

MAY 11 2015

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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

In re:)	BAP No.	CC-14-1253-KiKuD
)		
SIE KHALIL,)	Bk. No.	1:12-bk-11156
)		
Debtor.)	Adv. No.	1:13-ap-1234
_____)		
)		
LAWRENCE D. ROSE,)		
)		
Appellant,)		
)		
v.)	MEMORANDUM¹	
)		
DAVID K. GOTTLIEB, Chapter 7)		
Trustee,)		
)		
Appellee.)		
_____)		

Argued and Submitted on February 19, 2015,
at Los Angeles, California

Filed - May 11, 2015

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Maureen A. Tighe, Bankruptcy Judge, Presiding

Appearances: Michael F. Chekian argued for appellant Lawrence D. Rose; Michael W. Davis of Ezra Brutzkus Gubner LLP argued for appellee David K. Gottlieb, Chapter 7 Trustee.

Before: KIRSCHER, KURTZ and DUNN, Bankruptcy Judges.

¹ This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have (see Fed. R. App. P. 32.1), it has no precedential value. See 9th Cir. BAP Rule 8024-1.

1 Appellant Lawrence D. Rose ("Rose") appeals an order denying
2 his motion for summary judgment and granting partial summary
3 judgment to appellee, chapter 7² trustee David K. Gottlieb
4 ("Trustee"). The bankruptcy court determined that Rose, a
5 co-owner of real property, was entitled to only 50% of the net
6 sale proceeds from Trustee's sale of the property under § 363(h)
7 and not the 80% he claimed. We AFFIRM.

8 I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

9 A. Prepetition events

10 In 2008, Rose and debtor Sie Khalil ("Khalil") entered into a
11 written agreement whereby Khalil agreed, as general contractor, to
12 construct a single family residence for Rose, who is a California
13 attorney. Ultimately, the parties ended up in litigation for what
14 Rose claims was a diversion of funds and materials by Khalil and
15 damages of \$250,000.

16 As part of an attempt to settle the matter in December 2010,
17 Rose and Khalil entered into a real estate transaction together,
18 purchasing an investment property located in Reseda, California
19 ("Property"). Khalil was to refurbish the Property; then the men
20 would sell it and split the proceeds. Rose and Khalil purchased
21 the Property for \$375,000, with Rose contributing \$300,000 to the
22 purchase price and Khalil contributing \$75,000.

23 The grant deed transferring title to the Property to Rose and
24 Khalil, recorded on December 21, 2010, reads as follows:

25 Donald R. Miller, Jr., as to an undivided 25.0000%

26
27 ² Unless specified otherwise, all chapter, code and rule
28 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and
the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
Federal Rules of Civil Procedure are referred to as "Civil Rules."

1 interest; Dina C. Miller, as to an undivided 25.0000%
2 interest and Joy Rivellia [sic] Miller, Trustee of the
3 Joy Rivelli Miller Trust dated September 16, 2010, as to
4 an undivided 50.0000% interest hereby GRANT(s) to: Sie
Khalil, a Single Man and Lawrence Rose, a Single Man as
Tenants in Common.

5 The grant deed was silent as to the mens' percentage ownership
6 interests in the Property.

7 Rose and Khalil entered into an agreement in April 2011
8 ("Settlement Agreement"). The Settlement Agreement provided that
9 Rose had loaned Khalil \$300,000 to purchase the Property. Khalil
10 agreed to sign a promissory note in that amount. To secure
11 payment of the promissory note and the \$250,000 debt from the
12 failed construction project, Khalil agreed to execute first and
13 second deeds of trust encumbering the Property in the total amount
14 of \$550,000. In the event Khalil defaulted on his repayment
15 obligations, upon sale of the Property any remaining funds after
16 payment of the total indebtedness to Rose would be distributed to
17 Khalil.³ If no default occurred, any remaining funds after
18 payment of the total indebtedness would be distributed 50% to Rose
19 and 50% to Khalil. Rose and Khalil signed the Settlement
20 Agreement, failed to date it and the state court never approved
21 it. Khalil also signed a promissory note and deeds of trust in
22 favor of Rose, but did not date them or have his signature
23 acknowledged. No one recorded the deeds of trust.

24
25
26 ³ In the original draft of the Settlement Agreement, Rose and
27 Khalil agreed in the event of default and upon the payment of all
28 debt that they would distribute the remaining funds 80% to Rose
and 20% to Khalil. The parties later struck and initialed that
distribution language, so it appears that any remaining funds
would now go to Khalil.

1 **B. Postpetition events**

2 Khalil filed a chapter 7 bankruptcy case on February 6, 2012.
3 Khalil's Schedule A reflected a one-half interest in the Property.

4 **1. Rose's adversary action against Khalil**

5 Rose filed an adversary complaint against Khalil asserting
6 claims under § 523 and § 727. The parties ultimately settled on
7 November 4, 2014. In that litigation, Rose filed a motion for
8 turnover for one-half of the rents he claimed Khalil collected
9 from the Property and improperly withheld from Rose. In his brief
10 and attached declaration, Rose stated: "I am a half-owner of the
11 [Property]." "As a half-owner of the [Property], I am entitled to
12 half of the monthly rent received." "As Defendant's bankruptcy
13 estate owns the remaining one-half interest in the [Property], one
14 half of the rent received by Defendant belongs to the estate."
15 "Plaintiff/Movant herein is the co-owner of the [Property],
16 holding a one-half interest as Tenant in Common." The bankruptcy
17 court denied Rose's turnover motion for failing to file it in the
18 main case against Trustee, who currently collected the rents.

19 **2. Rose's motion for determining ownership interests**

20 Thereafter, Rose filed in the main case a "Motion by Co-Owner
21 Lawrence D. Rose for Order Determining Ownership of 18431 Arminta
22 St., Reseda, CA," which the bankruptcy court recast as a "Motion
23 for Setting Property Value of Co-Owned Property Interests," or the
24 "Valuation Motion." Rose sought a determination of the parties'
25 respective ownership interests in the Property. Rose argued that
26 an 80% ownership interest belonged to him and 20% belonged to
27 Khalil's bankruptcy estate based on the mens' respective
28 contributions to the purchase price. Rose argued that under

1 California law, as a tenant in common, he was entitled to a
2 ratable distribution of any sale proceeds in proportion to his
3 ownership interest. Thus, argued Rose, he should receive 80% of
4 the net sale proceeds in accordance with § 363(j).

5 Trustee opposed the Valuation Motion, contending that Rose
6 needed to file an adversary proceeding for such relief, not a
7 motion, and that Rose's request contradicted his previous
8 testimony that he was "one-half" owner of the Property.

9 In the bankruptcy court's ruling denying the Valuation
10 Motion, the court observed the grant deed's silence as to the
11 mens' ownership interest in the Property; no language evidenced a
12 different intent or demonstrated a fractional interest other than
13 50-50. Although Rose mentioned the Settlement Agreement in his
14 declaration, he failed to submit the document to the court. The
15 court also took judicial notice of Rose's prior admissions that he
16 held only a one-half interest in the Property.

17 The cases cited by Rose failed to persuade the court, because
18 they related to community property cases or to partition actions,
19 both of which the court deemed irrelevant. Thus, based on Rose's
20 prior admissions and absent any further documentary evidence
21 indicating otherwise, the court found that Rose held only a
22 one-half interest in the Property. The bankruptcy court entered
23 the Valuation Order on November 14, 2013.

24 **3. Trustee's adversary action against Rose to sell the**
25 **Property under § 363(h)**

26 Meanwhile, before the bankruptcy court had ruled on the
27 Valuation Motion, Trustee filed an adversary action against Rose
28 seeking to sell Rose's and the estate's interest in the Property

1 under § 363(h).⁴

2 In his answer, filed **after** the bankruptcy court entered the
3 Valuation Order determining Rose had a 50% interest in the
4 Property, Rose disputed Trustee's contention that the estate had a
5 50% interest in the Property. Rose claimed he had purchased an
6 80% interest and the recorded grant deed "control[ed] the relative
7 interests of Mr. Rose and the Estate in the Property." Rose
8 agreed to the sale, but claimed he either had a right to purchase
9 the estate's 20% interest under § 363(i), or that Trustee had to
10 distribute 80% of the net sale proceeds to Rose in accordance with
11 § 363(j).

12 **a. Rose's motion for summary judgment**

13 Rose moved for summary judgment on Trustee's complaint (the
14 "MSJ"). He contended that the only disputed issue was "the extent
15 of [his] ownership interest in the [Property]." The arguments
16 supporting Rose's position that he owned an 80% interest in the
17 Property were virtually identical to those he raised in the
18 Valuation Motion, including his cited California cases. Rose
19 contended that because he and Khalil held title to the Property as

20
21 ⁴ Under § 363(h), the trustee may sell both the estate's
22 interest and any co-owner's interest in property in which the
debtor had, at the time of the commencement of the case, an
undivided interest as a tenant in common, if -

- 23 (1) partition in kind of such property among the estate and
24 such co-owners is impracticable;
25 (2) sale of the estate's undivided interest in such property
26 would realize significantly less for the estate than sale of
27 such property free of the interests of such co-owners;
28 (3) the benefit to the estate of a sale of such property free
of the interests of co-owners outweighs the detriment, if
any, to such co-owners; and
(4) such property is not used in the production,
transmission, or distribution, for sale, of electric energy
or of natural or synthetic gas for heat, light, or power.

1 tenants in common (and not as joint tenants which presumes an
2 equal ownership share), California law recognized upon a partition
3 sale the extent of the mens' interests to be proportionate to
4 their contributions to the Property, which included purchase price
5 and improvements. Thus, argued Rose, since he contributed
6 \$300,000 of the Property's \$375,000 purchase price, he owned an
7 80% interest in it and was entitled to 80% of the net sale
8 proceeds. Rose now included a copy of the signed but undated
9 Settlement Agreement, which set forth the terms of any sale
10 proceeds distribution between the men.

11 Trustee opposed the MSJ, contending that the parties'
12 respective ownership interests in the Property had been previously
13 litigated in the Valuation Motion and decided in the Valuation
14 Order, which Rose did not appeal. The Valuation Order determined
15 that each party owned a one-half interest in the Property and
16 entitled each to only 50% of the net sale proceeds. Accordingly,
17 Rose was precluded from relitigating that issue.

18 **b. The MSJ hearing and the bankruptcy court's ruling**
19 **on the MSJ**

20 At the MSJ hearing, Rose conceded that he held only a 50%
21 interest in the Property. Nonetheless, he argued entitlement to
22 80% of the net sale proceeds based on his 80% contribution to the
23 purchase price. Rose believed his right to reimbursement under
24 California law applied to Trustee's sale under § 363(h). Trustee
25 disputed this, contending that Rose's entitlement did not exceed
26 50% of the proceeds because: (1) the Bankruptcy Code, not
27 California law, controlled the sale and § 544(a)(3) gave Trustee
28 power as a bona fide purchaser ("BFP") to avoid any unperfected

1 security interest Rose may have had; and (2) California law
2 presumes that tenants in common hold a 50-50 interest in real
3 property when the deed is silent.

4 Because the bankruptcy court believed the parties had raised
5 these arguments for the first time at oral argument, it decided to
6 take the matter under advisement to review their cited cases and
7 to consider their new arguments. Before announcing its intent to
8 continue the MSJ, however, the court offered Rose the opportunity
9 for further briefing. Rose declined, contending that the court
10 had enough before it to rule on the legal issue of his right to
11 reimbursement from the net sale proceeds and his respective amount
12 of entitlement.

13 The bankruptcy court issued its Memorandum Decision on May 1,
14 2014, determining that Rose was entitled to only 50% of the net
15 sale proceeds. The court disagreed that Rose's right to
16 reimbursement involved a different issue from his ownership
17 interest in the Property. In the court's opinion, the terms of
18 the unambiguous grant deed controlled, which, under California
19 law, created the presumption that Rose and Khalil each owned an
20 equal, undivided one-half interest in the Property. While
21 recognizing California's allowance of extrinsic evidence to rebut
22 this presumption in certain cases, the court concluded that the
23 following precluded Rose from doing so here: (1) on the petition
24 date, the grant deed reflected that Rose and Khalil presumptively
25 owned the Property 50/50 as tenants in common; (2) Rose stipulated
26 at the MSJ hearing that he held a 50% ownership interest in it;
27 and (3) due to Trustee's status as a BFP under § 544(a)(3) and his
28 ability to rely on the face of the unambiguous grant deed, Rose

1 could not introduce extrinsic evidence to vary its terms.

2 The bankruptcy court distinguished the California cases Rose
3 cited to support his argument for an unequal share of the sale
4 proceeds. Those cases involved partition actions or a division of
5 community property assets under state law, not a sale under the
6 Bankruptcy Code. And, they involved situations as between the
7 parties themselves, not the rights of third parties.

8 Although Trustee had not filed a cross-motion for summary
9 judgment but had also argued that no genuine issue of material
10 fact existed as to the parties' respective interests in the
11 Property, the bankruptcy court decided to grant Trustee partial
12 summary judgment on the discrete issue of Rose's reimbursement
13 right. The court denied Rose's MSJ because it believed certain
14 issues remained to be litigated regarding the sale under § 363(h).
15 He does not dispute that ruling on appeal.

16 The bankruptcy court entered an order denying Rose's MSJ and
17 granting Trustee partial summary judgment under Civil Rule 56(f)
18 (the "Order"). Rose timely appealed. The Panel granted leave to
19 appeal the Order to the extent it was interlocutory.

20 **II. JURISDICTION**

21 The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334
22 and 157(b)(2)(A). We have jurisdiction under 28 U.S.C. § 158.

23 **III. ISSUES**

24 1. Did the bankruptcy court err in granting Trustee partial
25 summary judgment under Civil Rule 56(f)?

26 2. Did the bankruptcy court err in determining that Rose was
27 entitled to only 50% of the net sale proceeds?

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IV. STANDARD OF REVIEW

The bankruptcy court's order granting summary judgment is reviewed de novo. Shahrestani v. Alazzeh (In re Alazzeh), 509 B.R. 689, 692-93 (9th Cir. BAP 2014). "Viewing the evidence in the light most favorable to the non-moving party, we must determine 'whether there are any genuine issues of material fact and whether the trial court correctly applied relevant substantive law.'" New Falls Corp. v. Boyajian (In re Boyajian), 367 B.R. 138, 141 (9th Cir. BAP 2007) (quoting Tobin v. San Souci Ltd. P'ship (In re Tobin), 258 B.R. 199, 202 (9th Cir. BAP 2001)).

V. DISCUSSION

12 **A. The bankruptcy court did not err in granting partial summary judgment to nonmovant Trustee.**

13
14 Civil Rule 56(f), incorporated by Rule 7056, provides that
15 after giving notice and a reasonable time to respond, the court
16 may: (1) grant summary judgment for a nonmovant; (2) grant the
17 motion on grounds not raised by a party; or (3) consider summary
18 judgment on its own after identifying for the parties material
19 facts that may not be genuinely in dispute. Rose contends the
20 bankruptcy court committed reversible error by failing to provide
21 sufficient notice that it was considering granting summary
22 judgment to Trustee. Rose assigns further error by the bankruptcy
23 court in raising arguments not contained in Trustee's opposition
24 to the MSJ. Rose's arguments lack merit.

25 Where the party moving for summary judgment has had a full
26 and fair opportunity to prove its case, but has not succeeded in
27 doing so, a court may enter summary judgment sua sponte for the
28 nonmoving party. Albino v. Baca, 747 F.3d 1162, 1176 (9th Cir.

1 2014) (citing Gospel Missions of Am. v. City of L.A., 328 F.3d 548,
2 553 (9th Cir. 2003) ("Even where there has been no cross-motion for
3 summary judgment, a district court may enter summary judgment sua
4 sponte against a moving party if the losing party has had a full
5 and fair opportunity to ventilate the issues involved in the
6 matter.")).

7 Rose moved for summary judgment on the narrow legal issue of
8 what percentage of net sale proceeds he was entitled to from
9 Trustee's sale of the Property under § 363(h). While Trustee did
10 not raise his defensive arguments regarding his BFP status or
11 California's presumption of equal ownership interests among
12 co-tenants in his opposition, instead focusing on issue and claim
13 preclusion, he did raise them at the MSJ hearing. Rose had an
14 opportunity to respond to these arguments and was even given the
15 opportunity to further brief the issues, which he declined. Thus,
16 Rose had a full and fair opportunity to prove his case. The
17 transcript reflects that Rose too had also raised new arguments,
18 which is why the bankruptcy court opted to continue the MSJ
19 hearing and take the matter under advisement. Even if Trustee had
20 not raised his arguments, the court could consider these legal
21 issues to determine whether Rose was entitled to his requested
22 relief.

23 Once the bankruptcy court decided the discrete legal issue of
24 whether Rose was entitled to 50% or 80% of the net sale proceeds
25 from the Property, it could not have erred in sua sponte granting
26 partial summary judgment to Trustee on that issue. By filing the
27 MSJ, Rose had conceded that no genuine issue of material fact
28 existed as to his portion of the proceeds. As a result, Trustee

1 was entitled to judgment as a matter of law. Goldstein v. Fid.
2 and Guar. Ins. Underwriters, Inc., 86 F.3d 749, 750-51 (7th Cir.
3 1996) (court did not err in entering summary judgment sua sponte in
4 favor of nonmovant when no genuine issues of material fact
5 existed, as movant conceded in filing motion for summary judgment
6 in its favor). Rose's argument here is much ado about nothing.
7 Even if the bankruptcy court had not formally entered judgment in
8 favor of Trustee, the result would be the same; Rose will receive
9 only 50% of the net sale proceeds.

10 Notably, this case has not been a model of proper procedure.
11 Motions were filed when adversary proceedings should have been
12 filed, and motions were filed in the wrong proceeding or context.
13 Nonetheless, we see no error by the bankruptcy court in granting
14 partial summary judgment to nonmovant Trustee.

15 **B. The bankruptcy court did not err in determining that Rose was**
16 **entitled to only 50% of the net sale proceeds.**

17 Rose contends the bankruptcy court erred by not acknowledging
18 his right of reimbursement under California law, which entitles
19 him to 80% of the net sale proceeds from Trustee's sale of the
20 Property because of his unequal contribution to the purchase
21 price. First, Rose contends that because he and Khalil were
22 tenants in common and not joint tenants, and because the grant
23 deed was silent as to their respective shares, it could not be
24 assumed they held an equal, undivided one-half interest in the
25 Property. Rose contends that the presumption of equal ownership
26 applies only in cases of joint tenancy, and the bankruptcy court
27 erred by confusing the legal affects of a joint tenancy with a
28 tenancy in common. We disagree.

1 As a general principle, a debtor's property rights that
2 become part of the bankruptcy estate under § 541 are determined by
3 applicable nonbankruptcy law. Thus, unless overridden by specific
4 provisions of the Bankruptcy Code, the property rights belonging
5 to Khalil on the petition date arose under state law. See Butner
6 v. United States, 440 U.S. 48, 54 (1979). Here, we begin by
7 looking to California law to determine the existence and scope of
8 Khalil's interest in the Property prior to the petition date.

9 Contrary to Rose's argument, "[w]hen two or more persons take
10 as tenants in common under an instrument silent as to their
11 respective shares[,] [a] presumption arises their shares are
12 equal." Caito v. United Cal. Bank, 20 Cal.3d 694, 705 (1978)
13 (citing Anderson v. Broadwell, 119 Cal.App 150, 153 (1931) (where
14 several grantees are named in a deed and their respective
15 interests are not set forth therein, it will be presumed that each
16 takes an equal interest)); In re Marriage of Rico, 10 Cal.App.4th
17 706, 710 (1992) (tenancy in common raises presumption of equal
18 ownership) (citing Caito). Further, under California's "form of
19 title" presumption, the description in a deed as to how title is
20 held presumptively reflects the actual ownership status of the
21 property. In re Marriage of Fossum, 192 Cal.App.4th 336, 344
22 (2011). This common law presumption is codified in CAL. EVID. CODE
23 § 662, which states that "[t]he owner of the legal title to
24 property is presumed to be the owner of the full beneficial
25 title." "Accordingly, absent a showing to the contrary, the
26 status declared by the instrument through which a party acquired
27 title will control." Fossum, 192 Cal.App.4th at 344.

28 Here, the grant deed to the Property lists the owners as "Sie

1 Khalil, a Single Man and Lawrence Rose, a Single Man as Tenants in
2 Common." The deed does not contain any other statements regarding
3 the mens' ownership interests. Thus, prior to the petition date,
4 California law created the presumption that Rose and Khalil each
5 held an undivided one-half interest in the Property. Had they
6 intended something other than equal ownership, Rose and Khalil
7 could have stated so in the grant deed as did the grantors of the
8 Property, which reflected their unequal ownership percentages.

9 However, as Rose correctly argues, California law allows the
10 presumption of equal ownership to be rebutted by clear and
11 convincing proof. See CAL. EVID. CODE § 662; Fossum, 192
12 Cal.App.4th at 344. And, in actions like partition or a partition
13 sale, California law provides that a cotenant who has paid more
14 than his portion of the purchase price for the property is
15 entitled to an accounting. 5 Miller & Starr, Cal. Real Estate
16 § 12:19 (3d ed. 2006); Demetris v. Demetris, 125 Cal.App.2d 440,
17 445 (1954).

18 It is undisputed that Rose paid 80% of the purchase price for
19 the Property. It is also undisputed that Rose did not seek a
20 partition action in state court against Khalil prior to Khalil's
21 bankruptcy. Had the sale at issue here been a partition sale
22 under California law, Rose would perhaps have a good argument.
23 However, once Khalil filed for bankruptcy, governing bankruptcy
24 law created new rights, particularly the "strong arm" powers of a
25 trustee under § 544(a). And Trustee's action to sell the Property
26 was not a partition sale under state law; it was a sale under the
27 Bankruptcy Code.

28 A partition action or sale "addresses only the rights *inter*

1 sese of cotenants. They do not deal with the rights of **creditors**
2 of one or more of the cotenants." Dubis v. Zarins
3 (In re Teranis), 128 F.3d 469, 472 (7th Cir. 1997) (emphasis in
4 original). In Teranis, the debtor's elderly mother purchased a
5 condominium and titled it in both of their names. Id. at 470.
6 Although the mother requested the property be titled jointly in
7 her name and debtor's with right of survivorship (i.e., as joint
8 tenants), the deed issued was one for tenancy in common. The
9 debtor never lived at the condo and paid nothing for its upkeep.
10 Upon debtor's bankruptcy filing, the chapter 7 trustee filed suit
11 against the mother to sell the condo. The mother opposed the
12 sale, contending that debtor had no ownership interest in it, even
13 though both were listed on the deed. Id. at 470-71.

14 On appeal, the mother contended the district court erred in
15 determining that debtor was a 50% owner of the condo, because she
16 had provided sufficient proof to rebut the presumption of equal
17 ownership under Wisconsin law, which included evidence that she
18 paid the entire purchase price. Id. at 471-72. In rejecting the
19 mother's arguments, which she supported with cases involving
20 partition actions, the Seventh Circuit held that third parties, be
21 they prospective buyers or creditors, cannot be expected to
22 investigate the possibility of unequal ownership; they can rely
23 upon the face of the deed indicating that each cotenant has an
24 equal interest in the property. Id. at 472. Accord Henshaw v.
25 Field (In re Henshaw), 485 B.R. 412, 419-20 (D. Haw. 2013) (citing
26 Teranis and holding that creditors must be able to rely on the
27 face of the deed, regardless of whatever equitable interests may
28 exist between the joint tenants); Osberg v. Risler (In re Risler),

1 443 B.R. 508, 510 (Bankr. W.D. Wisc. 2010); Seaback v. Barth
2 (In re Barth), 2008 WL 5170558, at *11 (Bankr. E.D. Wisc. Nov. 7,
3 2008). Accordingly, the Seventh Circuit affirmed the district
4 court's ruling that the trustee could rely on the deed to
5 ascertain debtor's ownership of the condo, which reflected an
6 equal, undivided ownership interest.⁵

7 Once Khalil filed for bankruptcy, his equal, undivided
8 one-half interest in the Property became property of the estate
9 under § 541(a). Likewise, § 544(a)(3) vested Trustee with the
10 rights of a BFP of Khalil's real property and allowed him to avoid
11 Rose's unrecorded equitable interest in the Property, even though
12 no transfer had occurred. Huber v. Danning (In re Thomas),
13 147 B.R. 526, 529 (9th Cir. BAP 1992). Section 544(a)(3) allows a
14 trustee to avoid all obligations and transfers that would be
15 avoidable by "a bona fide purchaser of real property . . . that
16 obtains the status of a bona fide purchaser . . . at the time of
17 the commencement of the case, whether or not such purchaser
18 exists." Thus, at the time of petition, Trustee had all the
19 rights and powers that a BFP of Khalil's undivided one-half
20 interest would have.

21 _____
22 ⁵ In Teranis, the mother tried to make a distinction much as
23 Rose does here between joint tenancy and tenancy in common. Rose
24 contends that joint tenants are always presumed to be equal owners
25 under California law and can never rebut that presumption, whereas
the rules are different for cotenants, and the presumption of
equal ownership may be rebutted by proof that the parties'
interests are unequal.

26 In its sidebar discussion of joint tenancy and tenancy in
27 common, the Teranis court noted that the differences between the
two legal concepts cease to exist for the purpose of division of
28 sale proceeds, because the joint tenancy terminates upon the sale.
128 F.3d at 471 n.1. Thus, the court felt it unnecessary to
distinguish between tenancy in common and joint tenancy. Id.

1 The powers of a BFP for purposes of § 544(a) are defined by
2 state law. Placer Sav. & Loan Ass'n v. Walsh (In re Marino),
3 813 F.2d 1562, 1565 (9th Cir. 1987). Under California law, a BFP
4 without actual or constructive notice takes free of a prior
5 equitable interest or constructive trust interest. In re Thomas,
6 147 B.R. at 529 (citing Rafferty v. Kirkpatrick, 29 Cal.App.2d
7 503, 507-08 (1938)). Section 544(a) (3) makes a trustee's actual
8 knowledge irrelevant. Id. However, constructive or inquiry
9 notice will preclude a trustee's BFP status. In re Marino,
10 813 F.2d at 1555. "A party has constructive or inquiry notice of
11 another's interest in property when he or she has knowledge of
12 circumstances or a condition of the property that would prompt a
13 prudent person to inquire about the other's interest and the
14 prosecution of the inquiry would have revealed the other's
15 interest." In re Thomas, 147 B.R. at 530.

16 In reviewing the grant deed, a BFP would have been put on
17 notice that Khalil co-owned the Property with Rose. However,
18 nothing in that deed, or in any other public document, would have
19 put a BFP on notice that Rose had paid 80% of the purchase price,
20 which might entitle him to reimbursement in a partition action.
21 Joint ownership of property in and of itself does not impose a
22 duty to inquire whether unrecorded interests or agreements exist
23 between the co-owners. Caito, 20 Cal.3d at 702. Thus, as a BFP,
24 Trustee took title to Khalil's one-half interest in the Property
25 without liability for Rose's latent reimbursement claim. See RNT
26 Holdings, LLC v. United Gen. Title Ins. Co., 230 Cal.App.4th 1289,
27 1296 (2014) (a BFP in California takes the property free of such
28 unknown rights). Trustee could rely on the grant deed, which

1 indicated that each co-tenant held an equal, undivided one-half
2 interest in the Property. In re Teranis, 128 F.3d at 472;
3 In re Henshaw, 485 B.R. at 419-20; In re Risler, 443 B.R. at 510;
4 In re Barth, 2008 WL 5170558, at *11.

5 Rose's evidence attempting to rebut the presumption of equal
6 ownership came too late. When Khalil filed his bankruptcy
7 petition, Trustee's rights as a BFP of Khalil's interest in the
8 Property were created, because at that moment the presumption of
9 equal, undivided ownership stood unrebutted. In re Barth, 2008 WL
10 5170558, at *12. A BFP who purchased Khalil's interest in the
11 Property at that moment would have presumed, based on the recorded
12 grant deed and California's "form of title" rule, he was
13 purchasing an undivided, one-half interest in the Property. Id.;
14 see also In re Teranis, 128 F.3d at 472.

15 Rose contends that the grant deed's silence as to the mens'
16 ownership interests created an ambiguity, putting Trustee either
17 on constructive or inquiry notice that their ownership interests
18 were not equal, thereby destroying his BFP status under § 544.
19 First, as we determined above, the grant deed was not ambiguous as
20 to the mens' ownership interests on the petition date, the date
21 that is relevant here. Further, this same argument was rejected
22 by the bankruptcy court in the well-reasoned decision of
23 In re Barth, 2008 WL 5170558, at *10-12. There, the co-owner
24 argued that the deed's silence as to the co-tenants' interests was
25 deliberate and this silence required any future BFP to look beyond
26 the deed for evidence about the percentages of ownership that each
27 of them held. The co-owner's argument was in part that Wisconsin
28 law allows the presumption of equal ownership to be rebutted in

1 cases of tenancy in common deeds silent as to ownership
2 percentages. The bankruptcy court disagreed, reasoning that
3 Wisconsin law did not require a BFP to look beyond a silent deed;
4 if the deed is silent, the presumption under state law is that the
5 co-tenants share an equal, undivided interest in the property.
6 The same is true in California; we reject Rose's argument that
7 Trustee was required to inquire beyond the grant deed as to the
8 mens' ownership interests. He had no such duty. Caito, 20 Cal.3d
9 at 702.

10 **VI. CONCLUSION**

11 Because Rose was entitled to only 50% of the net sale
12 proceeds as a matter of law, and because there were no genuine
13 issues of material fact in dispute as to this issue, we conclude
14 the bankruptcy court did not err in granting Trustee partial
15 summary judgment. We AFFIRM.

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