NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 CA 1663

MICHAEL WILLIS

VERSUS

YONSHIN WILLIS

Judgment rendered APR 25 2014

* * * * * *

Appealed from the
22nd Judicial District Court
in and for the Parish of St. Tammany, Louisiana
Trial Court No. 2010-12187
Honorable Dawn Amacker, Judge

* * * * * *

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* * * * * *

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

PETTIGREW, J.

In this appeal, the parties challenge a judgment partitioning community property. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

Michael and Yonshin Willis were married on February 19, 1992.[1] Michael originally filed for divorce[2] on April 1, 2010, thereby terminating the community property regime as of that date. A judgment of divorce pursuant to La. Civ. Code art. 103(1) was granted in favor of Michael on June 29, 2011. On November 21, 2011, the parties filed a joint motion and order to appoint a special master. The trial court appointed Lila T. Hogan Special Master pursuant to La. R.S. 13:4165, which provides:

> A. Pursuant to the inherent judicial power of the court and upon its own motion and with the consent of all parties litigant, the court may enter an order appointing a special master in any civil action wherein complicated legal or factual issues are presented or wherein exceptional circumstances of the case warrant such appointment.
>
> B. The order appointing a special master may specify or limit the master's powers. Subject to such specifications or limitations, the master has and shall exercise the power to regulate all proceedings before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties.
>
> C. (1) The court may order the master to prepare a report upon the matters submitted to him and, if in the course of his duties he is required to make findings of facts or conclusions of law, the order may further require that the master include in his report information with respect to such findings or conclusions.
>
> (2) The report shall be filed with the clerk of court and notice of such filing shall be served upon all parties.
>
> (3) Within ten days after being served with notice of the filing of the report, any party may file a written objection thereto. After a contradictory hearing, the court may adopt the report, modify it, reject it in whole or in part, receive further evidence, or recommit it with instructions. If no timely objection is filed, the court shall adopt the report as submitted, unless clearly erroneous.

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[1] At all pertinent times hereto, Michael was employed by RAAM Global Energy ("RAAM"), an oil and gas company involved in offshore drilling and exploration.

[2] According to the record, Michael filed a supplemental and amending petition for divorce on April 14, 2011, alleging that the parties had physically separated on March 27, 2010, and had been living separate without reconciliation for at least 365 days. Thus, Michael maintained, he was entitled to an immediate divorce from Yonshin pursuant to La. Civ. Code art. 103(1).

D. The master's compensation shall be reasonable, fixed by the court, and taxed as costs of court.

The November 28, 2011 order appointing Hogan Special Master vested her with "all powers as outlined in [La. R.S.] 13:4165," and provided that "her finding, conclusions, decisions and recommendations ... shall be submitted to the trial judge in accordance with" said statute.

Following a February 7, 2012 initial report regarding partial partition and other ancillary issues filed by Special Master Hogan, the parties entered into a "Consent Judgment Of Partial Partition Of Community Property," which was signed on March 28, 2012. Thereafter, the parties filed memorandums with the Special Master concerning the disputed items in the community property partition. Sworn testimony was taken by the Special Master on April 20, 2012, and April 27, 2012. At that time, although the parties had stipulated to the allocation of various assets and liabilities and to portions of their respective reimbursement claims, the following issues were still in dispute:

* Speakers - Allocation
* 2003 Lexus GS 300 - Value
* Frequent Flier Miles - Amount and Allocation
* Charter III - Classification and Amount
* Charter IV – Classification, Amount, and Allocation
* APORRI (After Payout Overriding Royalty Interest Plan) - Classification and Amount
* Yonshin's Reimbursement Claim - Michael's Sister's Loan
* Yonshin's Reimbursement Claim - Retroactive Child Support
* Michael's Reimbursement Claim - Separate Funds Used For Down Payment on Home
* Michael's Reimbursement Claim - Cash Advance to Yonshin
* Michael's Reimbursement Claim - Separate Funds Used For Yonshin's Patio Furniture
* Diamond Ring - Classification and Allocation

Following the hearings, Special Master Hogan issued a report on July 15, 2012, outlining findings of fact and conclusions of law with regard to the above issues. It was the recommendation of Special Master Hogan that the speakers be allocated to Michael; that the Lexus be valued at $6,500.00; that Michael transfer 75,000 frequent flier miles to Yonshin's credit card within 30 days of the final judgment of partition; that Charter III stock be classified as a community asset in its entirety with $722,951.00 being allocated to Michael; that Charter IV stock be classified as a community asset in

its entirety with 300 shares to be allocated to Yonshin; that Yonshin has no interest in the APORRI wells; that the diamond ring be allocated to Michael; that Yonshin's two reimbursement claims be denied; that Michael's reimbursement claim for separate funds used for down payment on home be denied; and that Michael's two other reimbursement claims concerning Yonshin be accepted. Special Master Hogan recommended that based on the above findings, the stipulations of the parties, and the allocations of the assets and liabilities, Michael pay Yonshin $326,636.00 as an equalization sum within 90 days of the final judgment of partition.

On October 23, 2012, the parties filed a joint motion stipulating that all the testimony and evidence submitted before Special Master Hogan would be submitted into evidence, without objection, for consideration by the trial court in lieu of a trial. The parties further agreed that except for Michael's objection to the recommended partition of the Charter III and Charter IV stock and Yonshin's objection pertaining to the recommended partition of the APORRI Plan, the Special Master's Report was accepted by the parties and "their community assets and debts shall be partitioned and their respective reimbursement claims resolved in strict accordance with the Special Master's recommendations." The trial court signed an order granting said motion on November 2, 2012, requesting memorandums from the parties concerning the unresolved issues, i.e., the partition of the Charter III and Charter IV stocks and the APORRI plan. After considering the entirety of the record, the trial court rendered judgment adopting Special Master Hogan's report. The trial court's judgment, signed June 20, 2013, provides, in pertinent part, as follows:

> 1.
>
> This Honorable Court adopts the Special Master's findings of fact and legal analysis concerning the proceeds from the sale of the Charter III Stock pages 4-9, Section D. Charter III - Classification and Amount, (#20) of the Special Master's Report.
>
> 2.
>
> This Honorable Court also adopts the Special Master's Findings of Fact and Law concerning the plaintiff's Charter IV Stock and makes said findings the judgment of this Court in accord with pages 9-10, Section E. Charter IV - Classification, Amount and Allocation, (#21) of the Special Master's Report.

3.

This Honorable Court adopts the Special Master's Findings of Fact and Law concerning the plaintiff's After Payout Overriding Royalty Interest Plan and makes said findings the judgment of this Court as set forth on pages 10-12, Section F. APORRI - Classification and Amount, (#22.5) of the Special Master's Report which is hereby made the judgment of this Court.

4.

Accordingly, the Charter III Stock aforesaid is established as a community asset in its entirety and is subject to partition with Seven Hundred Twenty-Two Thousand, Nine Hundred Fifty-One and 00/100 ($722,951.00) Dollars being allocated to the plaintiff, Michael Willis.

5.

The plaintiff's Charter IV Stock is a community asset and subject to partition with 300 shares of Charter IV Stock to be transferred to the defendant, Yonshin Willis, and 300 shares to be retained by the plaintiff, Michael Willis. However, in the event Charter IV, Inc. does not consent to the transfer of the stocks to the parties' respectively as set forth herein and they cannot be transferred, then this asset is to be allocated to the plaintiff, Michael Willis, and upon the occurrence of a liquidating event, the defendant, Yonshin Willis, shall receive 50% of the net proceeds from the liquidating event within thirty (30) days of liquidation.

6.

The APORRI (After Payout Overriding Royalty Interest) Plan, in which the plaintiff, Michael Willis, is a participant, is established as plaintiff's separate property in which the defendant, Yonshin Willis, has no interest whatsoever pertaining in the two APORRI Wells.

7.

The parties' net community prior to the consideration of any reimbursement claims is established at One Million Six Hundred Seventy Nine Thousand Six Hundred Eighty-Nine and 00/100 ($1,679,689.00) Dollars of which each party is entitled to receive Eight Hundred Thirty-Nine Thousand Eight Hundred Forty-Four and 50/100 ($839,844.50) Dollars as their net share of the community, prior to any reimbursement claims being considered.

8.

Pursuant to this judgment and to the Special Master's Report previously adopted and accepted by the parties, the defendant, Yonshin Willis, has received Four Hundred Eleven Thousand Five Hundred Sixty-Two and 00/100 ($411,562.00) Dollars in net assets and, accordingly, the defendant, Yonshin Willis, is entitled to an equalizing payment in the amount of Four Hundred Twenty-Eight Thousand Two Hundred Eighty-Three and 00/100 ($428,283.00) Dollars subject to reimbursement owed by the defendant to the plaintiff.

9.

It is judicially recognized that the defendant owes the plaintiff reimbursement in the amount of One Hundred One Thousand Six Hundred Forty-Seven and 00/100 ($101,647.00) Dollars.

10.

Accordingly, it is judicially recognized and established that the defendant, Yonshin Willis, is entitled to receive from the plaintiff, Michael Willis, and is hereby granted a total equalizing payment from the plaintiff of Three Hundred Twenty-Six Thousand Six Hundred Thirty-Six and 00/100 ($326,636.00) Dollars.

11.

In accord with the parties' written joint stipulations and this judgment, the parties' community assets and debts are hereby partitioned and their reimbursement claims resolved in strict accordance with the Special Master's Recommendations that are hereby made a judgment of this Court and any previous objections thereto filed by either party shall be considered dismissed and abandoned except for the objections addressed herein that are resolved pursuant to the terms of this judgment.

Michael filed a timely motion for new trial, alleging that the trial court's judgment "was based on an erroneous interpretation of the facts regarding ownership of the entities 'Charter III' and 'Charter IV' as the proceeds received from the sale of Charter III were clearly designated as a bonus attributable to [his] post termination, separate labor." The trial court denied Michael's motion for new trial, and these separate appeals by Michael and Yonshin followed. In his brief, Michael assigns the following specifications of error:

1. The Trial Court was manifestly erroneous in classifying the "Charter III" stock bonus distribution received after the termination of community property a community asset and "Charter IV" stock a community asset.

2. The Trial Court was correct in adopting the Special Master's recommendations regarding the After [Payout] Overriding Royalty Interest Plan (APORRI).

In her sole assignment of error, Yonshin sets forth the following issue for our review:

The trial court erred when it adopted the special master's findings of fact and law and concluded that the APORRI royalty payments received by the appellee (employee spouse) following the termination of the community were his separate property even though his right to receive these payments was established by contract when he was granted ownership of fifty (50) APORRI Units and they were SPUD during the parties' community and prior to its termination.

DISCUSSION

The provisions of La. R.S. 9:2801 set forth the procedure by which community property is to be partitioned when the spouses are unable to agree on a partition of community property. La. R.S. 9:2801(A); **Hoover v. Hoover**, 2010-1245, p. 3 (La. App. 1 Cir. 3/17/11), 62 So.3d 765, 767. Particularly, La. R.S. 9:2801(A)(4) provides, in pertinent part:

A. When the spouses are unable to agree on a partition of community property or on the settlement of the claims between the

spouses arising either from the matrimonial regime, or from the co-ownership of former community property following termination of the matrimonial regime, either spouse, as an incident of the action that would result in a termination of the matrimonial regime or upon termination of the matrimonial regime or thereafter, may institute a proceeding, which shall be conducted in accordance with the following rules:

. . . .

(4) The court shall then partition the community in accordance with the following rules:

(a) The court shall value the assets as of the time of trial on the merits, determine the liabilities, and adjudicate the claims of the parties.

(b) The court shall divide the community assets and liabilities so that each spouse receives property of an equal net value.

(c) The court shall allocate or assign to the respective spouses all of the community assets and liabilities. In allocating assets and liabilities, the court may divide a particular asset or liability equally or unequally or may allocate it in its entirety to one of the spouses. The court shall consider the nature and source of the asset or liability, the economic condition of each spouse, and any other circumstances that the court deems relevant. As between the spouses, the allocation of a liability to a spouse obligates that spouse to extinguish that liability. The allocation in no way affects the rights of creditors.

(d) In the event that the allocation of assets and liabilities results in an unequal net distribution, the court shall order the payment of an equalizing sum of money, either cash or deferred, secured or unsecured, upon such terms and conditions as the court shall direct. The court may order the execution of notes, mortgages, or other documents as it deems necessary, or may impose a mortgage or lien on either community or separate property, movable or immovable, as security.

It is well settled that a trial court has broad discretion in adjudicating issues raised by divorce and partition of the community. A trial judge is afforded a great deal of latitude in arriving at an equitable distribution of the assets between the spouses. **Legaux-Barrow v. Barrow**, 2008-530, p. 5 (La. App. 5 Cir. 1/27/09), 8 So.3d 87, 90. Factual findings and credibility determinations made in the course of valuing and allocating assets and liabilities in the partition of community property may not be set aside absent manifest error. **Clemons v. Clemons**, 42,129, p. 3 (La. App. 2 Cir. 5/9/07), 960 So.2d 1068, 1071, writ denied, 2007-1652 (La. 10/26/07), 966 So.2d 583. However, the allocation or assigning of assets and liabilities in the partition of community property is reviewed under the abuse of discretion standard. **Legaux-Barrow v. Barrow**, 2008-530 at 5, 8 So.3d at 90.

Property of married persons is generally characterized as either separate or community. La. Civ. Code art. 2335. Louisiana Civil Code article 2338 provides:

> The community property comprises: property acquired during the existence of the legal regime through effort, skill, or industry of either spouse; property acquired with community things or with community and separate things, unless classified as separate property under Article 2341; property donated to the spouses jointly; natural and civil fruits of community property; damages awarded for loss or injury to a thing belonging to the community; and all other property not classified by law as separate property.

Regarding the classification of property as separate, La. Civ. Code art. 2341 provides, in part, that a spouse's separate estate "comprises ... property acquired by a spouse prior to the establishment of a community property regime [and] property acquired by a spouse with separate things or with separate and community things when the value of the community thing is inconsequential in comparison with the value of the separate things used."

Property in the possession of a spouse during the existence of the community property regime is presumed to be community, but either spouse may rebut the presumption. La. Civ. Code art. 2340. The spouse seeking to rebut the presumption bears the burden of proving by a preponderance of the evidence that property is separate in nature. **Hoover**, 2010-1245 at 7, 62 So.3d at 770. A trial court's finding regarding the nature of property as being either community or separate is a factual determination subject to the manifest error/clearly wrong standard of review. **Corkern v. Corkern**, 2005-2297, p. 6 (La. App. 1 Cir. 11/3/06), 950 So.2d 780, 785, writ denied, 2006-2844 (La. 2/2/07), 948 So.2d 1083.

According to the record, Charter III and Charter IV were set up as wholly owned subsidiary corporations of RAAM, without any assets, to allow certain employees of RAAM to buy stock in the corporations, stock that would ultimately be bought back by the company. Testimony by Elizabeth Barr, the Vice President of Administration for RAAM, confirmed that RAAM's CEO, Howard Settle, designed these Charter entities because he wanted to minimize tax liability. Under this program, payouts would be taxed as capital gains rather than as ordinary income. Ms. Barr testified as follows:

> So the idea was that we would liquidate a charter every year. And so one year's worth of drilling prospects would go into a charter. We would drill them. Get them online. Have them start producing. Start paying down the JIB, the Joint Interest Billings, basically their capital costs. And then we would do a reserve valuation. And RAAM Global would purchase those assets.

Ms. Barr further testified that it was Mr. Settle's decision as to which employees were allowed to participate as a shareholder. She stated, "It basically was any employee that was contributing to the development of those reserves and those assets, those prospects."

Also, as part of RAAM's compensation package, certain employees were named participants in RAAM's "After Payout Overriding Royalty Interest Plan" ("APORRI"). Under this plan, the company assigned "unit interests" to employees, which would allow the employee participant the possibility of profiting from the company's producing wells. From the time a particular well was first drilled (the "spud date") until the well began to produce a profit for RAAM (the "payout date"), RAAM owned the royalty interest. It was not until the payout date that RAAM assigned the royalty interest to the employee participants. Moreover, according to the record, to receive any monies under the plan, participants were required to be a company employee both at the spud date and the payout date.

Michael argues on appeal that the Charter entities were initiated as deferred compensation for select employees based on employee performance. He points to the fact that his base pay was comparatively lower when looking at other people in similar positions. With regard to his compensation, Michael testified as follows: "[W]e have incentives ... in place where you can earn more through an incentive-based scheme to encourage employees to perform. And so you forgo some of the base compensation." Michael maintains that the origin and purpose of the Charter entities was a bonus plan, pure and simple. Although Michael acknowledges that the right to acquire this bonus through Charter III and Charter IV occurred during the community regime, he urges that "this bonus structure presents a unique situation and strict application of a pure date of acquisition of community property rule is the equivalent of fitting a square peg

into a circle." Citing **Melancon v. Melancon**, 2004-2569 (La. App. 1 Cir. 12/22/05), 928 So.2d 10, writ denied, 2006-0150 (La. 5/5/06), 927 So.2d 310, and **Hansel v. Holyfield**, 2000-0062 (La. App. 4 Cir. 12/27/00), 770 So.2d 939, writ denied, 2001-0276 (La. 4/12/01), 789 So.2d 591, as support for his position, Michael argues that the monies he received from Charter III should be prorated and that the same pro rata approach should be applied to the ownership in Charter IV in the event it is re-purchased in the future by the company.

With regard to the APORRI classification, Michael asserts that it was not until after the payout date that he acquired any property interest in the two wells at issue herein. Michael argues that when RAAM assigned the royalty interests to him, the community property regime had already been terminated. Thus, Michael maintains that any royalties generated from the wells at issue were and remain entirely his separate property.

After hearing the testimony and considering all the evidence, Special Master Hogan recommended that the Charter III and Charter IV stocks were both community assets and should be allocated as such and that Yonshin had no interest in the two APORRI wells at issue. The trial court adopted the Special Master's findings of fact and legal analysis concerning these issues and made it the judgment of the court.

Special Master Hogan's July 15, 2012 report, which is very thorough and well reasoned, provides, in pertinent part, as follows:

> **D. Charter III - Classification and Amount (#20)**
>
> Charter III, Inc. is the single biggest issue to decide, with a range from $75,907 to $722,951, depending upon how it's classified. Michael Willis' employer, RAAM Global Energy Company (RAAM) offered certain employees the right to buy into ... new corporations called Charter I, II, III, IV, V, etc. for the purpose of "participating in future exploration activities of RAAM."
>
> On August 1, 2008, during the marriage, Michael Willis was allowed to purchase 600 shares of Charter III, Inc. The decision as to how many shares he was allowed to buy was "based upon his level with the company and his years of experience." All of these years were during his marriage to Yonshin. Michael paid $1.00 per share. The subscription agreement states that the shares are being acquired for "investment."

If these exploration activities were successful, RAAM would buy back the shares from the employees. The plan was to liquidate each of these Charter corporations yearly. In fact, on August 24, 2011, RAAM called in the stock of Charter III and bought them back from the employees. The stock Michael Willis originally purchased for $1.00 per share was bought back by the company for $1,508.00 per share. Thus, his 600 shares were sold for $904,800. After capital gains taxes, Michael Willis netted $722,951 from this stock sale.

The price he received for the shares when they were re-purchased by the company was not determined by his years of service or his performance. Rather, the number of shares he owned was determined in 2008 when he purchased them based upon his years of service at that time. The price he received later was determined by the net value of the company at the time of re-purchase.

The issue to be decided is the classification of all or part of the $722,951 Michael Willis received for Charter III as community.

There are three ways of looking at this issue:

1. **All Community** - The stock was bought during the community and therefore are community. The funds received for them is a community asset.

2. **Mostly Separate - Community Only on Date of Termination** - If the stock were really a compensation plan and bonus at the time of redemption, then their value on the date of termination of the community regime would be the community's interest.

3. **Pro Rata Determination of Community Value** - If the stock is similar to a pension plan, or bonus for past work performed, then their community value would be determined by a percentage of the time participating in Charter III during the community regime divided by the total time participating in Charter III (during and after the community regime).

. . . .

DISCUSSION OF CASES

. . . .

A better, but still flawed, analogy is the reasoning in the stock option cases cited by Michael Willis, i.e., *Melancon v. Melancon*, 928 So.2d 10 (1st Cir. 2005), writ denied; and *Hansel v. Holyfield*, 779 So. 2d 939 (4th Cir. 2000), writ denied. These cases involve stock options awarded during the marriage, but which didn't vest until after the marriage terminated. Also, the options were dependent upon the continued employment of the employee spouse. The Courts pro-rated the options as community and separate based upon the amount of time from the moment the options were granted through the end of the marriage, and then after the marriage until the vesting date. The key issue in these cases is the "the time period required for the options to become fully earned ... and that completion date was the time of vesting." Spaht and

Moreno, *Louisiana Civil Law Treatise*, Vol. 16, Matrimonial Regimes, 2007, Section 3.3, p. 84.

While the same corporate purpose for granting the stock options exists in our case, i.e., rewarding past service and encouraging continued performance, they differ significantly from Michael Willis' Charter III stock. **Michael Willis does not have to exercise any stock option, remain employed for a certain period of time, or actively develop the wells himself. All he has to do is be an employee at the time he purchased the stock. If he quits or is fired before the company purchases all the shares, his shares are still bought at their net value. Michael Willis has an absolute right to these proceeds. This is a major fact that differentiates this case from *Hansel* and *Melancon, supra*, in which the employee forfeits the stock option if he quits or is fired before the vesting date.**

In our case, the value is determined at the time of the purchase event, i.e., date of termination of employment, death, disability, or re-purchase by the company. The value at that time is not based upon a given employee's performance with the company. Rather, the amount paid is based upon the value of the assets, particularly the reserves (which could play out), at the time of the re-purchase. Even Elizabeth Barr agreed that it was logical to equate it to stock values going up and down, with all kinds of market factors involved.

Interestingly, the First Circuit in *Melancon* distinguished *Camp v. Camp*, 580 So. 2d 553 (1st Cir. 1991), writ denied, and *Larsen v. Larsen*, 583 So. 2d 854 (1st Cir. 1991), writ denied, which actually would be better analogies for Charter III. In *Camp*, the issue was shares of stock in an ESOP plan that contributions were made to during the marriage, but not vested until after the marriage terminated. The Court held that because these shares were acquired during the marriage and the entire contribution to obtain the shares occurred during the marriage, the right to share in these funds was an incorporeal, movable, even though the right to receive these shares was due in the future and contingent upon continued employment. *Larsen* followed the *Camp* reasoning and declared that a thrift fund was community because the right to receive the Thrift fund proceeds was acquired during the marriage.

WILLIS DISCUSSION

The Willis case is even clearer. Michael Willis purchased 600 shares of stock during the marriage. They were valued at $1.00 per share when he bought them. Michael Willis became a part owner of Charter III, Inc. immediately upon his purchase of the stock. They were fully owned when they were acquired. There was no vesting requirement, or future ownership interest. He bought 600 shares, he kept 600 shares. While this was an incentive plan, it was really an incentive to keep good employees. It was not an incentive to reward a specific employee's performance and effort. It was not a carrot, i.e., if you stay with us long enough (and we keep you), you'll be able to exercise this stock option and be an owner of the stock. This is an important distinction.

Further, while not dispositive, the fact that Michael Willis had to pay capital gains tax, not income tax, when the Charter III stock was purchased by the company, indicates that this is not compensation for labor, skill, or industry. Rather, it was an investment that paid off.

Michael Willis and Elizabeth Barr counter by asserting that this mechanism, i.e., employees buying stock in new corporations [Charter I, II, III, IV, V, etc.] each year, was really something that the president of the company decided because he [the president] didn't like to pay taxes. Rather than award bonuses, he created the Charter corporations to help employees with their taxes, i.e., when the stock was re-purchased, the employee wouldn't have to pay income tax at a higher rate. Instead, the lower capital gains tax would be used.

Yet, under Charter III, all Michael Willis was required to do in order to participate in the buyback of this stock was to be employed when he purchased it. From the plan documents, it's clear that RAAM was the only entity/person who had the option to buy back the shares. However, there are three other events of purchase that could result in a stock buyback by RAAM: 1. Death of the shareholder; 2. Disability of the shareholder, or 3. Termination of the shareholder's employment.

Despite Michael Willis' efforts to say that Charter III is a bonus or deferred compensation plan, there is nothing in the Charter III documents which requires Michael Willis or any other shareholder to maintain a certain amount of activity or performance level. If the shareholder is employed, he's a member of Charter III. If RAAM decides to buy back the shares, there is no performance review or allocation based upon labor, skill, or industry. It's a number: Michael Willis owned 600 shares. The net value of those shares at the time RAAM decided to buy them back was $1,508.00 per share.

The Special Master believes Charter III is what it was described as in the Subscription Agreement, a speculative investment. The Subscription Agreement specifically states that the subscriber "understands that: (I) the Shares constitute a speculative investment involving a high degree of risk or loss by the undersigned of his or her investment therein, ..." While it may have been an incentive to work for RAAM, its value is not specifically tied to Michael Willis' labor and industry. If the wells in Charter III do well, RAAM does well, and the employee shareholders do well. Elizabeth Barr specifically testified that "some shares have gone up in value and some shares have gone down in value." If it would have been compensation for Michael Willis' work, it would have been tied to some performance review. It was not.

... Our community property law has a very basic premise that needs to be preserved, i.e., assets acquired during the community based upon the labor, skill, or industry of either spouse are community. Both parties have contributed in various ways to the community and both are entitled to all assets of the community. Michael Willis obtained 600 shares of Charter III during the community. The number of shares was determined in 2008, during his marriage, based upon his years of service at that time, and all of these years of service were during the community regime. These same 600 shares were re-purchased by the company after termination. They didn't lose their classification - they were still community.

Accordingly, the Special Master recommends that Charter III, Inc. is a community asset in its entirety, with $722,951 being allocated to Michael Willis.

E. Charter IV - Classification, Amount, and Allocation (#21)

The legal issues in Charter IV are the same as those in Charter III above. Michael Willis was offered the opportunity and bought into Charter IV for $1.00 per share for 600 shares on July 15, 2008. Michael Willis still owns Charter IV stock. However, at the time of the hearing, Charter IV had only "dry holes" with no value. The exploratory wells had not produced oil or gas revenues. At first glance, this asset's value should be a 0.

However, there is a remote possibility that Charter IV's wells will produce in the future. Elizabeth Barr testified that additional wells could be added to Charter IV. If so, using the same reasoning as in Charter III, Michael Willis will owe Yonshin Willis one-half of the net proceeds from RAAM's purchase of his stock for any reason, i.e., buyout, death, disability, or termination.

The Special Master explored with Elizabeth Barr, RAAM's Vice President, the possibility of assigning 300 shares of stock to Yonshin Willis. Initially she said that the stock may not be transferred or assigned. This is consistent with the documents received. However, when the following language was pointed out, Ms. Barr said that it had never come up, and they "would get our attorneys to interpret it for us:"

> ... no Shareholder, during the lifetime of the Shareholder, shall transfer, assign, convey, pledge, encumber, gift, grant or otherwise dispose of, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise, his or her Shares to any person (including immediate family members) or entity without the prior written consent of the Corporation, **which consent may be unreasonably withheld.**

This language, although a bit bizarre, indicates there is a possibility of assignment with the written consent of the Corporation. Rather than force this issue which could lead to more litigation and legal expense if 300 shares of Charter IV stock were allocated to Yonshin Willis, **the Special Master recommends as follows:**

1. Michael Willis shall request from the administrators of Charter IV, and/or Global, that 300 shares of Charter IV stock be transferred to Yonshin Willis, with the understanding that they will not be purchased by the company until there is a buyback of the stock or until a qualifying event (i.e., Michael Willis' death, disability, or termination of employment).

If consent is withheld (which is the company's prerogative),

2. the Charter IV stock is allocated to Michael Willis who shall obtain proof by January 31st each year from RAAM or its successor that Charter IV has or has not purchased his stock. If it has purchased his stock, he shall pay Yonshin Willis 50% of the net proceeds (after taxes) within 30 days of receipt.

F. APORRI - Classification and Amount (#22.5)

As part of Michael Willis' employment contract dated November 30, 2005, he was a participant in the After Payout Overriding Royalty Interest plan, hereinafter called APORRI. This is part of Michael Willis' compensation which

> is intended to promote the success of our company by providing certain key employees an after payout overriding royalty interest in successful wells. The interest granted pursuant to the APORRI Plan is a nonforfeitable ownership interest to the participant following the initial grant, which satisfies our goal of aligning our executive's interests with those of our stockholders.

Basically, Century Exploration drills oil and gas wells, with RAAM Global being the holding company and providing the administration of these plans. When the well is spud (i.e., beginning with "turning the bit to the right in the ground"), the officers of the company assign a unit interest in the well to various executives, including Michael Willis. This list of participants in the well is added as an Exhibit to the APORRI plan. The unit interest is a proration based upon the number of employees selected as participants in this plan. In order to participate, the employee has to be employed on both the date the well is spud, and on the date of the Payout. After the expenses are paid, the company assigns Payouts according to the percentage. At that time, the employees start receiving funds which usually continues through the well's life, approximately three to five years.

If an employee who has an APORRI interest dies or becomes disabled after a spud date but before an assignment of proceeds, he or his "heirs or devisees" are still entitled to receive the Payouts. On the other hand, if he terminates employment or is fired, he'll be able to continue receiving any Payouts from wells that are in Payout stage, but he will forfeit any interest in wells that are spud, but are not yet in Payout.

On June 15, 2010, Michael Willis directed his landman to divide equally between him and Yonshin any APORRI wells that were in Payout prior to the termination date, resulting in her receipt of $8,000 or more per month in royalty interests. These instructions were to be effective as of April 1, 2010.

The question before the Court is whether Michael Willis had an ownership interest in the wells that were spud prior to the termination of the community regime, but were not in Payout until after the termination. There are two such wells:

MVPA-152 GU #1 Spud Date 1-14-10 Payout Date 10-23-10
BS 46 SL 19050 #2 Spud Date 5-7-09 Payout Date 8-7-11

Yonshin Willis' expert, Susan Brown, CPA, reviewed the Payouts for these two wells, and used a *Sims*-type formula to come up with a 28% community interest in the #1 well above, and a 73% interest in the #2 well above. Applying those percentages to the actual Payout figures through the hearing, she calculated the proceeds to be $17,542.23 and

$35,815.26 respectively, for a total of $53,357.49 community interest, and a continuing interest in future Payouts.

There are three ways of looking at this issue:

1. **No community ownership** - Because Michael was not assigned any funds until the Payout date, he did not own any part of these wells prior to that date. Since the above two Payout dates were after the termination of the community regime, there is no community ownership interest in them.

2. ***Sims* community ownership** - Susan Brown treats the APORRI plan like a defined benefit pension plan, i.e., using the spud date as the beginning of participation, and the Payout date as the end. Her position is that Michael Willis was being "compensated for his labor, skill, and industry and effort" during and after the marriage so the community should reap the benefits of this labor. This is similar to the community interest in pension plans.

3. **Full community ownership** - If Michael Willis became an owner when the well was spud, which was during the marriage, then the entire Payout is community.

Michael Willis and Elizabeth Barr, RAAM Global's Vice President, testified that he had no interest in these wells until they were in Payout stage, and title doesn't transfer to an employee until such time. When it is paid out, there is no retroactive compensation for the time between the drilling date and the Payout — compensation starts with the Payout date.

This testimony was confirmed by Yonshin Willis' own expert Susan Brown who testified that Michael Willis didn't own any interest in the wells at the time they were spud. She testified that they were owned by the company until the Payout.

Accordingly, **the Special Master recommends that Yonshin Willis has no interest in these two APORRI wells.** [Footnotes and record citations omitted.]

In reviewing this matter, we find the trial court very closely and carefully considered all of the evidence presented. Likewise, we have thoroughly reviewed the documentary evidence and applicable law and find that the record does not demonstrate that the decision of the trial court was manifestly erroneous. We conclude that the evidence in the record reasonably supports a finding that both Charter III and Charter IV stocks are community property and the APORRI royalty payments received by Michael following the termination of the community are his separate property. Accordingly, we find no merit to the arguments made on appeal by either Michael or Yonshin and affirm the judgment of the trial court in all respects.

DECREE

For the above and foregoing reasons, we affirm the trial court's June 20, 2013 judgment. All costs associated with this appeal are assessed equally between Michael Willis and Yonshin Willis.

AFFIRMED.