

2-1-1997

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Lee Hargrave, *Community Property Considerations in Law Suits By and Against Spouses*, 57 La. L. Rev. (1997)

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## Community Property Considerations in Law Suits By and Against Spouses

*Lee Hargrave*

The rules governing the prosecution and defense of civil actions by married persons living under a community property regime—actions that may ultimately affect their community property—are primarily substantive law matters governed by Louisiana Civil Code provisions. The imprecision in Louisiana's related procedural statutes can result in some uncertainty, but once the basic rules are applied, it appears that the procedural problems are subsumed by the substantive law.

The overriding principle is that the community is not a legal entity with a juridical personality.<sup>1</sup> The community owns nothing and owes nothing. It cannot sue or be sued. No spouse "represents" the community as an agent or mandatary.<sup>2</sup> No judgment can be rendered for or against a community. Any litigation involving third persons has to be with one (or both) of the spouses as the party (or parties) in interest and not as agent (or agents) of a legal entity.

Also basic to this scheme is the general principle that the spouses, whether under a community or separate regime, are to be treated as unmarried persons of the age of majority in their ability to sue and be sued with respect to third persons.<sup>3</sup> Spouses lose no status rights or juridical capacity upon marriage. At least since the Married Women's Emancipation Acts, wives no longer lose some management rights over their property in favor of their husbands.<sup>4</sup> Since 1980, they also have equal management rights over community assets and over the management of their lawsuits.<sup>5</sup> The spouses are not automatic representatives of each other absent consent or a special statute making them so.

Another important substantive rule is that spouses are governed by the general laws of capacity and obligations in their contracts and torts. Especially important is the concept of personal liability: "Whoever has bound himself personally, is obliged to fulfill his engagements out of all his property, movable and immovable, present and future."<sup>6</sup> The important variation of this rule is the expansion community property law makes in Louisiana Civil Code article 2345. If a community exists, a spouse's obligations may be satisfied from the community property as well as that spouse's separate property. This result follows even though only one spouse incurs the obligation. It is so whether the obligation is community

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1. Under La. Civ. Code art. 2336, each spouse owns a present undivided half interest in each item of community property. Title is not in a separate entity. Under Article 2325, debts of the spouses can be satisfied by reaching community property, but the community has no debts.

2. La. Civ. Code art. 2346 cmt. b.

3. La. Civ. Code arts. 27, 29, 98-100; La. R.S. 9:291 (1991).

4. La. R.S. 9:51-105 (1991) (Married Women Emancipation Acts).

5. 1979 La. Acts. No. 709.

6. La. Civ. Code art. 3182.

or separate. It is so even if only one spouse is sued and found to be liable.<sup>7</sup> Under this scheme, lawsuits may proceed against one spouse alone even though they affect community property.<sup>8</sup> Due process probably demands notice to the other spouse before *seizure* of community assets. That notice, however, does not normally extend to notice of the underlying lawsuit.<sup>9</sup>

It should not be necessary for a third person to sue both spouses or for both spouses to join in a lawsuit against a third person unless the third person seeks a personal judgment against both spouses, the substantive law so provides, or both spouses want a personal judgment against the third person, again if the substantive law provides for such a judgment.

The basic procedural rules to be invoked are Louisiana Code of Civil Procedure articles 681, 682 and 731, which provide that an action can be brought only by a person having a real and actual interest in the claim and that a competent major person has the procedural capacity to sue and be sued.<sup>10</sup>

However, there are two special procedural statutes in effect that address the "proper plaintiff" and "proper defendant" in litigation related to community property. These statutes are discussed in the following sections. Basically, though, the issue will become whether one spouse will be, conventionally or by law, the representative of the other for litigation purposes. And, to the extent a state would make one person the legal representative of another, *Hansberry v. Lee*<sup>11</sup> suggests "that it would violate the Due Process Clause of the Fourteenth Amendment to bind

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7. *Rayne State Bank & Trust Co. v. Fruge*, 546 So. 2d 637 (La. App. 3d Cir.), *writ denied*, 551 So. 2d 1314 (1989).

8. In Arizona, the rule is that either spouse may contract debts, but, "[i]n an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or obligation." Ariz. Rev. Stat. Ann. § 25-215(D) (1991). In California, the community property is liable for a debt incurred by either spouse regardless of which spouse has management of the property and whether one or both spouses are parties to the debt or to a judgment for the debt. Cal. Fam. Code § 910 (West 1996).

9. 16 Katherine S. Spaht and W. Lee Hargrave, *Matrimonial Regimes* § 6.7, in 16 Louisiana Civil Law Treatise (1989); Michael H. Rubin & E. Keith Carter, *Notice of Seizure in Mortgage Foreclosures and Tax Sale Proceedings: The Ramifications of Mennonite*, 48 La. L. Rev. 535 (1988).

10. Article 681 does state the real party in interest rule applies "[e]xcept as otherwise provided by law." However, the comment states that the exception "in the first clause of this article avoids a conflict between it and Arts. 683, 684, 692 through 695, and 700." Apparently, Article 686, which addresses the community right problem, is not considered an exception to the rule, but a reflection of the same rule.

See generally Steven R. Plotkin, 1 Louisiana Civil Procedure 530-31: "The concept of the real and/or actual party in interest insists that the named plaintiff possess the right sought to be enforced. This concept does not specify which parties must be joined in the action, but instead guarantees that those present are proper parties plaintiffs whose legal rights have allegedly been infringed and who will be awarded redress if the action is successful. This rule satisfies the policy of due process notice to the defendant and to the court concerning the type of action filed; it also promotes the doctrine of *res judicata*."

11. 311 U.S. 32, 61 S. Ct. 115 (1940).

litigants to a judgment rendered in an earlier litigation to which they were not parties and in which they were not adequately represented."<sup>12</sup>

### I. SUITS BY THE SPOUSES

When the husband was the sole manager of the community, it may well have been appropriate to designate him as the manager of actions involving community property. At that time, Louisiana Code of Civil Procedure article 686 referred to him as the "proper plaintiff" to sue to enforce "a right of the community." To solve the procedural problems that could arise when it was uncertain whether a right was community or separate, the 1960 procedural reform also provided that when such doubt existed "the husband and wife may sue in the alternative to enforce the right."<sup>13</sup>

Upon adoption of equal management in 1979, Article 686 was amended to provide simply that "either spouse is the proper plaintiff" to "sue to enforce a community right."<sup>14</sup> However, "if one spouse is the managing spouse with respect to the community right sought to be enforced," then that spouse alone may bring the action. In case of doubt now as to whether the right is separate or community, the article also provides "that spouse" may sue in the alternative to enforce the right. "[T]hat spouse" presumably refers to the one whose separate right it might also be.

In 1979, a third paragraph was also added to Article 686 to make it clear that the non-suing spouse would never be an indispensable party. It stated that the spouse was only a necessary party, and added the unique provision that the judge on his own motion could order the other spouse to be joined to prevent an injustice to that spouse. Article 686 was not amended in 1995 when Articles 641 and 642 were amended to abolish the distinction between indispensable and necessary parties and to adopt instead a flexible statement of considerations to guide judges in deciding whether litigation could proceed without what had been considered indispensable parties.<sup>15</sup> In any event, the basic rule remains the same; litigation by one spouse alone is not precluded, and judicial discretion governs whether the litigation can proceed without the other. Also, under new Article 645, the failure to join a party "may be noticed by the trial or appellate court on its own motion" in any case.

A basic problem with Article 686 is its reference to a "community right." Strictly speaking, there is no such thing. The community is not a juridical

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12. *Richards v. Jefferson County*, 116 S. Ct. 1761 (1996).

13. La. Code Civ. P. art. 686 (1960).

14. 1979 La. Acts No. 711.

15. 1995 La. Acts No. 662. The drafter's comment states: "The amendments . . . codify the holding of the Louisiana Supreme Court in *State Department of Highways v. Lamar Advertising Co.* of La. . . . that courts determine whether a party should be joined and whether the action could proceed if the party could not be joined by a factual analysis of the interests involved." See Fed. R. Civ. P. 19.

person that can be the subject of rights. As between husband and wife, it may be convenient to speak of community or non-community obligations and rights, and it may be an acceptable standard to solve accounting problems between the spouses.<sup>16</sup> Third persons, however, do not contract with a community and are not harmed by delicts or torts committed by a community. Third persons contract with individuals: a husband, a wife, or both of them. If litigation arises over such contracts, the privity principle would govern and the real party in interest, the contracting party or parties, would bring the lawsuit. The other spouse may be affected financially by any judgment, and thus may have an interest in the litigation, but the third person is entitled to be sued by and to litigate with whom he contracted.

It is true that even though one spouse does not represent the *community*, one spouse can represent the *other spouse*. Basic agency law comes into play, and a spouse may appoint the other as agent or representative to conduct litigation. It may be that the other spouse may ratify the actions of the first and also be bound.<sup>17</sup> At one point, the community property law in some states made the husband the representative of the wife. But that view has been rejected.<sup>18</sup>

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16. La. Civ. Code arts. 2359-2369.

17. See *Cotton v. Federal Land Bank of Columbia*, 676 F.2d 1368 (11th Cir.), cert. denied, 459 U.S. 1041, 103 S. Ct. 459 (1982) ("it would blink reality for us to say that the trial court erred in finding that Cotton so identified himself in the litigation dealing with the foreclosure of the security deeds as to make it his own litigation. The trial court could hardly ignore the affirmative statement, twice used in the complaint, that Mr. and Mrs. Cotton entered into the security deed arrangement with the Bank. Moreover, by filing the suit in the United States Court, seeking to enjoin the state foreclosure proceeding, the husband fully injected himself into the defense of the state court suit." *Id.* at 1370.).

18. See E.H. Schopler, Annotation, *Judgment Involving Real Property Against One Spouse as Binding Against Other Spouse Not a Party to the Proceeding*, 58 A. L. R. 2d 701 (1958). As a general proposition, "it is recognized that husband and wife are not privies merely because of the marital relationship." *Id.* at 708. But one spouse may be the agent of the other, and "virtual representation" of the wife by the husband was adopted in California and Texas. However, the Restatement (Second) of Judgments (1980) recognized the rule was in disfavor.

In § 41, it is provided that a judgment is *res judicata* as to a party "represented by a party" including one "[i]nvested by the person with authority to represent him in an action." In Comment (b) to § 41, it was stated, "[a] similar fiduciary and representative relationship has been recognized in the husband with respect to interests in community property . . . although community property law is now changing to provide that each spouses has managerial authority over community property . . . leaving the problem of representation in litigation in considerable confusion. . . ."

The Texas Supreme Court reasoned that since that state's law removed the husband's sole right to manage the community, the basis for virtual representation had disappeared. Each spouse had the same rights and there was no basis for the virtual representation theory. *Cooper v. Texas Gulf Industries, Inc.*, 513 S.W.2d 200 (Tex. 1974) (a judgment to which one spouse is a party no longer binds the other under the doctrine of virtual representation). See Kyle W. Rost, Note, *Family Code Section 5.22 Abolishes Virtual Representation Between Spouses: Rule 39 of the Texas Rules of Civil Procedure Substantially Eliminates the Class of Jurisdictionally Indispensable Persons*, *Cooper v. Texas Gulf Industries, Inc.*, 52 Tex. L. Rev. 1410, 1413 (1974).

Normally, a judgment for or against a coowner of property does not affect the other coowners. Restatement (Second) of Judgments § 54 (1980).

One might ask whether Article 686 as amended in 1979 made either spouse, by operation of law, the automatic procedural representative or virtual representative of the other. That probably was not the case. The original provision reflected substantive matrimonial regimes rules that made the husband the sole manager of the community property; he did not represent his wife personally at that time, as evidenced by the fact that judgments against him left the wife's separate property untouched by his litigation. The 1979 amendments were adopted to reflect equality policies and nothing suggests a policy of making each spouse the personal representative of the other for litigation. To the contrary, great care was taken in other articles to allow both spouses to insulate their separate property from the claims of creditors of the other spouse.<sup>19</sup> Indeed, if Article 686 were to make both spouses the procedural representatives of the other, Article 695 would be unnecessary. The latter provides that if the managing spouse of some community right sought to be enforced is an absentee or a mental incompetent, the other spouse is the proper plaintiff to assert the right.

In any event, it ought to be clear that a defendant sued by one spouse in community when the defendant contracted with or caused harm to the other spouse should have a right to litigate against the spouse with whom he dealt. He should succeed with an exception of no right of action by the other spouse.<sup>20</sup>

If it is true that *either* spouse is a proper party, it also follows that *both* spouses are proper parties to enforce the "community right." The procedural revision is unclear as to what happens if the spouses disagree about how to conduct the litigation. Of overriding concern, of course, is protection of the third person who is being sued. He ought to be as free as possible from the problems of spousal disputes. For example, if the spouses cannot agree over whom to hire as a lawyer, presumably each could be represented by his or her own counsel without seriously interfering with the rights of the defendant. On the other hand, if the spouses proceed under inconsistent theories or pose allegations that are unfair to the defendant, the Code provides little relief. The basic factor here is that the statute clearly conceives of both spouses being plaintiffs to prevent injustice and it would seem impossible to prevent such injustice if that spouse is not given the power to do something to protect his or her interests. The implication seems to be that there is a right to present something, and presumably the court's inherent power would have to be the source of authority for the judge to accommodate their rights and the rights of the defendant to accomplish justice.

An additional problem results from the exception that if one spouse is the "managing spouse with respect to the community right" involved, that spouse is the proper plaintiff in an action to enforce that right. It should be clear under Louisiana Civil Code articles 2348 and 2350 that when one spouse renounces the

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19. La. Civ. Code arts. 2345, 2357.

20. La. Code Civ. P. art. 927(5).

right to participate in management of a community enterprise, the other spouse is the "sole manager" and thus becomes the "managing spouse." It is arguable, although less clear, that if a registered movable is in the name of one spouse alone, since only that spouse can alienate, encumber or lease it, that spouse is the "managing spouse" of that property and may be the sole proper party to enforce a right related to that vehicle. This was suggested in *Banks v. Rattler*,<sup>21</sup> where the court reasoned that a wife could not assert a claim for damages to a community vehicle that was titled in her husband's name alone. However, the case is not strong on the point, for the court allowed the husband to intervene and assert the claim.

It is also not clear what other types of situations would result in a spouse being the "managing spouse" of certain property and what the reference to "managing spouse of a community right" is. Because these terms are imprecise and undefined, they leave room for flexibility in court construction in light of basic policies involved. Those basic policies here, for example, would center on relieving third party defendants from injustice and uncertainty caused by spousal disagreement when the spouses are asserting claims against them. Of less concern here is the possibility of unfairness to the spouses caused by the fraud or bad faith of the other.

The *Banks* case is an example of the need for flexibility. There, a guest passenger sued the driver of the other car involved in an automobile accident, who in turn filed a third party demand against the wife/driver of the car. The husband and wife reconvened for the amount of damages caused to the car titled in the husband's name. The court then faced the anomalous situation in which the wife was not the proper party to sue for damages to the car and the husband was not entitled to reconvene because he had not been sued. The solution to allow liberal intervention was procedurally efficient and just, but it also suggested that one should construe the concept of exclusive management narrowly when third parties are not put at a disadvantage. Here, since it was the wife who was engaged in the conduct that may have caused the injury, it was preferable to have her in the litigation rather than the husband.

In 1960, Prof. Henry George McMahon's official comments to the procedural reforms then adopted stated:

The substantive rules of community property are legal rules of accounting between the community and separate estates which usually are of no concern to the defendant. The only justification for procedural rules on the subject are: (1) a recognition of the husband as head and master of the community to prevent any unauthorized assertion by the wife of a community right; (2) protection of the rights of the forced heirs and creditors of the husband; and (3) protection of a defendant against double recovery. Time and time again the courts have permitted a defendant, completely protected against double recovery, to defeat a

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21. 426 So. 2d 362 (La. App. 2d Cir. 1983).

wife's suit when the evidence technically showed that the right sought to be enforced by the wife, with the husband's approval, was a community right; or when the evidence failed to rebut the presumption that it was a community right.

In light of the 1980 matrimonial regime reforms, the first justification no longer exists. In light of forced heirship reforms, the second is not nearly as important as it might have been. The main consideration should be protection of the defendant in the litigation. That protection is not served by allowing a spouse not in privity to proceed with the litigation against the third person.

## II. SUITS AGAINST THE SPOUSES

Under the prior law, when only the husband could manage community assets or incur community debts, Louisiana Code of Civil Procedure article 735 simply provided that "[t]he husband is the proper defendant in an action to enforce an obligation against the marital community."<sup>22</sup> It also provided that in case of doubt whether it was a community obligation or one of the wife, the spouses could be sued in the alternative.<sup>23</sup> When the equal management reform was adopted in 1979, the article was changed to make "either spouse" the proper defendant "in an action to enforce an obligation against community property." Exception was made if one spouse is the "managing spouse with respect to the obligation sought to be enforced against the community property." And, when doubt exists as to the nature of the obligation, the spouses may be sued in the alternative.<sup>24</sup> Also added was the provision that when only one spouse is sued, the other is not an indispensable party, but only a necessary party, with the proviso that to prevent "an injustice to that spouse" the court may order joinder of the spouse on its own motion.

As was the case with parties plaintiff, Article 735 was not changed in 1995 when Articles 641 and 642 were amended to abolish the distinction between indispensable and necessary parties and to adopt instead a flexible statement of considerations to guide judges in deciding whether litigation could proceed without what had been considered indispensable parties.<sup>25</sup> In any event, the basic rule remains the same. Litigation against one spouse alone is permitted, and judicial discretion governs whether the litigation can proceed without the other spouse. Under new Article 645, the failure to join a party "may be noticed by the trial or appellate court on its own motion" in any case.

Under former Article 735, some doubt might have existed as to what is an action to "enforce an obligation against the marital community." That

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22. La. Code Civ. P. art. 735 (1960).

23. *Id.*

24. La. Code Civ. P. art. 735.

25. 1995 La. Acts No. 662.

terminology was imprecise, for the community is not a separate entity with its own juridical personality; it had to refer to a community debt or obligation. That imprecision caused no serious problem, though, for the husband was the sole manager of the community and any actions clearly were to be against him.

Amended Article 735 is even more imprecise, for it now refers to an action to "enforce an obligation against community property." In a strict construction, this text could be limited to some kind of in rem action against the property. It would not include a personal action which, if carried to judgment, could result in seizure and sale of community property. The imprecision is magnified because of the reference in the second paragraph of the article to the obligation being "a community obligation or the separate obligation," suggesting that the initial action is also covered and not just enforcement of judgments.

In any event, here again, recourse to basic substantive law principles and constitutional due process will overshadow Louisiana Code of Civil Procedure article 735 and will provide the overriding rules. The basic notion, as stated earlier, is that the community is not a separate entity that can engage in contractual relations or come under obligations for damages caused by torts. Only the husband or the wife can enter into such relationships with respect to personal obligations. This is in contrast to real rights with respect to things, where perhaps suits related to such things could be brought against any co-owner.<sup>26</sup> But if a plaintiff wants to assert a right against a person who is married under the community regime, it must be asserted against that person. Whether it be a matter of contract, quasi-contract or tort, the spouse in privity must be sued. If one spouse engaged in the contract or committed the tort, making him personally liable on a judgment that was secured against the other spouse would probably be an unconstitutional denial of due process.<sup>27</sup>

Again, the main issue will become whether a spouse has consented to appointment of the other as a representative or agent for the litigation, or has ratified the actions of the other spouse representing the first, or whether a statute purports to appoint a representative for the other spouse. As was discussed in

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26. La. Civ. Code art. 2321. The Louisiana Supreme Court ruled that a co-owner of a bull could be held responsible for harm caused by the animal; "regardless of whether owners also had custody," *Rozell v. Louisiana Animal Breeders Cooperative, Inc.*, 496 So. 2d 275, 276 (La. 1986); 434 So. 2d 404 (La. 1983). Under the liability for acts of children under La. Civ. Code art. 2318, either parent would be liable.

*But see* Restatement (Second) of Judgments § 54 (1980). Normally a judgment for or against a coowner of property does not affect the other co-owners.

27. In *Traweck v. Larking*, 708 S.W.2d 942 (Tx. App. 1986), the tort victim had sued and obtained a judgment against the husband during the community. After the spouses divorced, the victim sued the wife, contending she was liable for the former judgment. The court held she was not. While the judgment could reach the wife's interest in community property, the wife who was not a party to the initial suit was not personally bound.

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 657 (1950), the court said, "[t]his right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest."

the previous section, it is unlikely that Article 735 of the Louisiana Code of Civil Procedure was meant to make such an appointment.

The original provision was consistent with the substantive rule that made the husband the sole manager of the community property; he did not represent the wife personally in transactions and in litigation, as evidenced by the rule that judgments against him left the wife's separate property untouched. The 1979 amendments were adopted to impose equality and nothing suggests a policy of favoring creditors by making each spouse the personal representative of the other. To the contrary, great care was taken in other articles to allow both spouses to insulate their separate property from the claims of creditors of the other spouse.<sup>28</sup>

That Article 735 is unnecessary is illustrated by the procedure available to enforce a criminal fine. If a husband is guilty of the crime, he may be convicted, and there is no way to make the wife part of the trial even though the fine will be enforced by proceeding against community property. If the husband fails to pay the fine, Article 886 of the Code of Criminal Procedure intervenes and allows the state to collect the fine in the same manner as a money judgment in a civil case. This means the state may access his separate property and community assets.<sup>29</sup>

The case of *Fowler v. Dunshee*<sup>30</sup> points to the difficulties in this area. An action to collect on a note executed by the husband during marriage was filed against both ex-spouses after their divorce. The former husband could not be found and was not served. The ex-wife defended the suit, arguing primarily that the debt was the husband's separate obligation. The lower court proceeded to judgment and held her personally liable on the note. The court of appeal reversed the personal judgment against her and limited the plaintiff's relief to that provided in Louisiana Civil Code article 2357—recourse against the property of the former community. Relieving the wife from personal liability on the husband's note is of course required by the substantive law, even though the court may have had personal jurisdiction over the wife in the litigation. Also, the court's disposition may have been appropriate in light of the arguments of the wife, which concentrated on classification of the husband's debt rather than the scope of the relief under Louisiana Civil Code article 2357.<sup>31</sup>

Judge Kliebert argued in dissent, however, that recourse against the former community property was not proper. Even if Louisiana Code of Civil Procedure article 735 could constitutionally allow the non-contracting spouse to represent the contracting one, it was inapplicable here since the couple was divorced when the action was filed. As he pointed out, "once the community has been

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28. La. Civ. Code arts. 2345, 2357.

29. La. Civ. Code art. 2345.

30. 511 So. 2d 1323 (La. App. 5th Cir. 1987).

31. It is not clear from the record, but it may be that the court's action settled the matter to the ex-wife's satisfaction in light of her testimony suggesting the nonexistence of any former community assets. Transcript pp. 22-34.

terminated and its assets partitioned, the spouse who incurs the obligation is an indispensable party to proceedings to reduce the obligation to judgment."<sup>32</sup> Perhaps the majority's position can be sustained as a type of in rem proceeding against property, but if so, the plaintiff has no personal judgment against the contracting debtor. Perhaps the other spouse who obtained the property in a partition is not denied due process if given the opportunity to defend, as in this case.

An action against a nonresident or an absentee husband (once jurisdiction is obtained) could have proceeded in this case by appointment of a curator ad hoc to represent the interests of the absent person.<sup>33</sup> Such a proceeding produces a valid personal judgment against the nonresident. But this would normally have to be supported by proof of the attempt to serve the absentee and a court determination that another person is appropriate to represent the absent person. In many cases, a spouse can appropriately represent those interests, especially if that spouse has community property that might be affected by the judgment. But, the possibility of fraud between quarreling spouses and cooperative third persons is also a reality, justifying the necessity for court findings of the appropriateness of the representation.

The substantive law, rather than the procedural rules, also explains the result in a case like *Chrysler Credit Corp. v. Nata*.<sup>34</sup> Both spouses bought a car and both signed the promissory note and chattel mortgage as solidary obligors. The lender could then properly proceed against only the husband under executory process to seize and sell the car. The husband was personally liable, and under Louisiana Civil Code article 2345, the car was subject to seizure by virtue of the fact that all community property is subject to seizure for the debt of either spouse. It was not necessary to sue the wife to be able to reach the vehicle. Under those circumstances, there was no wrongful seizure even if the wife was never sued.

The most serious problem in this area is the one that Article 735 does not address—whether the non-party spouse must be served with notice of the (a) action on the obligation or (b) steps to enforce a judgment when community property may be at risk to satisfy the obligation. It is likely that some such notice is required, and the cautious plaintiff and judge will provide such notice to both spouses in all cases where enforcement against community property may be contemplated.<sup>35</sup>

Another problem that can arise, when both spouses are sued, is conflicting theories espoused by them. As discussed in the previous section, little authority exists other than the inherent powers of a court to control its proceeding so as to protect the opposite parties to the litigation. One specific matter that is

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32. 511 So. 2d at 1326.

33. La. Code of Civ. P. arts. 5091-5097; La. R. S. 13:3201-3204 (1991 and Supp. 1996).

34. 469 So. 2d 11 (La. App. 4th Cir.), writ denied, 474 So. 2d 1309 (1985).

35. Spaht and Hargrave, *supra* note 9, § 6.7.

addressed by the Louisiana Civil Code, however, is the defense of prescription. Under Article 3453, “[c]reditors and other persons having an interest,” that latter category presumably including a spouse, “in the extinction of a claim or of a real right by prescription may plead prescription, even if the person in whose favor prescription has accrued renounces or fails to plead prescription.”

