A Spouse's Interest in Joint Management Community Property Cannot Be Conveyed to a Third Party so as to Effect Partition of the Community Estate: *Dalton v. Don J. Jackson, Inc.*, 691 S.W.2d 765 (Tex. App.— Austin 1985, writ withdrawn on motion).

Robert and Ethel Dalton sought to sell certain real estate located in Austin, Texas.[1] The land was non-homestead, joint management community property with title in both Dalton's names.[2] Don J. Jackson offered to buy this property, and, after two contract offers, the Daltons accepted.[3] Robert Dalton signed the sales contract in one of the two spaces reserved for the sellers' signatures.[4] Ethel Dalton died, however, before signing the sales agreement.[5] After Robert refused to close the deal, Jackson brought suit seeking specific performance of the contract.[6] The district court ruled that the contract was enforceable to the extent of Robert Dalton's interest in the community estate and ordered the executrix to convey to Jackson a one-half undivided interest in the real estate.[7] Robert Dalton appealed.[8] The Austin Court of Civil Appeals reversed the district court, holding that a spouse cannot effect an involuntary partition of joint management community property by conveying his or her interest to a third party.[9]

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1. Dalton v. Don J. Jackson, Inc., 691 S.W.2d 765, 766 (Tex. App.—Austin 1985, writ withdrawn on motion). Petitioner filed an application for writ of error on July 22, 1985. 28 Tex. Sup. Ct. J. 593 (Sept. 14, 1985). Petitioner subsequently filed a motion to withdraw the application for writ of error on August 12, 1985. The Texas Supreme Court granted this motion to withdraw on September 11, 1985. *Id.* at 592.

2. 691 S.W.2d at 766-67. Specific provisions of the Texas Family Code govern the sale, conveyance, and encumbrance of homestead property. Section 5.81 states that neither spouse may sell, convey or encumber homestead property, whether separate or community property, without the joinder of the other spouse. Sections 5.82, 5.83, 5.84, and 5.85 of the Family Code provide exceptions to this joinder rule where one spouse is declared incompetent, disappears, abandons the homestead or spouse, is a prisoner of war, or is missing in government service. *See* TEX. FAM. CODE ANN. §§ 5.81-.85 (Vernon 1975).

3. 691 S.W.2d at 766.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.* at 768.

I. JOINT MANAGEMENT COMMUNITY PROPERTY UNDER SECTION 5.22 OF THE FAMILY CODE

Section 5.22 of the Texas Family Code supplies the general rules by which spouses manage and control the community estate.[10] With the exception of property under one spouse's sole management and control,[11] community property is "subject to the joint management, control, and disposition of the husband and wife, unless the spouses provide otherwise by power of attorney in writing or other agreement."[12]

Section 5.22 was enacted as a recodification of previous Texas legislation regarding the control and management of marital property.[13] Prior to 1967, Texas followed a community property system modeled on Spanish law in which the husband acted as sole manager of the community estate.[14] The husband's powers were absolute, and

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10. Section 5.22 is reprinted below:

§ 5.22 Community Property: General Rules (a) During marriage, each spouse has the sole management, control, and disposition of the community property that he or she would have owned if single, including but not limited to:

(1) personal earnings;

(2) revenue from separate property;

(3) recoveries for personal injuries; and

(4) the increase and mutations of, and the revenue from, all property subject to his or her sole management, control, and disposition.

(b) If community property subject to the sole management, control, and disposition of one spouse is mixed or combined with community property subject to the sole management, control, and disposition of the other spouse, then the mixed or combined community property is subject to the joint management, control, and disposition of the spouses, unless the spouses provide otherwise by power of attorney in writing or other agreement.

(c) Except as provided in Subsection (a) of this section, the community property is subject to the joint management, control, and disposition of the husband and wife, unless the spouses provide otherwise by power of attorney in writing or other agreement.

TEX. FAM. CODE ANN. § 5.22 (Vernon 1975).

11. *Id.* § 5.22(a). *See* Medenco, Inc. v. Mykleburt, 615 S.W.2d 187, 189 (Tex. 1981) (employment benefits acquired through employment subject to sole management and disposition of employee spouse); Valdez v. Ramirez, 574 S.W.2d 748, 750 (Tex. 1978) (civil service retirement annuity subject to employee spouse's sole management and control).

12. TEX. FAM. CODE ANN. § 5.22(c). *See* Cockerham v. Cockerham, 527 S.W.2d 162, 169-70 (Tex. 1975) (community interest in one-half of 320-acre tract subject to the joint management and control of husband and wife). For the statutory definition of community property, see TEX. FAM. CODE ANN. § 5.01(b) (Vernon 1975).

13. McKnight, *Texas Family Code Symposium—Title 1. Husband and Wife*, 5 TEX. TECH L. REV. 281, 358 (1974); McKnight, *Texas Family Code Symposium—Title 1. Husband and Wife*, 13 TEX. TECH L. REV. 611, 752 (1982).

14. Comment, *Section 5.22 of the Texas Family Code: Control and Management of the*

according to *Moody v. Smoot*,[15] "barring any disposition made with intent to defraud [the wife, the husband] may sell, barter, or give [the community property] away."[16] The husband's unilateral powers of disposition included the ability to mortgage personal property,[17] as well as to encumber real property by deed of trust.[18] Thus, a husband's execution of a deed of trust in which the wife did not join was found to be a valid encumbrance of her undivided one-half interest.[19]

Concern with the inequalities of control and management caused the Texas Legislature to gradually empower the wife with management powers. In 1913, the legislature enacted a statute giving the wife management of her "special community" property.[20] This property consisted of her personal earnings and income from her separate property.[21] Although the legislature substantially amended the act in 1927, the wife retained her management powers by inference from other statutory provisions.[22] Further enactments restored the wife's managerial rights in her own separate property.[23]

Marital Estate, 27 SW. L. J. 837, 838 (1973). Under Spanish marital law, community property was committed to the care and control of the husband. This did not, however, preclude a wife from owning and controlling her own separate property. This is in distinction to the common law system which prohibited a wife from owning and controlling any separate estate. 1 0. SPEER, SPEER'S MARITAL PROPERTY RIGHTS IN TEXAS § 90 at 118 and § 350 at 508 (4th ed. 1961).

15. Moody v. Smoot, 78 Tex. 119, 14 S.W. 285, 286 (1890); *accord* Commissioner v. Chase Manhattan Bank, 259 F.2d 231, 239 (5th Cir. 1958), *cert. denied*, 359 U.S. 913 (1959) (the husband is manager of the community); *see also* Teas v. Republic Nat'l Bank of Dallas, 460 S.W.2d 233, 242 (Tex. Civ. App.—Dallas 1970, writ ref'd n.r.e.) (husband extinguished community debt out of community estate without consent of wife).

16. *Moody*, 78 Tex. at —, 14 S.W. at 286.

17. Mason v. Green, 226 S.W. 829, 831 (Tex. Civ. App.— Texarkana 1920, no writ).

18. Boehm v. Beutler, 41 S.W. 658, 658 (Tex. Civ. App. 1897, writ ref'd).

19. Bound v. Dillard, 140 S.W.2d 520, 524 (Tex. Civ. App.— Dallas 1940, no writ).

20. Act of Mar. 21, 1913, ch. 32, § 1, 1913 Tex. Gen. Laws 61 *amended by* Act of Mar. 30, 1923, ch. 159, § 1, 1923 Tex. Gen. Laws 338. This latter act served as enabling legislation for the Texas Revised Civil Statutes for 1925. The new statutes omitted the wife's power to manage her "special" community property. *See infra* note 21 and accompanying text.

21. Her separate property included interest on notes and bonds, as well as stock dividends. *Id.*

22. TEX. REV. CIV. STAT. art. 4619 (1925), *amended by* Matrimonial Property Act ch. 309, § 1 1967 Tex. Gen. Laws 735. Retention of the wife's management powers was inferred from articles 4616 and 4621 of the Revised Civil Statutes of 1925. Article 4616 prohibited a husband's debts from being satisfied out of the wife's special community property. Article 4621 implied that a wife's contractual obligations could be satisfied out of her special community property. *See* Quilliam, *Gratuitous Transfers of Community Property to Third Persons*, 2 TEX. TECH. L. REV. 23, 24 nn.7, 8 (1970) (discussion of wife's management powers prior to Matrimonial Act).

23. Act of June 6, ch. 407, § 2, 1957 Tex. Gen. Laws 1234, *repealed by* Matrimonial

In 1967, the Texas Legislature enacted the Matrimonial Property Act.[24] This act provided for the complete reorganization of the community property management system. The new provisions ousted the husband from his traditional position as general manager of the community estate, adopting instead a system of equal spousal management.[25] The act divided community property into three classifications: 1) separately owned and controlled property; 2) community property subject to the control of the spouse who would have owned it had no marriage occurred (sole management community property); and 3) community property subject to the joint control and management of the spouses (joint management community property).[26] The act thus created an equality-based system of management, one designed to protect the interests of both spouses and provide for shared management responsibilities.[27]

The system of property management established by the Matrimonial Property Act, and later codified into section 5.22 of the Family Code,[28] is unique among the community property states.[29] Most community property states do not provide for the sole management of a community asset.[30] Those states which do provide for sole management of community property do so on a very limited basis.[31]

The general rule in community property states with regard to the management and control of community property is that either spouse

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Property Act, ch. 309, § 1, 1967 Tex. Gen. Laws 735. Further discussion regarding the history and development of Texas marital property law may be found in J. MCKNIGHT AND W. REPPY, TEXAS MATRIMONIAL PROPERTY LAW, 1-16 (1983); *see also* Huie, *Commentary on the Community Property Laws of Texas*, 13 TEX. REV. CIV. STAT. ANN.1 (Vernon 1960) (overview of Texas community property law).

24. Matrimonial Property Act, ch. 309, § 1, 1967 Tex. Gen. Laws 735, *repealed by* acts 1969, ch. 888, § 6, 1969 Tex. Gen. Laws 2707 (enacting TEX. FAM. CODE ANN. tit. 1 (Supp. 1973)). For two historical discussions of the Matrimonial Act and its codification, see Hudspeth, *The Matrimonial Act of 1967—Six Areas of Change*, 31 TEX. B.J. 477 (1968) and McKnight, *Recodification of Matrimonial Property Law*, 29 TEX. B.J. 1000 (1966).

25. Matrimonial Property Act, ch. 309, § 1, 1967 Tex. Gen. Laws 735 (repealed 1969).

26. The Matrimonial Property Act was codified, with minor changes, into the Texas Family Code. *See* McKnight, *Texas Family Code Symposium—Title 1. Husband and Wife* 5 TEX. TECH L. REV. 281, 358 (1974).

27. Matrimonial Property Act, ch. 309, § 1, 1967 Tex. Gen. Laws 735 (repealed 1969).

28. *See supra* note 25.

29. *See* J. MCKNIGHT & W. REPPY, TEXAS MATRIMONIAL PROPERTY LAW 155 (1983) (comparative law discussion).

30. *Id.*

31. *See, e.g.*, CAL. CIV. CODE § 5125(d) (West 1983) ("[a] spouse who is operating or managing a business or an interest in a business which is community personal property has the sole management and control of the business or interest.").

has full power to manage and control community property.[32] Some states require that in transactions involving realty, both spouses must join in the instrument of conveyance.[33]

The uniqueness of Texas Family Code section 5.22 has not, however, made interpretation of its provisions any easier for Texas courts. Confusion has accompanied the clear legislative purpose of providing for equal spousal management. The precise nature and scope of "sole" and "joint" management has proved elusive, resulting in some incongruous decisions. A review of some of the more important decisions will illustrate the problems associated with the proper application and interpretation of section 5.22.

II. INTERPRETATION OF SECTION 5.22 OF THE FAMILY CODE

A. *Joint Management Community as Separate Interests*

In *Cooper v. Texas Gulf Industries*,[34] Texas Gulf Industries (T.G.I.) sold real estate to Dr. Griffin Cooper and his wife (the Coopers). On December 29, 1970, Dr. Cooper sued T.G.I. for rescission and cancellation of the sale.[35] The court dismissed the suit with prejudice. Approximately nine months later, the Coopers sued again.[36] The trial court granted summary judgment against the Coopers, holding that the previous dismissal was res judicata to the action.[37] The appeals court affirmed.[38]

The Coopers appealed to the Texas Supreme Court alleging that the first suit was not res judicata as to Mrs. Cooper's action.[39] The petitioners reasoned that Mrs. Cooper, being a grantee with her husband in the deed to the real estate, was a necessary party and the trial court's dismissal of the first suit was therefore invalid for want of ju-

32. McKnight, *supra* note 26. *See, e.g.*, N.M. STAT. ANN. § 40-3-14(A)(1978) (either spouse has full power to manage, control, dispose of and encumber the entire community personal property, except where parties have agreed otherwise in writing or when a spouse is named in a document showing individual ownership of personal community property).

33. *See, e.g.*, ARIZ. REV. STAT. ANN. § 25-214(c)(1976); WASH. REV. CODE ANN. § 26.16.030(4) (West Supp. 1986). Wisconsin, which has recently adopted community property laws, requires that spouses manage and control marital property held in both spouses' names only if they act together. WIS. STAT. ANN. § 766.51 (West Supp. 1985).

34. Cooper v. Texas Gulf Indus., 513 S.W.2d 200 (Tex. 1974).

35. *Id.* at 201.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

risdiction.[40] The Texas Supreme Court reversed and remanded, ruling that the dismissal, with prejudice, was res judicata as to Dr. Cooper's claim, but that the dismissal was not res judicata as to Mrs. Cooper's rights and claims.[41]

In reaching its conclusion, the *Cooper* court relied on section 5.22 of the Family Code.[42] The court found that the property in question was community property, deeded to both parties, and thus subject to the joint management and control of each spouse.[43] As such, the court determined that since Mrs. Cooper's husband could not represent her without written authorization, the wife "was not a party to the first suit."[44] Consequently, dismissal of Dr. Cooper's suit did not affect Mrs. Cooper's right, as a joint owner, to bring suit.[45]

The significance of the *Cooper* decision lies in the supreme court's determination that community property subject to joint management and control involves separate, individual interests.[46] That interest represents the right to bring suit for rescission on a contract.[47] The joinder of both parties was unnecessary, according to the court, because each party "stands in the same position as any other joint owner of property."[48] The Coopers' interests were separate and divisible, at least with regard to the right to bring suit.[49]

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40. *Id.*

41. *Id.* at 204-05. The court decided that § 5.22 of the Family Code abolished the doctrine of virtual representation. *Id.* at 202. This doctrine declared that a suit naming the husband as a party was nonetheless binding on the wife. The doctrine was based on the husband's power of sole management of the entire community. As § 5.22 created joint management community property, the husband could no longer represent his wife's interests in jointly managed property. Thus, the wife's interests remained unaffected by an adjudication of the husband's interests. *Id. Accord*, Williams v. Saxon, 521 S.W.2d 88, 90 (Tex. Civ. App.—San Antonio 1975, no writ) (one spouse cannot represent the other where joint management community property is involved.) The court in *Cooper* also ruled that the wife was not an indispensable party according to rule 39 of the Texas Rules of Civil Procedure. The failure of Dr. Cooper to join his wife in the action, therefore, did not deprive the trial court of jurisdiction to adjudicate the action between Dr. Cooper and T.G.I. 513 S.W.2d at 202.

42. 513 S.W.2d at 201-02.

43. *Id.*

44. *Id.* at 202.

45. *Id.*

46. *Id.*

47. The court stated that the judgment of dismissal "is not res judicata, however, with respect to the rights and claims of Mrs. Cooper." *Id.* at 205. One of her rights and claims, as preserved by the court, would be to sue for recission of the contract.

48. *Id.* at 204.

49. *Id. See also* Dulak v. Dulak, 513 S.W.2d 205, 207 (Tex. 1974) (decision decided same day as *Cooper*, with court holding that wife's interest in joint management community property was unaffected by action against her husband in which she was not joined).

B. *Severability of Separate Interests*

The analysis in the *Cooper* case regarding the separate interests of jointly managed community property found expression, in a different form, in the case of *Williams v. Portland State Bank*.[50] The *Williams* case involved an action to remove the cloud upon a title to land.[51] The plaintiff, Rose Lee Williams, and her husband, Thurman Lee Williams, acquired 77.4 acres of land during their marriage.[52] Later the same year, the Williams bought another 100 acres.[53] Mr. Williams then executed a note in the amount of $25,000 and a deed of trust covering both tracts of land.[54] When the plaintiff, Mrs. Williams, refused to sign the instruments, Thurman executed the note and deed of trust alone.[55] The parties divorced, and the plaintiff received the property.[56] When Thurman did not pay his first installment on the note, the bank sought foreclosure on the deed of trust.[57] The plaintiff filed an action against the bank and the bank responded by filing cross claims against her and her husband.[58] The trial court granted judgment for the bank in the amount of the note and ordered foreclosure of the deed of trust and sale of the land as to both parties' interests.[59]

The Beaumont Court of Civil Appeals reversed in part and affirmed in part the district court's decision.[60] Holding that section 5.22(c) prohibited one spouse from encumbering the community property interest of the other spouse, the court nonetheless ruled that

50. 514 S.W.2d 124 (Tex. Civ. App.—Beaumont 1974, writ dism'd by agr.).

51. *Id.* at 124.

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* One of the issues in this case involved the question of whether the bank had notice of the husband's lack of authority to encumber his wife's community interest. Section 5.24 of the Texas Family Code provides that property is presumed to be subject to the sole management, control and disposition of a spouse if it exists in the spouse's name or is in his or her possession. A third party dealing with a spouse is entitled to rely upon his or her representation as evidence of the individual spouse's authority to dispose of the property. The provision is designed to protect third parties who are unaware of the management status of property with which they are dealing. *Id.* at 125. In *Williams*, however, the court of appeals ruled that the bank did have such notice and therefore had a duty to inquire further into the husband's authority to deal with the property. *Id.* at 126.

56. The plaintiff received the property as part of the court's divorce decree. The encumbrance on the property, however, remained. *Id.* at 125.

57. *Id.* at 126.

58. *Id.*

59. *Id.*

60. *Id.* at 127.

the bank could foreclose on the deed of trust lien as to the undivided one-half interest owned by Thurman.[61]

In determining that the husband's interest in the joint management community property could be reached by the bank, the *Williams* court cited no authority.[62] Nonetheless, the holding was referred to, with apparent approval, in the case of *Vallone v. Miller*.[63] In *Vallone* the plaintiff sought specific performance of a contract to sell real estate.[64] The contract contained spaces in which the sellers were to sign their names.[65] Both sellers' names were typed under the signature lines, but only the husband signed the contract.[66] The appeals court ruled that the contract was incomplete and unenforceable.[67] Yet, in dicta, the court stated that "it is clear that a husband has the right to convey his one-half interest in non-homestead community property without the signature of his wife on the conveyance."[68] Citing *Williams*, the court implied that had the contract been complete on its face, with signatures from both parties, then the court would consider ordering specific performance of the contract to the extent of the husband's one-half undivided community interest.[69]

C. *Section 5.22 after* Cooper, Williams *and* Vallone

The *Cooper*, *Williams* and *Vallone* decisions reflected recognition

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61. *Id.* The court stated:

> We must still determine whether or not the execution of the note and deed of trust created a valid lien upon Williams' interest in both tracts of land. We hold that it did, and the trial court properly ordered foreclosure of such lien as to Williams' interest. A study of the pertinent sections gives us no reason to believe such a lien would be either void or voidable as to his interest.

Id.

62. It is arguable that the court found support in the *Cooper* case. In *Cooper*, the court concluded that one spouse's rights and claims in jointly managed community property could not be represented or adjudicated by another spouse. Cooper v. Texas Gulf Indus., 513 S.W.2d 200, 202 (Tex. 1974). This holding supports the ruling in *Williams*. If a spouse's rights and claims in jointly managed community property are separate and distinct from the other spouse's, then it follows that each individual interest in the community estate is also separate and capable of being conveyed or encumbered, despite its joint nature. The court in *Williams* did not articulate such an analysis. Yet, the holding seems premised on it.

63. 663 S.W.2d 97 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.).

64. *Id.* at 97.

65. *Id.* at 98.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.* The court distinguished *Williams* on the basis of the husband executing the deed of trust documents alone, thus requiring only one signature. *Id.*

by the Texas courts that the interests held in joint management community property were separate and distinct. In *Cooper*, a wife preserved her separate right to sue on behalf of her own individual interest in jointly controlled property.[70] Similarly, as held in *Williams*, a spouse could convey and encumber his or her own undivided interest in the same joint management community property.[71] What the courts left unanswered, however, was the question of the effects such separate treatment of jointly managed community property would have.

The result of separate treatment of jointly managed community interests would be to allow the effective partition of the interests without the express agreement of the parties. Such a result, however, is unconstitutional. Article XVI, section 15 of the Texas Constitution expressly provides that spouses may partition their respective community interests in property by written agreement only.[72] Section 5.42 of the Texas Family Code codifies this constitutional directive, allowing parties to "partition or exchange between themselves any part of their community property . . . as they may desire."[73] Texas Family Code section 5.44 requires that any such partition or exchange agreement be "in writing and subscribed by all parties."[74]

The severance of joint management community interests, as held in *Cooper* and in *Williams*, places the parties in a position which would violate these constitutional and statutory provisions. For instance, the supreme court decision in *Cooper* preserved Mrs. Cooper's right to bring suit which, in turn, would allow her to sue and seek recission of the sales contract as it applied to her interest.[75] Were such a suit successful, Mrs. Cooper would no longer own any interest in the property. Dr. Cooper, because he failed in his attempt to re-

70. Cooper v. Texas Gulf Indus., 513 S.W.2d 200, 202 (Tex. 1974).

71. Williams v. Portland State Bank, 514 S.W.2d 124, 127 (Tex. Civ. App.—Beaumont 1974, writ dism'd by agr.).

72. Article XVI, § 15 of the Texas Constitution states, in part that:

> spouses. . .may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse.

TEX. CONST. art. XVI, § 15.

73. TEX. FAM. CODE ANN. § 5.42 (Vernon Supp. 1985).

74. *Id.* at § 5.44.

75. 513 S.W.2d at 202.

scind, would own one-half, while the other half would remain the property of T.G.I.[76] Yet the property existed as joint management community property. It was deeded in both their names. This result would effectively partition the community property without the consent of the parties. The Texas Supreme Court's decision in *Cooper* thus created an indirect means by which joint management community property could be partitioned involuntarily.

The holding in *Williams* provides a parallel result, although the question there was a matter of encumbering jointly managed property rather than preserving a right to bring a cause of action.[77] The property in *Williams* was subject to joint management and control.[78] By foreclosing on a spouse's one-half undivided interest, the court effected a partition of the property by placing title to the property both in the bank and in Mrs. Williams.[79]

The conclusions in *Cooper*, *Williams* and *Vallone* allow for the separation of interests in jointly managed community property. In *Cooper*, the Texas Supreme Court held that spouses owning joint management community property have separate and divisible interests in their rights and claims regarding the property.[80] Likewise, the *Williams* and *Vallone* cases asserted that community property under the joint management and control of both spouses could be encumbered as to the interest of the conveying spouse.[81] Although distin-

76. This example represents an outcome which follows logically from an extension of the *Cooper* decision. The result would be different if Mrs. Cooper failed in her rescission attempt, in which case the property would remain jointly owned by Dr. and Mrs. Cooper. Another possibility is that the court would grant rescission of the contract not just to Mrs. Cooper's interest, but to Dr. Cooper's interest as well, disregarding, in effect, the prior dismissal rendered against Dr. Cooper in the interest of justice. The possibility of such an outcome is evidenced by the court's statement that "the judgment of dismissal is conclusive as to Dr. Cooper except to the extent it might have to be disregarded in giving Mrs. Cooper all the relief to which she may show herself entitled." *Id.* at 204-05. By disregarding the prior judgment, and joining Dr. Cooper as a party, the court could then grant a total rescission of the contract and leave undisturbed the parties community interests. *See* Note, *Cooper v. Texas Gulf Industries*, 6 ST. MARY'S L.J. 933, 940 (1975) (discussion of *Cooper* decision and its implications in light of Texas Constitution article XVI, § 15).

77. 514 S.W.2d at 127.

78. *Id.* at 126.

79. *Id.* at 127. The court did not specifically state that a partition of property resulted. Nonetheless, the foreclosure on the one-half undivided interest of joint management community property necessarily results in a partition of that community interest.

80. 513 S.W.2d at 202.

81. Williams v. Portland State Bank, 514 S.W.2d at 124-127 (Tex. Civ. App.—Beaumont 1974, writ dism'd by agr.); Vallone v. Miller, 663 S.W.2d at 97-98 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.).

guishable in form, the ability to encumber one's interest in joint community property resembles the ability to separately adjudicate one's own rights and claims in joint management community property. The courts' decisions thus recognized separate interests within a jointly managed asset.[82] Not surprisingly, this result has not met with universal approval by other Texas courts.

III. DALTON V. DON J. JACKSON, INC.

In *Dalton v. Don J. Jackson, Inc.*,[83] the purchaser brought suit seeking specific performance of a contract to sell joint management community property which the husband had signed but the wife had not.[84] The only issue in the case was whether the Texas Family Code allowed for the conveyance of the husband's one-half interest in the property.[85] The Austin Court of Civil Appeals ruled that such a conveyance, if effectuated by a specific performance decree, would constitute an involuntary partition of joint management community property.[86] The court held that a spouse may not convey his or her one-half interest to a third party so as to effect a partition of the jointly managed community estate.[87]

In reaching its decision, the court specifically declined to follow the conclusions of the *Williams* and *Vallone* courts that a spouse's separate interest in jointly controlled property could be foreclosed on

82. A significant question not reached in this analysis is the indirect effects of § 5.24 of the Texas Family Code. This section creates a statutory presumption of sole control in a spouse who conveys community property held in his or her name. A third party dealing with a spouse is entitled to rely on this presumption and thus may reach the community property even if the property is joint management community property. The presumption enables a spouse to unilaterally convey the whole community property interest, representing the other spouse's interest with or without his or her consent. Cumming v. Johnson, 616 F.2d 1069, 1076 (9th Cir. 1979). The courts have not resolved how a spouse may contest such a conveyance if the property is joint management community property and the spouse does not consent to or know of its transfer or encumbrance. Presumably, if the non-consenting spouse's interests are affected, the spouse may intervene in the action. *Id.* at 1076 n.11. It is uncertain, however, what action the court could take to protect the spouse's interest. If the court preserves the interest by prohibiting its being reached by a creditor, then the court would have to partition the property and allow the creditor relief only to the extent of the other spouse's one-half interest. This result would seem contrary to the partition requirements in article XVI, § 15 of the Texas Constitution.

83. 691 S.W.2d 765 (Tex. App.—Austin 1985, writ withdrawn on motion).

84. *Id.* at 766.

85. *Id.*

86. *Id.*

87. *Id.* at 768.

by a creditor.[88] The court reasoned that to allow one spouse to convey his or her one-half interest in joint management community property would be to effect an involuntary partition of the estate, "creating a tenancy-in-common between the remaining spouse and the third party."[89] The court found this possibility unacceptable for the reason that any partition of community property must comply with section 15, article XVI of the Texas Constitution[90] as well as sections 5.42 and 5.44 of the Texas Family Code.[91]

These constitutional and Family Code provisions allow for the partition of a community asset.[92] If a husband and wife wish to partition any part of their community property, they must sign a written agreement to that effect.[93] Since the Daltons' failed to enter into such an agreement, the court reasoned that any partition attempt by a third party contravened the clear constitutional and statutory dictates.[94]

The court in *Dalton* rejected the decision in *Williams* that a spouse may convey his or her interest in joint management community property.[95] Instead, the court suggested that the *Williams* case constituted questionable authority.[96] Furthermore, the court repudiated respondent's claim that the *Williams* holding was compatible with community property law.[97] Allowing the purchaser to force conveyance of the husband's interest, said the court, would constitute a partition of community property without the express written consent of the parties in violation of Texas statutory and constitutional

88. *Id.* at 767-68 (citing Williams v. Portland State Bank, 514 S.W.2d 124 (Tex. Civ. App.—Beaumont 1974, writ dism'd by agr.); Vallone v. Miller, 663 S.W.2d 97-98 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.)).

89. *Id.* at 768.

90. Article XVI, § 15 of the Texas Constitution provides that spouses may partition separate and community property by written instrument. TEX. CONST. art. XVI, § 15.

91. Section 5.42 of the Family Code codifies the constitutional provision allowing spouses to partition their separate and community property. Section 5.42 states that "spouses may partition or exchange between themselves any part of their community property, then existing or to be acquired, as they may desire." Section 5.44 requires that such an agreement "be in writing and subscribed by all parties." TEX. FAM. CODE ANN. §§5.42, 5.44 (Vernon 1975).

92. *See supra* notes 89-90.

93. TEX. FAM. CODE ANN. §§ 5.42, 5.44 (Vernon 1975).

94. 691 S.W.2d at 768.

95. *Id.*

96. *Id.* at 767. The court cited two articles in which the Williams holding was criticized: Dorsaneo, *Compulsory Joinder of Parties in Texas*, 14 HOUS. L. REV. 345, 364 n.95 (1977); and McKnight, *Annual Survey of Texas Law: Family Law*, 29 SW. L. J. 67, 88-89 (1975). 691 S.W.2d at 766.

97. 691 S.W.2d at 768.

law.[98]

In response to these criticisms made by the *Dalton* court, the respondent argued that even if a conflict existed between the Family Code and the *Williams* and *Vallone* cases, a distinction should be made for cases where the marriage has been terminated by divorce or death.[99] The respondent referred to the long standing homestead rule in Texas regarding the rights of a third party purchaser and a non-signing spouse.[100] The rule made a contract for sale of homestead property, which only one spouse has signed, inoperative only to the extent the property remains jointly managed community property. Once the marriage is dissolved by death or divorce, the contract becomes valid.[101]

The respondent argued that this same method of adjusting the rights of third parties should apply to the case at hand.[102] Where one spouse signs a sales contract on joint management community property, the rights of the third party should be preserved until such time as the estate is dissolved. Since the death of one party in *Dalton* dissolved the jointly managed estate, the respondent urged the court to accept a rule fashioned on the same basis as that of the homestead rule.[103]

The court in *Dalton* rejected the respondent's homestead argument as well. It stated that such a rule, if allowed, "would permit the substantive rights of the purchaser and subscribing spouse to remain in a kind of limbo until the community was dissolved."[104] Once the community was terminated, the contract "would spring to life bestowing the subscribing spouses one-half interest upon the purchaser."[105] The court "[s]aid such a rule would be unworkable and would produce an undesirable result."[106] The court also asserted

98. *Id.*
99. *Id.*
100. The homestead rule found expression in the Texas Supreme Court case of Grissom v. Anderson, 125 Tex. 26, 79 S.W.2d 619 (1935). As stated by the *Grissom* court, "[a] conveyance by a husband, not joined by his wife, of the homestead property is merely inoperative while the property continues to be a homestead, or until such time as the homestead may be abandoned, or the deed ratified in accordance with law." *Id.* at 30, 79 S.W.2d at 621 (citations omitted).
101. *Id.*
102. 691 S.W.2d at 767.
103. *Id.*
104. *Id.*
105. *Id.*
106. *Id.*

that the rule would infringe upon the court's power to divide community property pursuant to section 3.63 of Texas Family Code.[107]

The statutory and constitutional provisions relied on by the *Dalton* court place clear restrictions upon the partition of community assets. To partition jointly owned and managed property, the parties must agree in writing. Prior cases, however, have refused to recognize these provisions and instead have reached conclusions which, in effect, allow indirect and involuntary partitions of the jointly owned and managed estate. The court in *Dalton* rejected the conclusions of these earlier cases, deciding instead to follow the plain requirements of the Texas Family Code and the constitution.[108] Joint management community property involves joint interests, not separate interests.[109] Any partition of a joint interest necessitates an agreement by the parties. Partition without agreement, by any means, undermines the nature of jointly held and controlled property. The *Dalton* decision provides a ready means by which the joint management responsibilities of a community asset may be preserved and thus represents the only logical solution to a question that has created a great deal of confusion.

In addition to providing a coherent approach to the problems created by previous interpretations of section 5.22, the *Dalton* decision returns to the Texas community property system what the *Cooper* and *Williams* decisions displaced: the integrity of jointly owned property. Property subject to the joint management and control of both spouses necessarily requires consent in all conveyances and transfers. The decision by the Texas Supreme Court in *Cooper*, as well as the holdings in *Williams* and *Vallone*, only encourage indirect means by which to partition joint management community property.[110] The *Dalton* decision correctly preserves the concept of community property. The holding is a simple, logical application of Texas Family Code law.[111] It eliminates the confusion associated with the

107. *Id.* Section 3.63 of the Family Code provides that in a decree of divorce or annulment the court should divide the estate of the parties in a just and fair manner, taking into account the separate property rights of each party. *See* TEX. FAM. CODE ANN. § 3.63 (Vernon Supp. 1985).

108. 691 S.W.2d at 765.

109. TEX. FAM. CODE ANN. § 5.22 (Vernon 1975).

110. Cooper v. Texas Gulf Indus., 513 S.W.2d 200 (Tex. 1974); Williams v. Portland State Bank, 514 S.W.2d 124 (Tex. Civ. App.—Beaumont 1974, writ dism'd by agr.); Vallone v. Miller, 663 S.W.2d 97 (Tex. App.—Houston [14th Dist.] 1983, writ ref'd n.r.e.).

111. *See generally*, TEX. REV. CIV. STAT. ANN. art. 5429b-2 § 3.01 (Vernon Supp. 1985)

separation of jointly managed community interests. In practical terms, this will mean that lenders and creditors will no longer have any doubt as to the ability of a spouse to convey or encumber his or her individual interest in joint management community property. The *Dalton* decision prohibits such a conveyance without express approval by the other spouse. In addition, the decision has a possible procedural application, such that spouses' rights and claims in jointly managed and controlled community property must be adjudicated together with the rights of the other spouse. Thus, the difficulties encountered in *Cooper* would be eliminated.

The logic and simplicity underlying the *Dalton* decision warrants approval of its holding by the Texas Supreme Court. The decisions in *Cooper*, *Williams* and *Vallone* have created confusion in an area that merits clarity. By determining that spousal interests in joint management community property are not capable of involuntary partition, the court in *Dalton* has reaffirmed the purposes behind the creation of a joint management community property system: to place management responsibilities in the hands of both spouses and to prohibit the partition of community assets without the express approval by both spouses. The Texas Supreme Court's affirmation of the *Dalton* ruling would go a long way toward making such a purpose a reality in Texas.

IV. CONCLUSION

In *Dalton*, the Austin Court of Civil Appeals ruled that a spouse cannot convey his or her interest in joint management community property so as to effect a partition of the community estate.[112] The court based its decision on sections 5.22, 5.42, 5.44 of the Texas Family Code, as well as section 15, article XVI of the Texas Constitution. These provisions require that jointly managed property be partitioned by express written agreement. The court refused to allow for the indirect partition of such community interests, and preserved the spirit of the Texas community property system. The term "community prop-

(Rule of Construction Act requirements with regard to the interpretation and construction of statutory authority).

112. Dalton v. Don J. Jackson, Inc., 691 S.W.2d 765 (Tex. App.—Austin 1985, writ withdrawn on motion.).

erty" itself reflects the idea of shared experience or union. The courts should not support attempts to defeat this union.

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