



January 29, 2025

**To:** Clients and Friends

**From:** Daniel S. Engle

**Subject:** Court of Appeals of Texas, Houston Holds that both Spouses Taking Out Home Equity Line of Credit Did Not Change Characterization of Homestead as Sole and Separate Property of Wife. *Hale v. Hale*, --- S.W.3d --- 2025 WL 271165.

2905 Corporate Circle

Flower Mound, TX 75028

Phone: 972-353-4174

Fax: 972-221-9316

**Partners**

**Shawn P. Black**<sup>1</sup>

**Ryan Black**<sup>2</sup>

**Daniel S. Engle**<sup>3</sup>

**Steven Kubik**

**Senior Lawyers**

**Margaret A. Noles**

**Sydney Davis**

**Associates**

**Andrew Stokes**

**Of Counsel**

**David M. Tritter**

**Calvin C. Mann, Jr.**

**Gregory S. Graham**<sup>4</sup>

**Retired Partner(s)**

**Calvin C. Mann, Jr.**

**Thomas E. Black, Jr.\***

**Gregory S. Graham**<sup>4</sup>

On January 23, 2025, the Court of Appeals of Texas, Houston (14th District) Houston in *Hale v. Hale*, --- S.W.3d --- 2025 WL 271165 overruled a trial court's decision in a final decree of divorce and found that both spouses applying for a Home Equity Line of Credit did not change the characterization of the homestead property from being the sole and separate property of the wife. The Court also ruled on a child custody matter outside the scope of this memo.

The relevant facts concerning real estate law begin when Leonard Hale and Yana Hale married and bought a house together as their marital homestead. Shortly after the marriage, in 2013, Leonard and Yana executed and recorded a partition deed that established the homestead as Yana's sole and separate property. After the partition deed was recorded, Leonard and Yana took out a Home Equity Line of Credit with both as borrowers. After about ten years of marriage Yana filed for divorce.

In the divorce proceeding, Leonard argued that he had an interest in the homestead property by claiming the homestead was still community property because he executed the partition deed under duress, so that the partition deed was invalid. The trial court rejected his argument that the partition deed was executed under duress. But the trial court did conclude that both spouses acting as borrowers for the Home Equity Line of Credit functioned as a gift of 50% of the homestead to Leonard. The trial court then awarded each party with a 50% separate property interest in the homestead. Yana appealed.

On appeal, Leonard argued that he had signed the partition deed under duress and argued, for the first time, that if the partition deed was valid, that Yana had subsequently gifted a 50% interest back to him after the execution of the partition deed. The Appellate Court rejected his arguments. They affirmed the trial court's factual finding that the partition deed was not executed under duress. The Court also rejected his argument of a subsequent gift as he did not raise this argument at trial and did not present any evidence of a subsequent gift.

Instead, the Appellate Court overruled the trial court and awarded the entire homestead property to Yana. The Court pointed to case law that established that both spouses borrowing funds and executing a security instrument has no effect on the characterization of property:

*In sum, absent evidence of a conveyance giving rise to the gift presumption, a different rule applies: "Simply stated, the fact that Husband and Wife borrowed funds during marriage for which the real estate served as collateral has no effect on its characterization whatsoever." Rivera v. Hernandez, 441 S.W.3d 413, 420 (Tex. App.—El Paso 2014, pet.denied); accord, Haynes v. Haynes, No. 04-15-00107-CV, 2017 WL 2350970, at \*5-6 (Tex.App.—San Antonio May 31,*

<sup>1</sup> Also Licensed in Kentucky and New York

<sup>2</sup> Also Licensed in District of Columbia

<sup>3</sup> Also Licensed in New York

<sup>4</sup> Also Licensed in Georgia

\*Retired from the practice of law

*2017, pet. denied) (mem. op.) (“Even the execution by both parties of a home equity loan does not convert separate property to community property.”). Hale at 7.*

The Court also noted that Texas Constitutional and statutory provisions require that both spouses must consent to a Home Equity Line of Credit, even if the property is the separate property of one of the spouses. *See* Texas Constitution, Article XVI, Section 50(a)(6)(A) (spouse must consent to home equity loan); Texas Family Code Section 5.001 (statute that spouse must consent to sale or encumbrance of homestead).

Overall, this case reemphasized a line of case law establishing that execution of a security instrument securing homestead does not convert separate property to community property. This is even the case if both spouses are borrowers on a home equity loan secured by homestead that is one spouse’s sole and separate property. This line of case law can help resolve future misconceptions as often a spouse who owns property as his or her sole and separate property is hesitant to proceed with a refinance of homestead as he or she mistakenly believes that the required spousal joinder will recharacterize the separate property.

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