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DUE PROCESS—EXECUTING AGAINST COMMUNITY ASSETS

State and federal courts in Louisiana are beginning to probe the demands of state and federal due process with respect to the seizing of community assets after litigation against one spouse, without notice to the other spouse of the initial action or of the seizure. The inquiry is an open, flexible one requiring recourse to basic principles and fundamental policies, for little in the existing case law establishes certain rules.

In *Jackson v. Galan*,[1] Judge Sear of the United States District Court for the Eastern District of Louisiana held that it was a denial of due process to garnish a wife's wages to satisfy a judgment against her husband, when "she was neither named as a party defendant nor served with process of any kind."[2] On the other hand, the Louisiana Court of Appeal for the First Circuit in *Magee v. Amiss*[3] found no defect in a judicial sale of former (but unpartitioned) community property to satisfy a judgment against the husband, when the wife had not received notice. The spouses, however, had not recorded their judgment of separation in the conveyance or mortgage records.

Although *Jackson* faced the the constitutional question squarely, albeit in a case with a scant factual record, *Magee* is not as directly on point on the legal question and is distinguishable in a number of ways. In *Magee*, the community regime had been terminated prior to when the debt was incurred and to the seizure and sale; thus it involved co-owners in indivision rather than in community. The case arose before the 1980 community property revision, which established equal management of community assets and which made the notice problem more complex than it was before. At issue was a debt for necessary repairs

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1. 631 F. Supp. 409 (E.D. La. 1986).

2. Id. at 415.

3. 490 So. 2d 322 (La. App. 1st Cir. 1986). Also distinguishable is Chrysler Credit Corp. v. Nata, 469 So. 2d 11 (La. App. 4th Cir. 1985), in which both spouses signed the note and chattel mortgage on a vehicle registered in the husband's name alone. Here, the wife was a solidary obligor, and at issue was a movable registered in the husband's name alone.

to the roof of a house, and thus the case is distinguishable statutorily under the doctrine of negotiorium gestio or the rights of possessors of property.[4] The decision is further supportable on statutory grounds, since the parties had failed to record judgment of separation that terminated the community in the mortgage or conveyance records. Thus, under Louisiana Revised Statutes (La. R.S.) 9:2721, it was a "judgment . . . relating to or affecting" immovable property, ineffective as to third persons. Nonetheless, *Magee* addresses the constitutional question in dictum and will be discussed here in light of its similarity to the situation of spouses who have an undivided co-ownership in each asset of the community.

The Substantive Law

The community property revision effective in 1980 established a regime in which spouses have equal ability to make community assets available to creditors for satisfaction of debts. Civil Code article 2345 allows a creditor of either spouse, during the existence of the community, to satisfy an obligation by executing against that spouse's separate property and all the community assets. It matters not whether the obligation is a separate debt or a community debt, nor whether it arose before the marriage.[5] Though some obligations require the consent of both spouses to be valid,[6] most debts do not, and it is possible for one spouse to incur substantial liabilities without the consent (or even the knowledge) of the other. Article 2345 is silent regarding notice to the other spouse when a creditor seeks to reach community property. The Code also fails to provide any procedure for the marshalling of assets or for establishing a priority for separate or community property to be reached first to satisfy different kinds of debts.[7] It is basically the creditor's choice in this regard.

After termination of the community, article 2357 applies and makes available to then-existing creditors the same patrimonial mass that existed at termination. Obligations incurred before termination can be satisfied by the separate property of the spouse who incurred the obligation and by "property of the former community,"[8] without regard to which spouse now owns the asset. Again, the Civil Code makes no mention

4. La. Civ. Code art. 2314 (repealed 1979); La. Civ. Code arts. 527, 528.

5. Spaht & Samuel, Equal Management Revisted: 1979 Legislative Modifications of the 1978 Matrimonial Regimes Law, 40 La. L. Rev. 83 (1979).

6. La. Civ. Code art. 2347.

7. Spaht & Samuel, supra note 5, at 122-28; Note, Termination of the Community, 42 La. L. Rev. 789 (1982).

8. Spaht, Developments in the Law, 1981-1982—Matrimonial Regimes, 43 La. L. Rev. 513, 517 (1982); Note, Termination of the Community, 42 La. L. Rev. 789, 791 (1982).

of notice or preference for one type of property or another. The basic policy is simply that community assets are available to satisfy the debts of each spouse.

Substantive Due Process

Little has been written suggesting that the substantive law scheme just described results in a violation of due process. The argument would be that inadequate governmental interest exists to support depriving a spouse of property to satisfy another's debt. One answer would be that the non-incurring spouse is given equal power to reach community assets. More importantly, the provision is part of a larger scheme which grants to each spouse, whether earning income or not, a share in the gains for contributing to the ongoing household. Sharing the burden of the debts seems to be a logical corollary to sharing the gains. It would be hard to defend a scheme making spouses *personally* liable for the debts of the other, but the Louisiana scheme does not do this.[9] It only makes the existing community assets available to the creditor. The spouses can protect future assets by either keeping them out of the community or by terminating the community.

The Louisiana Supreme Court has held it is not a denial of due process for the state to forfeit community seines, trawls and other fishing equipment used by husbands in violating the shrimping laws.[10] Since the 1980 revision, the wife is equal to the husband in managing or representing the community, but that should not change the underlying conclusion that the non-violating spouse's interest could be constitutionally taken. More broadly, the Louisiana view has been that forfeiture statutes can be applied to the property of innocent owners.[11]

The United States Supreme Court took a similar view in *Calero-Toledo v. Pearson Yacht Leasing Co.*[12] The owner of a yacht claimed a denial of due process when the government sought to forfeit the yacht because of its use in illegal activity by a lessee. The court permitted the forfeiture, even though there had been no proof of the owner's participation in the crime, because "no allegation ha[d] been made or proof offered that the company did all that it reasonably could to avoid having its property put to an unlawful use."[13]

That harsh approach may be weakening slightly. Recent statutory developments in Louisiana disclose a view that such punishment of

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9. Hargrave, Developments in the Law, 1983-1984—Louisiana Constitutional Law, 45 La. L. Rev. 397, 401 (1984).

10. 254 La. 988, 229 So. 2d 72 (1969).

11. State v. Bellande, 241 La. 213, 128 So. 2d 14 (1961); State v. Sonnier, 242 La. 220, 135 So. 2d 472 (1962).

12. 416 U.S. 663, 94 S. Ct. 2080 (1974).

13. Id. at 690, 94 S. Ct. at 2095.

innocent persons is unfair. The mini-RICO statute, which provides for forfeiture of property obtained by illegal drug activity, specifically states that "[n]o forfeiture or disposition under this Section shall affect the rights of factually innocent persons."[14] Such innocent persons include those holding a "mortgage, lien, privilege, or other security interest recognized under the laws of Louisiana," as well as those with an "ownership interest in indivision."[15] Continuing statutory development along these lines may support the view that the governmental interest here is not so strong in a due process analysis, when a person "did all that it reasonably could" to prevent the conduct resulting in the forfeiture or the seizure. If so, one could make a similar argument that the property of an "innocent" spouse should not be seized to satisfy another's debt when that spouse did what was reasonable to prevent it.

The Procedural Scheme

Since the community is not a separate legal entity, it cannot be sued.[16] Because under the prior law, only the husband could manage community assets or incur community debts, the Code of Civil Procedure simply provided that the "husband is the proper defendant in an action to enforce an obligation against the marital community."[17] In case of doubt whether an obligation was community or a separate obligation of the wife, the spouses could be sued in the alternative. The Code of Civil Procedure said nothing about suing them jointly.[18] When the substantive community property revision was adopted in 1980, the procedural rule was changed to make *either spouse* the proper defendant "in an action to enforce an obligation against community property."[19] Exception is made if one spouse is the "managing spouse with respect to the obligation sought to be enforced against community property."[20] When the character of the obligation is not certain the spouses may be sued in the alternative. Also added was the provision that when only one spouse is sued, the other is not an indispensable party, but only a necessary party. Nevertheless, to prevent "an injustice to that spouse,"[21] the court may order joinder of the spouse on its own motion.

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14. La. R.S. 15:1356 (Supp. 1986).

15. Id.

16. See Comment, The Juridical Nature of the Marital Community, 25 La. L. Rev. 721 (1965).

17. La. Code Civ. P. art. 735 (amended 1979).

18. Cf. Ariz. Rev. Stat. Ann. § 25-215 (1976) which provides for jointly suing the spouses.

19. La. Code Civ. P. art. 735 (amended by 1979 La. Acts 711, § 3).

20. Id.

21. Id.

Under old Code of Civil Procedure article 735, some doubt might have existed as to the meaning of an action to "enforce an obligation against the marital community." That terminology was imprecise, for the community is not a separate entity with a juridical personality. The reference had to be a community debt or obligation. The imprecision caused no serious problem, however, for the husband was the sole manager of the community and whatever actions were involved had to be against him.

Amended article 735 also imprecisely refers to an action to "enforce an obligation against community property." Strictly construed, this is a reference to in rem or quasi-in-rem proceedings or to an action to enforce a judgment already rendered. It would not include a personal action which, if carried to judgment, could result in execution against community property. Confusion is caused, however, by the reference in the second paragraph of the same article to "a community obligation or the separate obligation," suggesting that the initial personal action is in fact contemplated.

Here again, the problem may not be serious, for basic due process requirements will overshadow article 735 and provide the overriding rule. Since the community is not a separate entity, one or both of the spouses will have to be sued, depending on the grounds for the suit. In a contractual dispute, the spouse in privity should be sued; in a tort suit, the tortfeasor should be called to defend. A plaintiff wanting to assert a right against a married person living under the community regime must assert it against that person or his agent. It seems clear it would be a violation of due process to obtain a personal judgment against a person without that person being sued.[22] No principle of agency or substantive marriage law would make one person the other's agent for litigation purposes absent some consent.

If one were to follow article 735 literally and seek a personal judgment against *one spouse* by sueing, giving notice to, and litigating with the *other spouse*, without the consent or presence of the first, the judgment would be a nullity as well as a violation of due process.[23] Justification for such a drastic departure from basic notions of fairness would be virtually nonexistent. If the spouses are living together, there would probably be jurisdiction over the other. If a spouse is incapable, the interdiction procedure is available.[24] If the spouse is absent, the absentee procedure is simple.[25] Little governmental interest exists to

22. E.g., Shaw v. Phillips Crane & Rigging, Inc., 636 S.W.2d 186, 187 (Tex. 1982), appeal dismissed for want of a substantial federal question, 459 U.S. 1191, 103 S. Ct. 1169 (1983).

23. Id.

24. La. Civ. Code arts. 389-426; La. Code Civ. P. arts. 4541 et. seq.

25. La. Civ. Code arts. 57-79; La. Code Civ. P. arts. 2674, 5091 et. seq.

justify a judgment against a person without that person's participation. Furthermore, what would one have against the spouse who is sued? A personal judgment? Apparently not, for that person would not be the one who engaged in the contract or committed the tort, and there would be no substantive basis for that person being bound.[26]

Procedural Due Process—Notice

The most serious problem in this area is one that article 735 does not address—whether the nonparty spouse must be notified (a) of the initial lawsuit on the obligation, or (b) of the action to enforce a judgment by seizure and sale or garnishment of community property.

In *Jackson v. Galan*,[27] no notice was given to a wife of a suit against her husband to collect a note. Furthermore, she received no notice of an action to satisfy the obligation under the note against her employer that resulted in garnishing her wages. The court did not distinguish between these two types of notice. Failure to give notice of the seizure is easier to fit into the existing case law, as discussed later, but the court indicated that more was involved. The court pointed out that, because the wife was only a necessary and not an indispensable party, and because the husband did not object to this nonjoinder in the *initial suit*, the wife was "placed in the inauspicious position of having . . . her property placed at peril of seizure with neither notice nor hearing."[28] Since state action existed in the use of the state's enforcement powers, 42 U.S.C. § 1983 could be invoked, resulting in the possibility of damages and injunctive relief.

Five years earlier, Judge Mitchell of the Eastern District, in an unpublished opinion, ruled similarly in *Williams v. First National Bank of Commerce*.[29] He ruled that seizures under *fieri facias* of a nonparty spouse's interest in community property would violate due process if that spouse was not served with the citation and petition in the initial action, and not placed on notice that the judgment issued could be executed against community property, including wages. Thus, he held that a minimally acceptable procedure required citation and notice, granting the nonparty spouse the same delays for pleading in the action available to the parties, and notice that the judgment could be satisfied by seizing community property.

On the other hand, Judge Dawkins of the Western District in *Bonner v. B.W. Utilities Inc.*,[30] seemed to focus on notice of the foreclosure

26. See W. McClanahan, Community Property Law in the United States 496 (1982).
27. 631 F. Supp. 409 (E.D. La. 1986).
28. Id. at 412.
29. No. 79-3185 (E.D. La. Mar. 27, 1981).
30. 452 F. Supp. 1295 (W.D. La. 1978).

under Louisiana's executory process. In executory process, of course, the underlying cause of action is not litigated under the confession of judgment theory that supports such process.[31] Therefore, the court concluded: "The very least a person may expect before the State seizes and sells his real property . . . is that a reasonable attempt will be made to notify him of the proceedings."[32] In *Bonner*, the plaintiff, who was not notified of the seizure, owned residential property subject to a mortgage granted by a prior owner. The reasoning was similar to that employed in *Mennonite Board of Missions v. Adams*,[33] in which the United States Supreme Court held that a mortgagee of property was entitled to some notice of a tax sale of the property after the owner's failure to pay taxes.

Judge Tate's Fifth Circuit opinion in *Myers v. United States*[34] provides a strong analogy. The buyer of property at a foreclosure sale argued that the procedure allowing the United States to levy on private property to enforce its tax assessments was unconstitutional. The United States was not notified of the sale, and thus the United States' lien was not discharged.[35] The buyer asserted that granting an opportunity to contest the levy was not enough; there should also be, he insisted, the opportunity to contest the validity of the underlying tax assessment that provided the basis for making the levy. The court disagreed: "However, we perceive no constitutional infirmity in that restriction."[36] Considering the strong governmental interest in tax collections and the taxpayer's opportunity to contest the assessment, no denial of due process occurred. It was adequate that the buyer of the property could contest the superiority of the lien, the means of making the levy, etc. In the same way, one could distinguish between notice of the suit against a spouse and notice of seizure of community property.[37]

In a due process analysis, the basic inquiry weighs (a) the citizen's interest that is being impinged upon; (b) the government's interest in proceeding as it does; and (c) the possible means to protect the citizen interest while adding minimal burdens on the governmental interest.[38]

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31. La. Code Civ. P. art 2632.

32. 452 F. Supp. at 1303.

33. 462 U.S. 791, 103 S. Ct. 2706 (1983).

34. 647 F.2d 591 (5th Cir. 1981).

35. 26 U.S.C. § 7425 (1966).

36. 647 F.2d at 603.

37. See Note, Termination of the Community, 42 La. L. Rev. 789, n.51 (1982). A similar approach was taken in Shataka v. Smith, 491 So. 2d 671 (La. App. 4th Cir. 1986), holding on statutory grounds that in an eviction proceeding against a lessee, sublessees were entitled to notice to vacate premises, but not to service of process of the main suit.

38. Mathews v. Eldridge, 424 U.S. 319, 96 S. Ct. 893 (1976); see United States v. National Bank of Commerce, 554 F. Supp. 110 (E.D. Ark. 1982).

This is the inquiry under both the federal due process guarantee of the Fourteenth Amendment and the state due process guarantee of article 1, section 2 of the Louisiana Constitution of 1974. The Louisiana Supreme Court recently addressed the nature of this inquiry in *Wilson v. City of New Orleans*,[39] in which it held the procedure for immobilizing or "booting" automobiles that had received excessive parking tickets to be a denial of due process. The inquiry, stated the court, is basically a "cost-benefit, or balancing, analysis to decide what procedural safeguards are demanded by due process for each type of deprivation."[40] The court in *Wilson* also recognized the importance of notice: "Persons whose rights may be affected are entitled to be heard; and in order that they may enjoy that right, they must first be notified."[41]

The Private Interest Being Invaded

By virtue of Civil Code article 2336, each spouse "owns a present undivided one-half interest in the community property." This interest is not an inchoate future expectancy, but a present interest under state law.[42] It is also true, however, that this is a special kind of "ownership" under which one spouse acting alone can transfer title to most community assets to a third person.[43] A spouse's ownership is thus subject to divestment by the other spouse, and arguably it should make little difference whether such divestment is by voluntary act of the other spouse or forced by the action of that spouse's creditors. It must be recognized, however, that with respect to immovable property and movables registered or issued in the name of both spouses, consent of both spouses is required for a valid voluntary transfer.[44] In those instances, the interest being invaded is much stronger, for the whole scheme protects each spouse against the other's acts with respect to those transactions that have the potential for serious depleting of the community patrimony. This situation is more akin to co-ownership in the traditional sense.

One can compare the intensity of this special ownership interest with interests in other cases. *Bonner* involved the interest of an owner of land subject to a mortgage imposed by a former owner. This is quite similar to a spouse's ownership subject to dispossession by another person. In *Bonner*, minimal due process required notice to the owners subject to dispossession if those owners were easily ascertainable. In

39. 479 So. 2d 891 (La. 1985).
40. Id. at 895.
41. Id. at 894.
42. La. Civ. Code art. 2336; R.D.M. Corp. v. Patterson, 255 La. 301, 230 So. 2d 820 (1970).
43. La. Civ. Code art. 2346.
44. La. Civil Code art. 2347.

Mennonite, the interest protected was that of the holder of a mortgage as against government enforcement of its tax laws. The interest of a community co-owner appears at least as strong as that of a holder of a real right of mortgage on property. The leading United States Supreme Court case on notice is *Mullane v. Central Hanover Bank & Trust Co.*,[45] the Court required notice when the private interest was simply the ability to contest improper management of pooled, small trust funds—certainly something less than an ownership interest in property. The recent Louisiana Supreme Court decision in *Wilson v. City of New Orleans* protected an automobile owner against the loss of possession—again, an interest in property less than ownership—as a device to ensure payment of traffic fines.

It thus appears that the court's implicit finding in *Jackson* that the interest of the nonparty spouse is as strong or stronger than those in prior cases is on firm ground. *Magee* does not pursue this analysis in great detail. It simply says, after an enumeration of *Mennonite*'s facts, that *Mennonite* is distinguishable. The court does not explain why an ownership interest in indivision should be given less weight than a mortgagee's interest. *Magee* also distinguishes *Bonner* without a detailed discussion of why the ownership interest there—one subject to a preexisting mortgage—was stronger than the ownership interest in community property.

The Extent of the Deprivation

If a plaintiff has secured a judgment against a spouse and proceeds to execute against community property, the nonparty spouse is in the position of losing all ownership rights to that property. In a few instances, the nonparty spouse may have a claim against the other spouse in a final accounting for fraud or bad faith,[46] but this is of little value when the community assets are gone. In any event, the loss is extreme, as much as in *Mennonite*, where the result would have been complete nullification of the mortgagee's interest in the property, since the purchaser acquires title free of all liens and other encumbrances.[47]

Notice of seizure of property or garnishment could also prompt the nonparty spouse to seek a separate property agreement, to obtain a judicial separation of property, or to act to keep fruits of separate property out of the community. The community could be terminated and future earnings and fruits of the nonparty spouse would be free from liability for the other spouse's debts. Notice could also provide the information that would make the spouse avoid alienating property

45. 339 U.S. 306, 70 S. Ct. 652 (1950).
46. La. Civ. Code art. 2354.
47. 462 U.S. at 798, 103 S. Ct. at 2711.

of the former community, which in some instances under article 2357, would result in future personal liability on the part of that spouse.

In addition to these unique community property devices, there are the standard defenses which might be raised—contesting whether the property seized is separate or community, contesting the procedural regularity of the seizure, jurisdiction, etc. None of these defenses requires contesting the validity of the underlying claim that resulted in the judgement.

If one looks at the failure to give the nonparty spouse notice of the initial action, the possible harm is less clear. Although under article 735 of the Code of Civil Procedure, the other spouse is not an indispensable party, the court may on its own motion provide for notice to that other spouse in the interest of justice. The obvious corollary of that provision is that the spouse can do something to protect his or her interests upon notification. Other proceedings, such as interdiction of the spouse, if possible, or filing a suit for separation of property in light of the disorder of the affairs of the party spouse, are possible measures which the notified spouse could take.

The extent to which the nonparty spouse could participate in the defense of the main lawsuit, however, is not clear. In contract suits, the parties in privity will assert their interests, and in tort suits, the injured plaintiff and the persons allegedly at fault will assert their interests. The nonparty spouse's interests are more limited—protection of the community property against a later seizure. If, for example, the party spouse failed to raise a liberative prescription defense and the other spouse wanted to do so, it is not clear exactly what could be done. Determining the importance of the spouse's interest in receiving notice of the action hinges in part on his ability to participate. Until the extent of his participation is established, it is hard to say that a serious invasion of his interest is or is not going to happen.

Governmental Interests

The primary governmental interest in the current scheme appears to be to protect the rights of creditors by giving them a speedy means of enforcing their rights against debtors who happen to be married. Ultimately, this should also produce cheaper credit for consumers. Such an interest is not as great as, for instance, the governmental interest in securing collection of tax revenues,[48] or in providing for attachment of ships without a hearing under admiralty rules, because the vessels can leave the jurisdiction so quickly.[49]

48. Myers v. United States, 647 F.2d 591 (5th Cir. 1981).

49. Merchants Nat'l Bank v. The Dredge General G. L. Gillespie, 663 F. 2d 1338 (5th Cir. 1981).

The governmental interest may also relate to protecting third persons who engage in commercial transactions with married persons, by relieving them of concern over the relations between the spouses resulting from their marital property regime. The third person tort plaintiff or contracting party ought to be able to deal as much as possible with one spouse.

The policy concern that produced the current law, however, was to provide equality for the spouses. Under the prior law, all community claims had to be asserted against the husband and satisfaction could be had as to his separate assets and the community assets. The revision simply accorded these same rights to the wife. The wife's creditors could now reach community property, too. Under the old rule, the manager of the community would be given notice of all lawsuits and seizures involving community debts and property. Equality, however, has created the possibility that a *de facto* non-manager of community property could be sued on claims that would put the property at risk. This possibility was not so much planned, as it was the result of a desire for equality.

Indeed, the substantive law in this area, where the major changes occurred, did not face the immediate problem. The best the revision did in resolving this problem was to amend article 735 to read as it now does.[50] The amendment shows concern for the nonparty spouse; hence the unique (and perhaps unmanageable in the traditional adversary system) provision that the judge may provide for notice to the other spouse on his own motion.

In any event, to the extent there is data reflecting a concern for speedy and efficient protection of the rights of creditors, those interests must be compared with prior cases. The *Bonner* concern was the same—speedy executory process—and the weight placed on the interest was not sufficient to sustain the procedure without notice. In *Mennonite*, the governmental interest in collecting its own taxes was inadequate. It would seem that the same conclusion would be reached here: that the governmental interest is not particularly strong. This then forces more careful examination of the crucial part of the analysis—what can be done to protect the citizen while imposing only minimal burdens on the governmental interests.

The Weighing

The court's approach in *Mullane* is the guiding point: whereas newspaper publication would be sufficient as to unknown or missing beneficiaries, "[w]here the names and post-office addresses of those

50. Spaht & Samuel, supra note 5, at 135. (The Louisiana State Law Institute proposed the amendment.)

affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency."[51] Similarly, the burden of notifying the spouse of a party would be minimal when that spouse's existence is available from the public records and the address from local sources. Granted, in the usual on-going marriage, the spouse served will inform the other of the lawsuit or seizure and discuss it with the other. But the cases in which that does not occur—when one spouse is away; when the spouses are living apart or otherwise estranged; when one is trying to enhance his or her economic position to the disadvantage of the other—are exactly the ones in which notice is most needed, and when recourse to the public records or other easily obtainable sources of information would produce the maximum benefits with the least intrusive burden. In *Mennonite*, for example, the fact of a mortgage and the identity of the mortgage holder were available from the public records.[52] In *Bonner* the existence and address of the subsequent owner of the property were available in the records.

Conclusion

Predictable solutions are hard to reach in a due process analysis that depends so much on the facts of any individual situation. Although state law, for example, does not distinguish between wages earned by one or the other spouse in terms of availability to creditors, since both are community, *Jackson v. Galan* is doubtless an easier case because it involved the wages of the spouse who was not given notice. *Magee*, perhaps, is more understandable because of the failure of the spouses to record their separation judgment in the property records, and because the debt sued upon was a necessary roof repair.

Nonetheless, in light of the cases just discussed, it is difficult to avoid the conclusion that in suits against a spouse, the prudent plaintiff will give both spouses notice if existence of the nonparty spouse and

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51. 339 U.S. at 318, 70 S. Ct. at 659.

52. The court in *Mennonite* stated at footnote 4:

> In this case, the mortgage on file with the County Recorder identified the mortgagee only as "MENNONITE BOARD OF MISSIONS a corporation, of Wayne County, in the State of Ohio." We assume that the mortgagee's address could have been ascertained by reasonably diligent efforts. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. at 317. Simply mailing a letter to "Mennonite Board of Missions, Wayne County, Ohio," quite likely would have provided actual notice, given "the well-known skill of postal officials and employees in making proper delivery of letters defectively addressed." Grannis v. Ordean, 234 U.S. 385, 397-398 (1914). We do not suggest, however, that a governmental body is required to undertake extraordinary efforts to discover the identity and whereabouts of a mortgagee whose identity is not in the public record.

462 U.S. at 798, 103 S. Ct. at 2711 n.4.

an address may be obtained from public records or other reasonable sources. The prudent attorney will hardly proceed without that kind of precaution, at least as to notice of seizure, and, since the burden is not much greater, also as to notice of the initial lawsuit. The risk is not simply one involving a theoretical constitutional law question: 1983 damages are at stake.