

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Gregory Taylor, :
 : C.A. No. 05-10-0032
 Plaintiff :
 :
 v. :
 :
 Dorethea A. Savage, :
 :
 Defendant. :

AND

Gregory Taylor, :
 : C.A. No. 05-09-0066AP
 Plaintiff below/ :
 Appellee. :
 :
 v. :
 :
 Dorethea Savage, :
 :
 Defendant below/ :
 Appellant, :

Decision after trial.

Submitted: December 14, 2006

Decided: January 2, 2007

Judgment is entered in behalf of Plaintiff

and against Defendant.

Gregory Taylor, 1584 John Clark Road, Dover, Delaware, 19904, Pro Se Plaintiff.

I. Barry Guerke, Esquire, Parkowski, Guerke & Swayze, P.A., 116 West Water Street, Dover, Delaware 19903, Attorney for Defendant.

Trader, J.

This civil action is a consolidation of a claim based on a contract implied in law on an appeal from Justice of the Peace Court 16 and a complaint filed in this Court in which the plaintiff, Gregory Taylor (“Taylor”), is seeking half of the net proceeds resulting from the sale of a house purchased by Dorethea Savage (“Savage”). Taylor claims that he helped Savage purchase the home by providing money toward the down payment, closing costs and insurance, and that they had a verbal agreement that the home belonged to both of them. Additionally, he contends that he paid for the furnishings for the new home and provided work on the house for which he should be compensated.

I hold that Taylor is not entitled to a share of the profits resulting from the sale of the house because Delaware’s statute of frauds, 6 *Del. C.* Sec. 2614, requires that any contract for the sale of real estate be in writing and because Taylor has not provided clear and convincing evidence of actual part performance that would take the case out of the statute of frauds. As to Taylor’s quantum meruit claim, I hold that he is not entitled to compensation for painting the house because these services were provided gratuitously. But based on a contract implied in law, Taylor is entitled to recover damages from Savage for contributions he made to furnish the house as well as reimbursement for his contribution to one-half of the down payment on the purchase of the house.

The relevant facts are as follows: Taylor and Savage first met in 1999 and resided together on and off at a residence rented by Savage. On May 24, 2003, Savage executed a contract to purchase a house and lot located at 224 West Darby Circle, Camden, Delaware. Settlement was made on May 5, 2004, for a sales price of \$167,279.00 and Savage paid the closing costs of \$11,369.33 plus one-half of the \$1,000.00 deposit on the contract, and Taylor paid the sum of \$500.00 toward the down payment. The settlement

sheet, the mortgage and all other papers were signed by Savage, and the deed to the house was in Savage's name only. Taylor helped furnish the house by paying \$999.00 for a sofa set, one-half of the sum of \$2,199.00 for a bedroom set and \$788.00 for a sofa and love seat combination. Taylor is a self-employed painter and he painted much of the interior of the house which he valued at \$7,500.00. He also paid Savage \$833.00 in June 2004 to be applied toward half of the monthly mortgage on the house. The relationship of the parties deteriorated and in August 2004 Savage asked Taylor to leave the house and she changed the locks on the property so that he could not enter the house. They attempted to reconcile the relationship in May of 2005, but they quickly decided to end the relationship permanently. In August 2005, Savage resold her house for \$242,900.00.

Taylor contends that he and Savage entered into an oral contract to purchase the house together and that he should share in half the proceeds from the sale. To support this contention he points to the \$500.00 he provided toward the down payment, the money spent on furnishing the house, the payment of one-half the mortgage in June 2004 and the effort he expended in painting the house. On the other hand, Savage contends that she never entered into an agreement with Taylor that he would have an interest in the real estate that she purchased in her own name. The documentary evidence supports her contention in this regard. Additionally, I find Savage's testimony more credible and in so doing I reject Taylor's testimony on this issue. I therefore conclude that there was no agreement between the parties that Taylor have a joint interest in the land purchased by Savage.

Additionally, any contract concerning the sale of land is required to be in writing under the Delaware statute of frauds, 6 *Del. C. Sec. 2714(a)*, which reads in part as follows:

No action shall be brought to charge any person. . . upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them. . . unless the contract is reduced to writing, or some memorandum or notes thereof, are signed by the party to be charged therewith. . . .

“The purpose of the statute is explained by its title, namely to afford protection against fraud. . . .” *Durand v. Snedecker*, 177 A.2d 649, 651 (Del. Ch. 1962). Therefore any promise regarding Taylor obtaining an interest in land which was purchased in Savage’s name would be subject to the statute of frauds and would require a written memorandum signed by Savage.

An exception to the statute of frauds is that a partly performed oral contract may be enforced upon proof by clear and convincing evidence of actual part performance. “[T]he theory [is] that acts of part performance, even if incomplete, constitute substantial evidence that a contract actually exists.” *Quillen v. Sayers*, 482 A.2d 744, 747 (Del. 1984). Under this exception, substantial evidence must ultimately be produced to convince the court that the part performance in fact evinces the alleged contract with a high degree of certainty. *Durand, supra* at 651. Taylor has not provided the level of evidence necessary to establish the part performance exception to the statute of frauds. The paying of \$500.00 of the initial closing costs on the house, providing one-half of the mortgage payment one month out of the four months he resided at the house, buying some furnishings for the house and painting some of the interior of the house does not provide clear and convincing evidence that he entered in an oral contract with Savage to

obtain an interest in the real estate and that he was partly performing his part of the agreement.

As to Taylor's claim for compensation for work done in painting the house, I accept as credible Savage's testimony that she never requested that the interior of the house be painted. Accordingly, I conclude that these services were provided by Taylor gratuitously and he cannot recover any compensation for the painting of the house.

As to the money Taylor spent on the furniture for the house, I hold he is entitled to recover on a quantum meruit theory. This theory was discussed in *Spanish Tiles, Ltd. v. Hensey*, 2005 Del. Super. LEXIS 427 (Del. Super. Mar. 30, 2005).

A contract implied in law permits recovery of that amount by which the defendant has benefited at the expense of the plaintiff in order to preclude unjust enrichment. To claim restitution, the plaintiff must show that the defendant was unjustly enriched and secured a benefit that it would be unconscionable to allow her to retain. The essential elements of a quasi-contract are a benefit conferred upon the defendant by the plaintiff, appreciation or realization of the benefit by the defendant, and acceptance and retention by the defendant of such benefit under such circumstances that it would be inequitable to retain it without paying the value thereof.

Id. at *8 (citations omitted).

In this case, Taylor spent a total of \$2,886.50 to furnish the home and he provided Savage with a \$500.00 down payment on the house. He paid \$999.00 for a loveseat and sofa, \$788.00 for leather chairs, and one-half of the value of the bedroom set in the amount of \$1,099.50. Savage reimbursed Taylor in the amount of \$100.00 for part of the money he paid for the bedroom set. He is entitled to recover for this benefit provided to Savage subject to any offset she claims for storing the furniture. Savage has not used this furniture since April 18, 2005, and she paid \$570.00 to have it stored from that date until January 10, 2006. She spent at least \$250.00 to have the furniture transported out of

storage and she has repeatedly asked Taylor to remove the furniture from her possession. She is therefore entitled to an offset in the amount of \$920.00. Deducting this offset from Taylor's claim of \$3,386.50 reduces his claim to \$2,466.50.

Taylor asserts that part of the money used to pay the closing costs came from a \$3,000.00 check issued by FEMA for damages done to his car from Hurricane Isabelle. The check was issued to Savage and she claims that it was for damages done to her car. I accept her explanation as to the \$3,000.00 check. Taylor also seeks reimbursement for the sum of \$833.00 that he paid Savage in June of 2004 for one-half of the mortgage payment. Since he lived in the house rent free for three months, I reject his claim for this amount.

Based on the above findings of fact and conclusions of law, judgment is entered in behalf of Gregory Taylor and against Dorethea Savage for the sum of \$2,466.50 plus the costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge