ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

HANI W. SABA v. SAWSAN KHOURY
CV-21-0023-PR

PARTIES AND COUNSEL:

Petitioner: Hani W. Saba

Respondent: Sawsan Khoury

FACTS:

Hani Saba (Husband) and Sawsan Khoury (Wife) married in 2009. During the marriage they invested their excess earnings in real estate. In addition to a marital residence, they purchased two Phoenix houses, one located on Leisure Lane ("Leisure Lane") and the other on 30th Way ("30th Way"). They purchased Leisure Lane in 2010 using solely community funds to make the down payment. However, they took title only in Wife's name as an "unmarried woman" so they could obtain a federal first-time homeowner tax credit and, given Husband's credit status, so that Wife would appear as the sole borrower named on the home loan. (Husband was already a borrower on a sizable loan on the marital residence.)

They purchased 30th Way in 2010 using community and Wife's separate funds to make the down payment. Wife took title to the home as her sole and separate property. Husband's name was not included on the deeds or loans for either Leisure Lane or 30th Way and he signed a disclaimer deed to both properties.

Approximately 2 1/2 years later, the parties refinanced Leisure Lane for a lower interest rate. Because Wife remained the sole borrower on the loan, the title company required Husband to sign another disclaimer deed, disclaiming all "right, title, interest, claim and demand" in Leisure Lane. Wife also executed a corrective warranty deed to describe Leisure Lane as her sole and separate property as a married woman.

The parties rented out both properties. They deposited the rents in Wife's separate bank account and made the loan payments on the homes through the same account. According to testimony in Family Court, Husband devoted considerable time to maintaining the rental properties during the marriage, including handling the leases, repairs, tenant complaints, hiring contractors, regular maintenance, and cleaning.

Husband filed a dissolution petition in April 2017. After a trial, the Family Court entered a decree dissolving the parties' marriage and dividing their assets and liabilities. It held that, despite the motivation for the disclaimer deeds being solely to obtain favorable financing, the deeds operated to change the character of Leisure Lane and 30th Way to Wife's separate property. It found that the community made 100% of the payments on Leisure Lane and all of the mortgage payments after the

down payment on 30th Way. The Family Court concluded that the community was entitled to an equitable lien under *Drahos v. Rens*, 149 Ariz. 248 (App. 1985) and *Barnett v. Jedynak*, 219 Ariz. 550, 554 ¶ 15 (App. 2009) based on the community's payments on the principal of both mortgages. In applying the *Drahos* formula, the Family Court rejected Husband's arguments that the community lien on Leisure Lane should equal 100% of the equity because the community paid 100% of the payments, and that the community lien on 30th Way should be equivalent to the percentage of principal paid by the community. The Family Court also rejected Husband's argument that it should consider the efforts of Husband in maintaining and managing the properties during marriage.

For the Leisure Lane property, the Family Court found that Wife contributed 0% of the funds and the community contributed 100% of the funds. Despite this, Wife received 81% of the equity and Husband received 19% of the equity. On the 30th Way property, the court found that Wife contributed 49% of the funds and the community contributed 51% of the funds. Wife received 88% of the equity and Husband received 12% of the equity.

Husband appealed, arguing that the Family Court erred by (1) upholding the validity of his disclaimer deeds and (2) improperly applying the formula to calculate community liens on Wife's separate property.

While the appeal was pending, a different panel of Division One of the Court of Appeals decided *Femiano v. Maust*, 248 Ariz. 613 (App. 2020) holding that the *Drahos* formula should not apply when calculating a community lien on a husband's separate property purchased during marriage that was paid for solely with community funds and as to which the wife had executed a disclaimer deed for financing reasons. *Femiano* held that, when only community funds have been used to purchase and pay for a separate property, the community is entitled to a lien for its full contribution to the principal and the full amount of appreciation.

The Arizona Supreme Court denied review of *Femiano* on December 15, 2020. See CV-20-0153-PR. It granted review in this case on August 24, 2021.

ISSUES:

A.R.S. § 25-318 requires the court to equitably divide community property and to confirm separate property to its owner, while impressing a community lien upon such property if appropriate. Is the application of a *Drahos/Barnett* formula appropriate where it grossly favors the separate property holder, thus, creating an inequitable result?