$355,772.

After obtaining Landon's approval, Esmond issued new promissory notes providing that PIC would pay Bliss an amount equivalent to 51 percent of the debt it had owed to BJM; PIC would pay the Landon Family Trust an amount equivalent to 49 percent of the debt it had owed to BJM; Bliss and the Landon Family Trust would each pay those same amounts to BJM.

### ***D. Dissolution Proceedings***

#### ***1. Summary of pretrial pleadings***

Kirk and Bliss were married in August of 2000. In 2011, Kirk petitioned for divorce, and sought a determination that the community had property rights to Bliss's share of PIC. Kirk also sought a determination that the community had no interest in "Animal Specialty Group," (ASG) an animal medical services provider he had started prior to the marriage.

In his trial brief, Kirk explained that Bliss had raised two arguments in support of her claim that PIC was her separate property. First, she had asserted PIC was “merely a continuation of [the] prior, pre-marriage business” UPIC. Second, she argued that even if PIC qualified as a new business formed during marriage, “her interest in PIC was acquired as a gift” from her father. Kirk contended neither argument was “factually or legally sound,” asserting that the evidence would show PIC was an “entirely new business,” and that “no . . . documents . . . support[ed] Bliss’s gift theory.” Kirk also argued that even if PIC was deemed to be Bliss’s separate property, the community was entitled to reimbursement for the increase in PIC’s value that had occurred during the marriage.

In her response brief, Bliss asserted the evidence would show her father was solely responsible for incorporating and funding PIC, and that he had provided her a “gift of 50 [percent] of the stock.” She also argued that: (1) the community was not entitled to any reimbursement for the increase in PIC’s value; and (2) the community was entitled to reimbursement for the increase in value of Kirk’s company (ASG) that had occurred during the marriage.

## *2. Trial testimony*

At trial, Landon testified that during his litigation with Keyes, he had decided to acquire UPIC’s promissory note from Imperial Bank so that he could “liquidate” the company, and “form PIC.” Landon further testified that the decision to dissolve UPIC and form PIC was merely a change in corporate structure, and that the business operations had remained unchanged. Landon asserted that PIC operated its business out of UPIC’s

former office space, and had hired UPIC's former employees to provide the same services to the same customers. According to Landon, the only difference customers had experienced was that "on Friday they were insured by UPIC. On Monday, they were insured by PIC."

Landon also testified that when he formed PIC, he intended to give Bliss her 50 percent share in the company as a gift. Landon explained that he had directed his attorneys and accountants to "start a company" using the assets BJM had acquired from UPIC, and to "give Bliss 50 percent of the stock." When asked why he had not put any language in PIC's corporate documents clarifying that Bliss's 50 percent share in PIC was a gift, Landon explained: "[T]here was nobody else involved. It was just my wife and I giving our daughter 50 percent of the stock. . . . I didn't see any reason to have any gift letter."

Landon also explained that at some point after PIC was formed, he gifted Bliss an additional one percent share of the company because he believed a "female owned company . . . had some advantages in the marketplace." Landon could not recall exactly when he gave Bliss this additional one percent share, and conceded the transfer was not documented. He confirmed, however, that PIC's 2001 tax return listed Bliss as the owner of 51 percent of the company, and the Landon Family Trust as the owner of the remaining 49 percent. Landon further testified that Bliss never "put a dime" of her own money into PIC.

Landon's accountant, Leonard Esmond, testified about the restructuring of the promissory notes PIC had initially entered into with BJM. Esmond stated that he had advised Landon to restructure the loans so that PIC's two shareholders (Bliss and the Landon Family Trust) would have a "tax basis" in the



company that would allow them to take advantage of PIC's \$203,000 operating loss in 2001. Esmond explained that under the loan restructuring, "Bliss and [the Landon Family Trust would] became direct lenders to PIC," and "indebted to BJM." Esmond further testified that in August of 2002, the parties signed a series of documents that obligated PIC to pay Bliss 51 percent of the debt it formerly owed to BJM, and pay the Landon Family Trust the remaining 49 percent. A second series of documents obligated Bliss and the Landon Family Trust to pay those same amounts to BJM. According to Esmond, the loan restructuring was "set up [solely] for purposes of [claiming PIC's] loss."

Esmond further testified that although he believed the restructured notes were legitimate and enforceable, he was uncertain whether Bliss had ever made or received any payments under the notes, clarifying that PIC may have made the payments "directly to BJM." Esmond also confirmed that the amounts set forth in the promissory notes had been fully repaid to BJM several years before Kirk initiated the marital dissolution.

The parties each called expert witnesses to testify about the value of PIC and ASG, and to provide their opinions as to what factors had caused the businesses' increase in value during the marriage.

### *3. The trial court ruling*

After receiving written closing arguments, the court issued a 19-page tentative decision concluding that Bliss's interest in PIC was her separate property because the company was effectively a continuation of UPIC: "It is apparent from the

uncontroverted evidence that UPIC and PIC are identical businesses save for ownership. Essentially UPIC closed one day and PIC opened the next. [Kirk] argues that this ownership change created a new business during marriage. . . . In fact, however, it did not create a ‘new’ business. . . . In the transition from UPIC to PIC, the same employees serviced the same customers, in the same office from the same desks, using the same computers, in the same way, both before and after what was essentially no more than a name change. It was a seamless transition for both the customers and employees. Equally importantly, it was seamless to the community. [Bliss’s] duties and obligations did not change, nor did the duties and obligations of the community. . . .”

The court further concluded that the evidence showed Landon had “gifted” Bliss her share in PIC, explaining there was “no credible evidence . . . any other outcome . . . can be reached.” Based on these findings, the court awarded PIC to Bliss as “her sole and separate asset.”

The court also found that the *Van Camp* method, rather than the *Pereira* method, was appropriate to evaluate whether the community was entitled to reimbursement for the increase in PIC’s value that had occurred during the marriage.<sup>3</sup> Applying

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<sup>3</sup> Courts generally employ one of “two distinct” methods of allocating business “profits accruing from . . . separate property.” (*Beam v. Bank of America* (1971) 6 Cal.3d 12, 17.) “The *Pereira* approach [see *Pereira v. Pereira* (1909) 156 Cal. 1] is to allocate a fair return to the separate property investment and allocate the balance of the increased value to community property as arising from community efforts. [Citation.] The *Van Camp* approach [*Van Camp v. Van Camp* (1921) 53 Cal.App. 17] is to determine the reasonable value of the community’s services, allocate that

the *Van Camp* method, the court concluded Bliss had been overcompensated for her services to PIC, and therefore owed no reimbursement to the community.

The court made similar findings regarding ASG (Kirk's company), concluding that: (1) ASG was Kirk's "sole and separate property"; (2) applying the *Van Camp* method, Kirk did not owe the community any reimbursement for ASG's increase in value.

Kirk filed a request for a statement of decision (see Code Civ. Proc., § 632) "explaining the factual and legal bases" for 32 categories of findings set forth in the court's tentative decision. Kirk requested, for example, that the court identify "All legal and factual bases upon which the Court concluded that PIC was not a new business"; "All factual and legal bases upon which the Court determined that the transition from UPIC to PIC was essentially no more than a name change"; and "All legal and factual bases for the Court's conclusion that . . . Marvin Landon gifted the . . . ownership in PIC to [Bliss], not to the community."

The court thereafter issued an order adopting its tentative ruling, and confirming that "f[rom] the community's perspective, the transition from UPIC to PIC . . . was no more than a continuation of a pre-existing separate property enterprise." The

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amount to community property and the balance to separate property. [Citations.]" (*In re Marriage of Dekker* (1993) 17 Cal.App.4th 842, 852-853 (*Dekker*)). "*Pereira* is typically applied where business profits are principally attributed to efforts of the community. [Citations.] Conversely, *Van Camp* is applied where community effort is more than minimally involved in a separate business, yet the business profits accrued are attributed to the character of the separate asset. [Citations.] The court has discretion to choose whichever formula will effect substantial justice." (*Id.* at p. 853.)

court declined to address Kirk’s request for a statement of decision, which it characterized as “essentially a series of interrogatories which the Court is not obligated to answer.”

## DISCUSSION

The sole argument Kirk raises in this appeal is that there is insufficient evidence to support the trial court’s determination that Bliss’s interest in PIC is her separate property.<sup>4</sup> More specifically, he argues there is insufficient evidence to support the court’s finding that PIC was merely a continuation of a pre-marriage business enterprise, and that, even if construed as a new and separate business, Bliss received her interest in PIC as a gift. For the reasons explained below, we affirm the court’s finding that Bliss obtained her interest in PIC as a gift.<sup>5</sup>

### *A. Standard of Review*

A trial court’s determination whether property is community or separate in character is generally reviewed under the substantial evidence standard. (*Beam, supra*, 6 Cal.3d at p. 25 [“The finding of a trial court that property is either separate or community in character is binding and conclusive on the

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<sup>4</sup> Kirk has not appealed any issue regarding the court’s valuation of PIC, or its determination that, if construed as her separate property, Bliss does not owe the community any reimbursement for the increase in PIC’s value.

<sup>5</sup> Because we affirm the court’s finding that Bliss received her interest in PIC as a gift, we need not address the court’s alternative finding that PIC was a continuation of a pre-marriage business enterprise.

appellate court if it is supported by sufficient evidence, or if it is based on conflicting evidence or upon evidence that is subject to different inferences . . .”]; see also *Dekker, supra*, 17 Cal.App.4th at p. 849 [“Appellate review of a trial court’s finding that a particular item is separate or community property is limited to a determination of whether any substantial evidence supports the finding”].) Under this standard, ““the power of an appellate court begins and ends with the determination as to whether there is any substantial evidence contradicted or uncontradicted which will support the finding of fact.” [Citations.] “[W]e have no power to judge of the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom.” [Citations.] Our role is limited to determining whether the evidence before the trier of fact supports its findings. [Citation.]” (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 766 [italics omitted].)

When the underlying facts are undisputed, however, we review the trial court’s determination that property is separate or community in character under the de novo standard. (*In re Marriage of Rossin* (2009) 172 Cal.App.4th 725, 735 (*Rossin*).)

***B. Substantial Evidence Supports the Trial Court’s Finding that Bliss’s Interest In PIC Was a Gift***

““[T]he status of property as community or separate is normally determined at the time of its acquisition.” [Citations.] [Citation.]” (*In re Marriage of Fabian* (1986) 41 Cal.3d 440, 445.) Under Family Code section 770, “all property that a [spouse] acquires after marriage by gift” qualifies as his or her “separate property.” (Fam. Code, § 770, subd (a)(2).)

“[W]hether a transfer of [property] was a gift . . . presents [a] question[] of fact.” (*Burkle v. Burkle* (2006) 141 Cal.App.4th 1029, 1036.) “The elements of a gift are: ‘(1) competency of the donor to contract; (2) a voluntary intent on the part of the donor to make a gift; (3) delivery, either actual or symbolical; (4) acceptance, actual or imputed; (5) complete divestment of all control by the donor; and (6) lack of consideration for the gift.’ [Citation.]” (*Id.* at p. 1036, fn. 5.) Kirk essentially argues Bliss failed to establish the second and sixth elements, asserting there was insufficient evidence to support a finding that her shares in PIC were intended as a gift, and that she provided no consideration in exchange for those shares.

At trial, Bliss’s father, Marvin Landon specifically testified that he intended to give Bliss her 500 shares in the company as a gift. Landon explained that he directed his company, BJM, to purchase UPIC’s assets, and assign them to the newly formed PIC. According to Landon, all of PIC’s equipment, furniture, accounts and receivables consisted of the assets BJM had previously acquired from UPIC. Landon also testified that he instructed his accountants and lawyers to structure PIC so Bliss would receive a 50 percent interest in the company as a gift, and emphasized that Bliss did not pay “a dime” of her own money to obtain her interest in the company.<sup>6</sup>

Landon’s testimony was supported by several documents related to BJM, UPIC and PIC. A bill of sale and the reports of

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<sup>6</sup> Landon also testified that he subsequently gifted Bliss an additional one percent share of the company, making her the majority owner. Kirk does not dispute there was “credible evidence” to support a finding that Landon gifted this additional one percent share.

the receiver who oversaw UPIC's dissolution showed BJM had acquired all of UPIC's assets at foreclosure, which included "Office furniture and furnishings," "Office equipment" and "accounts receivable due to [UPIC]." An "Assignment of Assets" that Landon signed in his capacity as manager of BJM confirmed BJM had assigned all assets it had acquired in UPIC to PIC. Finally, the Consent that Bliss and Landon signed in their capacity as PIC's directors states that Landon (in his capacity as trustee of the Landon Family Trust) and Bliss each provided \$50,000 in consideration for their respective shares in the company, and that the consideration consisted of "furniture, equipment, accounts and receivable to the corporation, having a total value of \$100,000." The Consent also authorized PIC to enter into a \$200,000 promissory note with BJM in exchange for additional "accounts receivable."

The court could reasonably conclude from Landon's testimony and the information set forth in the documents that Bliss obtained her interest in PIC as a gift. That evidence demonstrates Landon intended Bliss's interest in PIC to be a gift, and that she paid nothing for it. Indeed, at trial, Kirk presented no evidence that Bliss used any separate or community assets to acquire her interest in PIC. Nor did Kirk present any evidence to rebut Landon's testimony that BJM provided all of the assets used to capitalize PIC, including its furniture, equipment, accounts and receivables.

Kirk nonetheless contends there are three reasons why Bliss's share in PIC cannot be deemed a gift. First, he argues the Consent "clearly and unambiguously" states that PIC "sold" 500 shares to Bliss, and that she provided \$50,000 in "consideration" for the shares. According to Kirk, this language shows she did in

fact purchase her shares in the company. As discussed above, however, the Consent specifically identifies the “consideration” PIC received for the shares as “furniture, equipment, accounts and receivable to the corporation.” Landon, in turn, identified these items as the assets BJM had acquired from UPIC, and then assigned to PIC. He also confirmed Bliss did not pay any of her own money to capitalize PIC, or to acquire her 50 percent interest in the company. This evidence supports the trial court’s finding that, despite the wording of the Consent, Bliss did not actually pay for her shares, but rather received them for no consideration.<sup>7</sup>

Second, Kirk argues that, as a matter of law, Landon could not have gifted Bliss her shares in PIC because BJM, not Landon, owned the UPIC assets that were used to capitalize PIC. As stated in Kirk’s closing trial brief, “[Landon] could not ‘gift’ \$50,000 in assets to Bliss since there was no evidence he ever owned them.” It is undisputed, however, that Landon controlled BJM. Thus, the trial court could reasonably infer that even if Bliss received the assets that were used to secure her shares in PIC from BJM, rather than from Landon personally, Landon nonetheless caused BJM to give Bliss those assets. Simply put,

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<sup>7</sup> In a related argument, Kirk appears to contend Bliss’s shares in PIC cannot be deemed a gift because there is no document that expressly identifies them as such. Kirk, however, has cited no legal authority supporting the proposition that a gift may only be established through an express written instrument. Landon’s testimony that he intended the shares to be a gift, combined with the information set forth in the Consent, is sufficient to support the court’s finding of a gift. (See generally *Crane v. Reardon* (1933) 217 Cal. 531, 532-533 [delivery of written instrument sufficient to demonstrate gift].)



we find it immaterial whether Landon personally gifted Bliss her share in PIC, or whether he caused BJM to do so. In either event, there is substantial evidence that Bliss's 500 shares were intended as a gift, and that she received them without providing any form of consideration.<sup>8</sup>

Finally, Kirk argues Bliss's interest in PIC was not a gift because, approximately eight months after acquiring that interest, she signed a promissory note that obligated her to pay BJM 51 percent of the debt PIC owed to it. As explained above, Landon's accountant testified that to enable Bliss and the Landon Family Trust to claim PIC's operating loss in 2001, the parties signed a series of promissory notes that "recast" PIC's debt to BJM. Under these restructured notes, PIC agreed to pay Bliss 51 percent of the debt it owed to BJM, and pay the Landon Family Trust the remaining 49 percent of the debt<sup>9</sup>; Bliss and the Trust, in turn, agreed to pay BJM those same amounts. The accountant clarified he was uncertain whether Bliss had ever received or made any payments under the restructured notes, or

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<sup>8</sup> Kirk argues, as he did in the trial court, that Landon is judicially estopped from asserting he caused BJM to give Bliss her share in PIC because, in prior legal filings, Landon asserted he was not BJM's alter ego. However, Kirk has failed to explain why Landon, who was the manager and controlling member of BJM, would have to be BJM's alter ego to cause BJM to give Bliss her share in PIC.

<sup>9</sup> The parties do not dispute these percentages reflect each shareholder's respective ownership interest in PIC at the time the loans were restructured. Although Bliss and the Landon Family Trust each initially owned 50 percent of the company, Landon subsequently gifted Bliss an additional one percent share.

whether PIC had paid the amounts due directly to BJM. In any event, it is undisputed that all of the debts reflected in the notes were repaid.

Kirk contends these notes show Bliss did in fact pay for her interest in PIC, and therefore the interest was not a gift. More specifically, he asserts that by making herself (and presumably the community) liable to BJM for 51 percent of the amount it had previously lent to PIC, she effectively “purchased” her share in PIC.

The evidence shows, however, that the loan restructure did not occur until eight months after Bliss had acquired her interest in PIC. “[W]ell-settled case law recognizes [that] ‘[t]he character of the property as separate or community is fixed as of the time it is acquired; and the character so fixed continues until it is changed . . . as by agreement of the parties.’” [Citations.]” (*Rossin, supra*, 172 Cal.App.4th at p. 732; see also *Fabian, supra*, 41 Cal.3d at p. 445.) Thus, absent a transmutation,<sup>10</sup> “property [that] is separate at the time of its acquisition . . . ‘remains so with the exception of such increase thereof as may have been due to the contribution of the community by virtue of capital or industry.’ [Citation].” (*In re Marriage of Aufmuth* (1979) 89 Cal.App.3d 446, 454 [disapproved of on other grounds in *In re Marriage of Lucas* (1980) 27 Cal.3d 808]; see also *Rossin, supra*, 172 Cal.App.4th at p. 732.)

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<sup>10</sup> “A transmutation is an interspousal transaction or agreement that works a change in the character of the property.’ [Citation.]” (*Rossin, supra*, 172 Cal.App.4th at p. 734.) To be valid, a “transmutation of real or personal property . . . [must be] made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.” (Fam. Code, § 852, subd. (a).)

As discussed above, there is substantial evidence that, at the time of acquisition, Bliss received her interest in PIC as a gift, rendering it her separate property. Kirk concedes that there was no transmutation of the property. It therefore remains Bliss's separate property.<sup>11</sup>

### DISPOSITION

The judgment is affirmed.

ZELON, Acting P. J.

We concur:

SEGAL, J.

BENSINGER, J.\*

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<sup>11</sup> Kirk has not argued that the promissory notes Bliss entered into with PIC and BJM increased the value of PIC, or that the community is entitled to any such increase. (See *Rossin, supra*, 172 Cal.App.4th at p. 733 [“If [property] was separate [at the time of acquisition], it continues to remain so, with the exception of [any increase in value attributable] to the contributions of the community by virtue of capital or industry”].) The evidence in the record suggests PIC did not gain any direct economic benefit from the promissory notes, which were intended solely to allow Bliss and the Landon Family Trust to claim PIC's operating loss on their individual taxes. The only effect the debt restructuring had on PIC was to change the identity of its lender: Prior to the restructuring, PIC owed those amounts to BJM; after the restructuring, it owed those amounts to Bliss and the Trust.

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