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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ANASTASIA POPOVA, Plaintiff and Respondent, v. ILIA ZAVIALOV, Defendant and Appellant.	B269591 (Los Angeles County Super. Ct. No. BD588375)

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

Ferguson Case Orr Paterson, Wendy C. Lascher and John A. Hribar for Defendant and Appellant.

Elkins Kalt Weintraub, Reuben Gartside and Thomas Paine Dunlap for Plaintiff and Respondent.

* * * * * *

In this dissolution action, the trial court ruled that (1) the husband during the marriage validly granted the wife an apartment complex in Texas as her sole and separate property, and (2) the husband was not entitled to reimbursement for the merchant account balances and undistributed earnings of one of their businesses that wife obtained as part of a pretrial settlement. Husband challenges both rulings in this appeal. We conclude there was no error, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

A. *Marriage*

Ilia Zavialov (husband) and Anastasia Popova (wife) married in May 2003. They had a child in 2011.

In early summer 2013, wife learned that husband had a mistress and a child by that mistress. On August 26, 2013, wife moved out of their home upon learning that husband had a second mistress and a child by *that* mistress. (By 2015, husband had four children out of wedlock.)

Wife filed for dissolution on September 6, 2013.

B. *Dream Marriage Group*

In 2003, husband and wife founded an online business to match American men with women from Russia and the Ukraine. The business was called Dream Marriage Group, Inc. (Dream Marriage). Husband and wife owned related businesses that matched American men with women from Asia, Africa, and Latin America.

Dream Marriage charges its male patrons for various levels of "access" to women, and most of them pay using credit cards. The credit card companies require Dream Marriage to maintain "merchant reserve" accounts, typically in an amount equal to 10 percent of the last six months' credit card charges, to compensate

them in the event of bogus credit card transactions.

Dream Marriage is organized as an S Corporation, which means it passes through all of its profits to its owners.

C. *Heather Village*

1. *Initial purchase*

In 2011, husband and wife purchased a 27-building, 170-unit apartment complex on 7.6 acres on the outskirts of Fort Worth, Texas for approximately $1.5 million. The complex is called Heather Village. Immediately after the purchase, Husband and Wife formed Heather Village, LLC (Heather Village or the LLC). Husband and wife owned the LLC, were each 50 percent owners of the LLC, and were named as the LLC's two managers.

At the time of purchase, the 1977-built complex was "dilapidated" and needed "a great deal of work." Only 17 of its units were occupied, and that occupation was illegal because the complex had lost its certificate of occupancy. The complex had been "red tagged" by the City of Fort Worth, and had been vandalized.

2. *Renovation*

Husband and wife began to renovate the complex. By early 2013, they had spent between $500,000 and $1.2 million to renovate some but not all of the units. Even with these renovations, the complex was still less than 70 percent occupied. Sometime in 2012 or 2013, the LLC was sued by an unpaid contractor.

In 2013, husband told wife that Heather Village was a "money pit" with "too many problems," and that he wanted to "sell it" because it was "making us bankrupt." In an e-mail dated August 28, 2013, husband stated that the LLC would have "to try

new management as we are completely out of time and out of money."

3. *Assignment of interest*

Two days later, on August 30, 2013, husband executed a document entitled "Assignment of Membership Interest" (the Assignment). In the Assignment, husband stated that for $10 and "other good and valuable consideration," husband did "hereby grant, assign, convey, transfer, and deliver unto" wife "a fifty percent (50%) 'Membership Interest'" in "Heather Village, L.L.C." "to have and to hold . . . , together with all the rights and appurtenances thereto in anywise belonging." Husband also "represent[ed] and warrant[ed]" to wife "that this Assignment is an assignment of all of [husband's] Membership Interest in the" LLC. The Assignment was signed by husband in the state of Washington.[1]

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1 In fuller, pertinent part, the Assignment provides:

"That, in for and in consideration of Ten Dollars and No/100 ($10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed by the 'Assignor' (as hereinafter defined), and pursuant to the terms and provisions set forth in this Assignment of Membership Interest (this 'Assignment'), ILIA ZAVIALOV, an individual ('Assignor'), does hereby grant, assign, convey, transfer, and deliver unto ANASTASIA POPOVA, an individual (the 'Assignee'), the following:

"With respect to Heather Village, L.L.C., a Texas limited liability company (the 'Company'), a fifty percent (50%) 'Membership Interest' (as such term is defined in and evidenced by that certain Company Agreement of Heather Village, L.L.C. [the 'Company Agreement'] dated as of March 11, 2011) in the Company (the aforesaid Membership Interest in the Company being assigned is hereinafter referred to as the 'Assigned

Husband and wife provided differing accounts of why husband executed the Assignment.

Husband offered two inconsistent explanations. Initially, husband insisted that he did so based on wife's oral agreement to "remain married" to him and that he would not have executed the Assignment if he knew she was going to file for divorce. Later, however, husband insisted that he executed the Assignment "to make sure [wife] feels [financially] secure" after wife mentioned being concerned about her "financial security"; husband specifically and repeatedly *denied* that wife ever agreed to

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Interest'), free and clear of all encumbrances, security interests, liens, charges, claims and restrictions on the transfer thereof, subject, however, to the terms and provisions of the Company Agreement.

"TO HAVE AND TO HOLD the Assigned Interest, together with all the rights and appurtenances thereto in anywise belonging, unto Assignee, and her heirs, personal representatives and assigns forever. Assignor does hereby bind himself and his heirs, personal representatives and assigns to forever warrant and defend title to the Assigned Interest unto Assignee, and its successors and assigns, against the claims of any and all persons whomsoever.

"Assignor represents and warrants to Assignee that Assignor (i) has the full power, right and authority to execute and deliver this Assignment and to assign the Assigned Interest; (ii) has not sold, assigned, transferred, mortgaged or pledged any of the Assigned Interest except pursuant to this Assignment and that this Assignment is an assignment of all of Assignor's Membership Interest in the Company; and (iii) has not executed any other document or instrument that would prevent Assignee from realizing the benefits of the terms, conditions and provisions of this Assignment." The Company Agreement referenced in the Assignment was never admitted into evidence.

remain married to him.

Wife explained that she approached husband in early August 2013, after she learned about his "second family." In that conversation, wife told husband that she "felt insecur[e] about the future and [her] financial situation" and, in response, husband offered to give her Heather Village. She did not plan on filing for divorce at that time, and only did so after learning about his "third family" in late August 2013.

4. *Post-Assignment conduct*

Following execution of the Assignment, wife took over all decisionmaking regarding the complex and, on her own, continued to renovate apartments in the complex, investing an additional $733,000 to that end. She resolved the pending lawsuit and repaired the vandalism damage to the complex.

Following execution of the Assignment, husband did not spend any more money on, or take any further action regarding, the complex. In an October 2, 2013 e-mail, husband told the complex's local manager that he was no longer "on any docs of the company" and that wife "is a sole owner" of the complex.

II. Procedural Background

A. *Dissolution Petition and Pretrial Acts*

1. *The petition itself*

On September 6, 2013, wife filed for dissolution.

2. *Order regarding control of Dream Marriage*

On October 31, 2014, the trial court granted wife exclusive temporary use, possession, and control over Dream Marriage. Husband and wife also agreed to distribute, each month, $50,000 of Dream Marriage's earnings to each spouse.

3. *Pretrial settlement*

A few weeks before trial in August 2015, husband and wife signed a written settlement agreement resolving several outstanding issues regarding division of the marital assets (pretrial settlement).

The parties divided their real estate. Husband was to keep 11 properties (three in Washington state, one in Las Vegas, three in Wyoming, and four others). Wife was to keep four properties (one in Las Vegas and three in Texas).

The parties divided their vehicles. Husband was to keep the airplane, five boats, one Harley Davidson motorcycle, the Maybach, three Mercedes-Benz, the Land Rover, and three other cars. Wife was to keep three Mercedes-Benz.

The parties divided their businesses. Husband was to keep 22 businesses along with four websites, including Asian Girls Online, Latin Girls Network, and African Date. Wife was to keep Dream Marriage.

The parties purposely did not list any values for the real estate, vehicles, or the businesses. Instead, they mutually agreed that "[t]he division of assets as set forth hereinabove constitutes a substantially equal division of all community property with the exception of the characterization and value of Heather Village which is not included in this settlement and shall be a trial issue."

The parties listed four issues to be "excluded from this settlement" and to "be resolved at trial": (1) "[c]haracterization and value of Heather Village"; (2) "[c]hild support"; (3) "[s]pousal [s]upport"; and (4) "[r]eimbursement claims by both parties."

B. *Trial*

The parties proceeded to a four-day bench trial.

With respect to Heather Village, wife contended that the Assignment converted the complex to her separate property; husband maintained it did not.

With respect to claims that the spouses were required to reimburse the community, husband by the time of trial articulated 54 categories of reimbursement claims totaling $5.8 million, which was nearly four times the amount he initially sought. Among those claims were reimbursement for (1) the amounts held in Dream Marriage's merchant reserve accounts, and (2) all earnings not distributed by Dream Marriage for the first six months of 2015.

1. *Mid-trial settlement*

Midway through trial, the parties fixed the amount of child support and spousal support; agreed that each spouse would bear his or her own attorney's fees; and agreed to one item of reimbursement.

2. *Resolution of remaining issues by trial court*

i. Heather Village

The trial court ruled that (1) the Assignment transmuted husband's community property interest in Heather Village into wife's separate property, and (2) this transmutation was not the product of wife breaching her fiduciary duty to husband. As to transmutation, the court ruled that "the language in the Assignment"—namely, that husband was "granting, assigning, conveying, transferring, and delivering" "the entirety" of his membership interest—was "clear" enough and "sufficient" "to transfer ownership." Thus, the court noted, "[b]oth in word and deed [husband] clearly transferred his interest to [wife]." As to

breach of fiduciary duty, the court found that it was a close question whether wife's acquisition of Heather Village—which was "a very distressed [and] very troubled property"—constituted an "unfair advantage" that triggered the statutory presumption of undue influence. However, the court went on to find that wife had rebutted the presumption because there was "no evidence" that wife did anything that would "rise to the level of duress . . . , fraud," or a "level of inappropriate activity or behavior."

ii. Reimbursements

In the aggregate, the trial court found that husband owed the community reimbursement of $1,748,904 and that wife owed the community reimbursement of $738,996; the net result was that husband owed the community $1,009,908.

As pertinent to this appeal, the court rejected husband's claims that wife was required to reimburse the community for (1) the funds in Dream Marriage's merchant reserve accounts, or (2) any undistributed earnings from Dream Marriage.

As to the merchant reserve accounts, the court ruled that those funds were "not a cash asset of the business" because, as husband himself conceded, those funds were necessary for the business to continue to operate. Consequently, those funds were accounted for in the value of Dream Marriage that was allocated to wife in the pretrial settlement. Because, in the trial court's view, it was inappropriate to "value the business and then siphon out the cash," the court ruled wife was not required to reimburse the community for those account balances.

As to the undistributed earnings, the court concluded that Dream Marriage's profits for the first six months of 2015 were included "in the value of Dream Marriage" allocated to wife in the pretrial settlement in August 2015. The court nevertheless

ordered that wife hold husband harmless for any taxes imposed on those earnings.

C. *Judgment and Appeal*

Following entry of judgment, husband filed a timely notice of appeal.

DISCUSSION

Husband challenges the trial court's ruling (1) that Heather Village is wife's separate property, and (2) that wife is not required to reimburse the community for the balance of Dream Marriage's merchant reserve accounts or its undistributed earnings.

I. Heather Village

In assailing the trial court's ruling regarding Heather Village, husband contends that (1) the Assignment was not a valid transmutation of his community property interest in Heather Village into wife's separate property, and (2) the Assignment was in any event the product of wife's breach of her fiduciary duty to husband.

A. *Transmutation*

As a general rule, property acquired during marriage is community property. (*In re Marriage of Valli* (2014) 58 Cal.4th 1396, 1400 (*Valli*); Fam. Code, § 760.)[2] Under this rule, Heather Village would be community property because it was acquired in 2011, while husband and wife were married.

Transmutation is one exception to this general rule and provides that one spouse can transmute—that is, can convert—property that would otherwise be community property into the separate property of one spouse. (§ 852.) However, a

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2 All further statutory references are to the Family Code unless otherwise indicated.

transmutation is valid only if it is "made in writing by an *express declaration* that is made . . . by the spouse whose interest in the property is adversely affected." (§ 852, subd. (a), italics added.) An "'express declaration'" is one that "contains language which expressly states that the characterization or ownership of the property is being changed." (*Estate of MacDonald* (1990) 51 Cal.3d 262, 272 (*MacDonald*).) Because the requisite declaration must be express, we are confined to examining only the writing "without resort to extrinsic evidence." (*In re Marriage of Starkman* (2005) 129 Cal.App.4th 659, 664 (*Starkman*); *MacDonald*, at pp. 271-272.) And because we are looking only to the writing, our review is de novo. (*In re Marriage of Lafkas* (2015) 237 Cal.App.4th 921, 932 (*Lafkas*).)

An express declaration is most obvious when the writing uses the words "transmute," "community property," or "separate property." (E.g., *In re Marriage of Lund* (2009) 174 Cal.App.4th 40, 51-52 (*Lund*).) But these words are not required. (*MacDonald*, *supra*, 51 Cal.3d at p. 273; *Starkman*, *supra*, 129 Cal.App.4th at p. 664; *In re Marriage of Holtemann* (2008) 166 Cal.App.4th 1166, 1173 (*Holtemann*).)

When these words are not used, we must study the writing's language carefully. Fortunately, prior cases sketch out what is and is not enough to effect a transmutation. On the one hand, it is not enough (1) if one spouse designates himself the sole primary beneficiary of a retirement account with the other spouse's consent (*MacDonald*, *supra*, 51 Cal.3d at p. 272 [account bought with community property remains community property]; (2) if one spouse buys a life insurance policy naming the other as the policy's sole owner and beneficiary (*Valli*, *supra*, 58 Cal.4th at pp. 1399, 1406-1407 [policy bought with community property

remains community property]; (3) if one spouse who owns a partnership interest as his separate property adds the other spouse's name as a "co-owner" (*Lafkas*, *supra*, 237 Cal.App.4th pp. 933, 938-939 [separate property asset remains separate property]; (4) if one spouse "transfers" a stock certificate to the other spouse (*In re Marriage of Barneson* (1999) 69 Cal.App.4th 583, 588-591 (*Barneson*) [stock bought with community property remains community property]; or (5) if both spouses agree to escrow instructions that divide real estate proceeds "50/50" (*In re Marriage of Leni* (2006) 144 Cal.App.4th 1087, 1096 [proceeds of property bought with community property remain community property]). On the other hand, and more to the point here, our Supreme Court in *MacDonald* said it *is* enough if the writing says, "'I give to the account holder any interest I have in'" the asset at issue. (*MacDonald*, at p. 273; accord, *In re Marriage of Stoner* (1983) 147 Cal.App.3d 858, 861, 864 [under pre-section 852 law, quitclaim deed disclaiming all interest in property effects a transmutation].)

Under this constellation of precedent, the language in the Assignment constitutes an express declaration sufficient to transmute Heather Village to wife's separate property. That is because the Assignment provides that husband "grant[s], assign[s], convey[s], transfer[s], and deliver[s]" his 50 percent "Membership Interest" in Heather Village to wife. Critically, the Assignment also contains husband's warranty that he was "assign[ing] [to wife] . . . all of [his] Membership Interest" in Heather Village. This declaration and the declaration approved as sufficient in *MacDonald* are functionally indistinguishable. Indeed, the only notable distinction is that the Assignment uses the words "grant, assign, convey, transfer, and deliver," while the

language in *MacDonald* used the word "give," but these terms are interchangeable for these purposes (*Estate of Bibb* (2001) 87 Cal.App.4th 461, 468-469 [so holding]).

Husband offers what boils down to five categories of arguments against this conclusion.

First, husband argues that the Assignment did no more than (1) put husband's 50 percent community property interest in wife's name, which he claims is insufficient to effect a transmutation under *Lafkas*, *supra*, 237 Cal.App.4th at page 939, *Valli*, *supra*, 58 Cal.4th at pages 1399, 1406-1407, and *Barneson*, *supra*, 69 Cal.App.4th at pages 583, 588-591; (2) cede wife operational control of Heather Village; or, at most, (3) grant wife husband's 50 percent interest in Heather Village, but did not transfer husband's ownership of half of wife's 50 percent interest in Heather Village, which was community property and hence half his. The flaw common to all of these arguments is that they ignore the language of the Assignment in which husband "assign[s]" "*all* of [his] Membership Interest" in Heather Village to wife. (Italics added.) We also reject husband's further argument that the assignment of his entire "*Membership* Interest" somehow excludes (and thus left him in possession of) some *other* type of interest in Heather Village because there is no evidence he has any interest in the property or in the LLC beyond his "Membership Interest." At bottom, husband seems to suggest that the Assignment did not really change much of anything, but we are loathe to construe a contract in a way that renders it illusory (and accordingly void). (*Scottsdale Ins. Co. v. Essex Ins. Co.* (2002) 98 Cal.App.4th 86, 94-95 [contract that lacks mutual exchange of promises is illusory and hence invalid]; Civ. Code, § 1643 ["A contract must receive such an

interpretation as will make it lawful, operative . . . and capable of being carried into effect"].)

Second, husband offers a number of hypothetical questions that, in his view, illustrate why transmutation makes no sense in this case. Specifically, he asks: Would there be "cross-transmutation" if husband and wife had swapped their 50 percent interests in Heather Village, and would there have been a transmutation if the spouses had put Heather Village entirely in wife's name when they acquired it? These hypothetical questions are unhelpful because they bear no relation to the facts of this case and, more to the point, they do not account for husband's disclaimer of all interest in Heather Village, which is the linchpin of the analysis of transmutation in this case.

Third, husband contends that the law related to transmutation counsels against a finding of transmutation in this case because (1) the Assignment nowhere uses the words "transmute," "community property," or "separate property," and (2) a finding of transmutation effectively adopts the dissent in *MacDonald*. As explained above, there are no magic words that must always be uttered to effect a transmutation. (*MacDonald*, *supra*, 51 Cal.3d at p. 273; *Starkman*, *supra*, 129 Cal.App.4th at p. 664; *Holtemann*, *supra*, 166 Cal.App.4th at p. 1173.) Further, it is the *majority* opinion in *MacDonald*—and, in particular, its observation that the words "'I give to the [other spouse] any interest I have in'" the property (*MacDonald*, at p. 273)—that largely dictates the result in this case; it is not the dissent.

Fourth, husband cites *Ieremia v. Hilmar Unified School Dist.* (2008) 166 Cal.App.4th 324. But *Ieremia* addresses whether a spouse's community property interest in a car renders her an

"owner" within the meaning of the statute barring recovery of noneconomic damages for vehicle owners who are uninsured. (*Id.* at pp. 329-332, citing Civ. Code, § 3333.4, subd. (a)(2).) *Ieremia* concluded that the answer was "no," and that this conclusion did not affect the status of the spouse's community property interest in the car. (*Id.* at p. 332.) *Ieremia*'s construction of Civil Code section 3333.4 sheds no light on what does or does not constitute a transmutation.

Lastly, husband asserts that the trial court's reference to husband's "word and deed" while examining the issue of transmutation is proof that the court impermissibly looked to extrinsic evidence. Because we are engaged in de novo review and are therefore concerned solely with the propriety of the trial court's result and not its reasoning (*People v. Chism* (2014) 58 Cal.4th 1266, 1295, fn. 12), any misstep in the trial court's reasoning does not affect our analysis, which rests solely on the Assignment's text.

We accordingly conclude that the Assignment transmuted Heather Village into wife's separate property under California law.[3]

B. *Breach of Fiduciary Duty*

A spouse may transmute community property into the separate property of the other spouse for no consideration. (§ 850, subd. (a).) If he does, however, courts will presume that the transmutation was the product of undue influence in derogation of the general fiduciary duty that spouses owe one another. (*In re Marriage of Haines* (1995) 33 Cal.App.4th 277,

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3 Because California law on transmutation is more onerous than its counterpart in Texas, we have no occasion to analyze the issue under Texas law.

287 ["when an interspousal transaction advantages one spouse over the other, a presumption of undue influence arises"]; *In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 717, 730-731 [spouse obtains "unfair advantage" when she obtains property from other spouse for "no consideration"]; see generally § 721, subd. (b) [spouses owe each other "a duty of the highest good faith and fair dealing . . . and neither shall take any unfair advantage of the other"].) This presumption of undue influence may be rebutted if the spouse receiving the property shows, by a preponderance of the evidence, that the transmutation "'[(1)] was freely and voluntarily made, [(2)] with full knowledge of all the facts, and [(3)] with a complete understanding of the effect of' the transaction." (*Burkle*, at pp. 738-739; *In re Marriage of Mathews* (2005) 133 Cal.App.4th 624, 630-631; *Lund*, *supra*, 174 Cal.App.4th at p. 55.) We review a trial court's findings that the presumption has been triggered or rebutted for substantial evidence. (*Burkle*, at p. 734; *Mathews*, at p. 632.)

We need not decide whether wife obtained an "advantage" or "unfair advantage" when husband gave her Heather Village in its still largely dilapidated state because, even if she did and even if this transaction triggers the presumption of undue influence, substantial evidence supports the trial court's finding that wife rebutted that presumption. Husband's execution of the Assignment was "free[] and voluntar[y]"; he signed it while in a different state and without any pressure from wife do to so. Further, both husband and wife testified that giving wife Heather Village was *husband's* idea. Husband's transmutation was also made "with full knowledge of all the facts" because he knew wife wanted some financial security, believed that assigning her Heather Valley would give her that security, and

executed the Assignment with that goal in mind. And husband had "a complete understanding of the effect of the transaction." Not only was the Assignment's language clear, but husband just five weeks later confirmed that the Assignment rendered wife the "sole owner" of Heather Village.

Husband asserts he did *not* act with full knowledge because he did not know, at the time he executed the Assignment, that wife was planning to divorce him. We reject this argument for two reasons. First, husband made clear at trial—contrary to his earlier position—that his decision to execute the Assignment was *not* based on any promise by wife to remain married to him. Thus, his ignorance of his wife's alleged intention to divorce him was by his own testimony irrelevant to his decision. Second, husband executed the Assignment (on August 30), which was four days *after* wife moved out (on August 26), which supports the finding that husband was in any event well aware that wife was not planning to remain with him when he executed the Assignment.

II. Reimbursement

Husband argues that the trial court erred in denying him reimbursement for two aspects of the Dream Marriage business—namely, (1) the funds in its merchant reserve accounts, and (2) the company's undistributed earnings for the first six months of 2015 (as reduced by the amounts distributed to each spouse pursuant to the October 2014 court order).

When one spouse personally benefits from community property after the period of separation, that spouse is typically required to reimburse the community for that benefit. (See *In re Marriage of Stallworth* (1987) 192 Cal.App.3d 742, 752.) Under this rule, wife would ordinarily be required to reimburse husband

for the earnings of community property assets she held pending dissolution, which includes the Dream Marriage business. In this case, however, the spouses agreed to grant wife that business in the August 2015 pretrial settlement. Whether husband is entitled to reimbursement for the merchant reserve funds and undistributed earnings from Dream Marriage thus turns on whether the pretrial settlement cut off the right to reimbursement he would otherwise have had. This turns on the language of the pretrial settlement, and is a question of contractual interpretation that we review de novo. (*AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 821-822 [setting forth principles of contract interpretation]; *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1165 [settlement agreements interpreted like any other contract]; *Starkman*, *supra*, 129 Cal.App.4th at p. 664 [contracts are interpreted de novo].) Husband bears the burden of establishing his right to reimbursement. (See *In re Marriage of Cochran* (2001) 87 Cal.App.4th 1050, 1057-1058.)

A. *Merchant Reserve Accounts*

Husband has not established that he is entitled to reimbursement for the funds in Dream Marriage's merchant reserve accounts. As husband conceded, these funds were necessary for the business to operate. They were also accounted for in the valuation of the business at the time of the pretrial settlement. Thus, when husband granted wife Dream Marriage as part of the settlement, that grant *included* the funds in the merchant reserve accounts.

B. *Undistributed Earnings*

Husband also has not established that he is entitled to reimbursement for Dream Marriage's undistributed earnings in the first six months of 2015. The pretrial settlement lists the

"business interests" allocated to each spouse, and grants wife Dream Marriage without any qualification or limitation. This would seem to indicate that the business as a whole—including all of its assets at that time—was granted to wife.

C. *Husband's Remaining Arguments*

Husband raises three arguments in response.

First, and most persuasively, he argues that the pretrial settlement expressly preserved each spouse's right to make "[r]eimbursement claims," such that the seemingly absolute grant of Dream Marriage to wife did not cut off his right to seek reimbursement for certain aspects of that business. This argument tees up the question: Does the reimbursement clause carve out (and thus allow) reimbursement claims related to Dream Marriage? Although it is a close question, we conclude that the answer is no for two reasons. To begin, the pretrial settlement expressly indicates its "division of assets . . . constitutes a substantially equal division of all community property." Were we to conclude that the reimbursement clause allowed husband to "claw back" unspecified amounts of money from Dream Marriage, the value of that asset to wife would be uncertain and certainly less than the full value, thereby rendering the "substantially equal division" clause inaccurate. Because we are required to give effect to *all* of a contract's provisions (Civ. Code, § 1641 ["The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other"]), we are loathe to endorse an interpretation of one clause that effectively nullifies another. Further, it is clear that the reimbursement clause was designed with a much broader purpose than allowing husband to claw back aspects of Dream

Marriage; of the 54 reimbursement claims that husband makes (many of which have multiple sub-claims), only two deal with Dream Marriage. In our view, the interpretation that harmonizes and gives effect to both the equal division and reimbursement clauses is the one that construes the pretrial settlement as granting wife the *entirety* of Dream Marriage and cuts off husband's right to make reimbursement claims against assets of that business.

Second, husband notes that he asserted his claims for reimbursement related to Dream Marriage prior to entering into the pretrial settlement. This is true, but seems to support the finding that husband, while aware of his possible reimbursement claims involving Dream Marriage, nevertheless chose to give them up by giving wife the entirety of Dream Marriage in the pretrial settlement.

Lastly, husband contends that the valuation of Dream Marriage at the time of the pretrial settlement did not take into consideration the undistributed earnings from the first half of 2015 in its valuation. This contention is factually inaccurate because the expert who valued the business updated the valuation to include those earnings.

DISPOSITION

The judgment is affirmed. Wife is entitled to her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
ASHMANN-GERST