IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: PARTITION OF THE LANDS AND TENEMENTS OF JOHN JOSEPH SKRZEC, SR., AND LAURIE ANN EASTBURN	)	
JOHN JOSEPH SKRZEC, SR.,	)	C.M. No. 12130-NC
PETITIONER,	)	
v.	)	
LAURIE ANN EASTBURN,	)	
RESPONDENT.	)	

MASTER'S REPORT

Date Submitted: May 29, 2007
Final Report: December 31, 2007

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AYVAZIAN, Master

On July 14, 2005, John Joseph Skrzec, Sr. ("Petitioner" or "Skzrec") filed a Petition for Partition pursuant to 25 Del. C. § 721 *et seq*., seeking an order of sale in partition of a property identified as 29 Robert Road, New Castle, Delaware 19720, tax parcel number 10-029.20-019 ("Property"). According to the Petition, Laurie A. Eastburn ("Respondent" or "Eastburn") acquired the Property in 1993. By quit-claim deed recorded on June 2, 2003, Eastburn conveyed the Property to herself and Skrzec, whereby Skrzec allegedly acquired a half interest in the Property as a tenant in common. In her Answer filed on November 11, 2005, Respondent denied that the purported quit-claim deed was valid, and counterclaimed that the purported deed had been obtained by fraud and deceit after Skrzec had advanced Eastburn approximately $11,000 to pay for the mortgage and other expenses of the home. A trial, originally scheduled to take place on December 4, 2006, was continued at Respondent's request for medical reasons. On April 17, 2007, Respondent moved for summary judgment. This is my report on Respondent's Motion for Summary Judgment following the parties' submission of briefs.

The Factual Background

Eastburn inherited the Property from her father in 1993.[1] According to Eastburn's deposition testimony, she had been laid off from work in June 2000, and had fallen behind on her mortgage payments when she met Skrzec in August 2002.[2] The parties became "enamored with each other" and three weeks later, on September 7, 2002, Skrzec moved into the Property with Eastburn.[3] On May 16, 2003, Eastburn executed a quit-claim deed between herself as "first party, Grantor" and Skrzec and herself as "second party, Grantee."[4] The deed recited consideration in the amount of $85,000 for the interest in the parcel of land that was conveyed.[5] Eastburn filed the deed with the Recorder of Deeds Office in New Castle County on June 2, 2003, the same date Skrzec wrote two checks totaling $10,911.41 on his account with the Dover Federal Credit Union.[6] The first check, in the amount of $6,856.22, was made payable to Eastburn's primary mortgage company,

[1] Ex. 1 of Petition for Partition.
[2] Ex. A of Respondent's Opening Brief in Support of Her Motion for Summary Judgment, at p. 5-11.
[3] *Id.* at p. 5.
[4] Ex. 2 of Petition for Partition.
[5] Although the space on the quitclaim deed for describing the parcel of land was left blank, the parcel's tax number was handwritten in the upper right hand corner of the document. In their briefs, neither party has raised the issue whether the deed's failure to describe the property renders it legally ineffective to pass title. *See Faraone v. Kenyon*, 2004 WL 550745, at *10 (Del. Ch. Mar. 15, 2004). As a result, I will not address the issue in this report.
[6] Ex. 3 of Petitioner's Answering Brief in Opposition to Respondent's Motion for Summary Judgment.

Washington Mutual.[7] The second check, in the amount of $4,055.19, paid off a second mortgage Eastburn had obtained from PNC Bank.[8] The couple's relationship ended in January 2005, and Skrzec subsequently vacated the Property pursuant to a Family Court Protection from Abuse Order.[9]

The Parties' Claims

Respondent claims that Skrzec has no ownership interest in the Property because the funds he provided to bring her mortgages current and to avoid foreclosure ($10,911.41) were simply a loan. According to Eastburn, as a condition of receiving the loan, Skrzec made her prepare and record a quit-claim deed adding Skrzec's name to the Property as security for the loan. Furthermore, Skrzec dissuaded her from seeking the advice of an attorney. Their relationship ended in 2005 when Skrzec became physically abusive toward her.

Petitioner claims that during the time he lived with Eastburn, he paid most of the household expenses including the mortgage payments, and made improvements to the Property in the form of new windows and a swimming pool. Petitioner made these payments and improvements because he and Eastburn were in love and engaged. Skrzec knew that if the money was not

[7] Ex. 2 of Petitioner's Answering Brief, at pp. 41-42, 50-52.
[8] *Id.* at p. 33-34.
[9] Ex. C of Respondent's Opening Brief.

paid to Washington Mutual, the mortgage company would foreclose on "our house."[10] According to Skrzec, Washington Mutual required his name to be placed on the deed and the mortgage in order to save the Property from foreclosure. The couple split up in January 2005, around the same time that Eastburn received her first disability check.

The Legal Issues

Summary judgment may be granted only where there are no disputed issues of material fact, and the moving party is entitled to judgment as a matter of law. Chancery Court Rule 56(c). When deciding a motion for summary judgment, a court must view the record in a light most favorable to the non-moving party. *See Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 99-100 (Del. 1992). The moving party has the burden of demonstrating that there is no dispute as to any material issue of fact. *Krajewski v. Blair*, 297 A.2d 70, 72 (Del. Ch. 1972). If the moving party's burden is met, then the burden shifts to the non-moving party to demonstrate otherwise. *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

For the purpose of her summary judgment motion only, Eastburn concedes the truth of certain portions of Skrzec's deposition testimony. Eastburn argues that she is entitled to judgment as a matter of law based

[10] Ex. 2 of Petitioner's Answering Brief, at pp. 34, 41-42.

upon the following excerpts from Skrzec's deposition testimony: (1) Skrzec wrote the checks to PNC Bank and Washington Mutual to save the Property from foreclosure because Eastburn had no income;[11] (2) the quit-claim deed adding Skrzec's name to the title was prepared at the request of Washington Mutual; [12] (3) Skrzec and Eastburn did not have any agreement where she would put his name on the deed in order for him to write the check to PNC Bank;[13] (4) Skrzec did not pay Eastburn the $85,000 consideration recited on the deed, nor did he pay any money to Eastburn to get his name on the deed;[14] and (5) there was never any discussion between the couple as to how they would own the Property.[15] Eastburn argues, therefore, that the above undisputed testimony demonstrates that Skrzec's name was added to the title of the Property as security for the loaned funds. Rather than Skrzec owning an undivided one-half interest in the Property, according to Eastburn, Skrzec merely holds an equitable lien against the Property.

In response to the summary judgment motion, Skrzec argues that the issue of a loan is still disputed by the parties. He points out that nowhere in his deposition transcript does he use the term "loan" or concede that the funds he provided were a loan. Skrzec also claims that the $85,000

[11] Ex. B of Respondent's Opening Brief, at pp. 33-34, 41.
[12] *Id.* at 49-50.
[13] *Id.* at 34.
[14] *Id.* at 54-55.
[15] *Id.* at 78.

consideration recited in the deed reflected the perceived value of the Property in June 2003. According to Skrzec, the mortgage balance at the time was approximately $72,000; thus, the equity in the Property was only about $13,000. Since Skrzec paid almost $11,000 in arrears to the mortgage companies, he paid an amount nearly equal to the equity in the Property, not including his substantial improvements to the Property, in order to get his name on the deed. Finally, Skrzec points out that his name being on the mortgage makes partition appropriate so he can protect his credit if Eastburn falls behind again in her mortgage payments.

In deciding a motion for summary judgment, I must look at the evidence presented in a light most favorable to the non-moving party. In this case, Skrzec bases his claim of legal ownership in the Property on a quit-claim deed executed and recorded by Eastburn conveying Eastburn's interest in the Property to Skrzec and herself. Although Eastburn contends that the deed is void and that she never gave Skrzec an ownership interest in the property, I cannot grant summary judgment in favor of Eastburn because the record, viewed in a light most favorable to Skrzec, is equally consistent with the theory of the case advanced by Skrzec, i.e., his payments to the mortgage companies were consideration for the transfer of an undivided one-half ownership interest in the Property, and with the theory advanced by

Eastburn, i.e., the payments Skrzec made to the mortgage companies were a loan to avoid foreclosure.

While Skrzec admits that no part of the consideration ($85,000) recited in the deed was ever paid directly to Eastburn, and that the quit-claim deed was prepared at the request of Washington Mutual, these undisputed facts do not establish that the funds Skrzec provided were merely a loan. Skrzec was living in the Property with Eastburn at the time he paid nearly $11,000 to the two mortgage companies. His payments benefited Eastburn by enabling her to retain some ownership (one-half interest) of the Property that she had owned since 1993, rather than being forced to sell or losing the Property to foreclosure. Furthermore, there is no evidence that the original proceeds from Eastburn's two mortgage loans ever benefited Skrzec, thus distinguishing this case from *Lea v. Griffin*, 1995 WL 106562 (Del. Ch. Feb. 15, 1995), a case cited by Eastburn in support of her argument that Skrzec is not a co-owner of the Property. In *Lea*, as a condition of obtaining a consolidation loan to pay off her own creditors, a granddaughter had obtained an undivided half-interest in her grandmother's property. Because the granddaughter admitted at trial that she had never intended to take the property and her name was added as a part owner only because the mortgage company required it, the Court concluded that the grandmother had acted

only as a surety, and required the granddaughter to deed her interest in the property to her grandmother. *See id.* at *4.

In this case, Skrzec has not admitted that he never intended to take the Property. At the time the Eastburn executed and recorded the quit-claim deed, the parties were living together as boyfriend and girlfriend in the Property. Viewing this evidence in a light most favorable to Skrzec, the fact that Washington Mutual required Skrzec's name to be placed on the deed and mortgage is not inconsistent with the reasonable theory that Eastburn willingly transferred a half-interest in the Property to her live-in boyfriend given his commitment to bring current her mortgage payments and to share in her future liability on the Washington Mutual mortgage.

Skrzec also claims that the amount he paid to the two mortgage companies (almost $11,000) nearly equaled the amount of equity Eastburn had in the Property at the time. By my calculation, Skrzec's two payments to the mortgage companies equaled, at a minimum, slightly more than half of the equity in the Property.[16] Even so, this calculation demonstrates that it

[16] Ex. 4 of Petitioner's Answering Brief is a Washington Mutual Home Loan Statement dated November 4, 2004, showing the principal balance at that time was $70,731.97, and the principal paid for 2004 to that date was $1,215.96. Therefore, by my calculation, the principal balance of the Washington Mutual mortgage at the start of 2004 would have been $71,947.76. According to Skrzec, the consideration recited in the quit-claim deed ($85,000) was supposed to reflect the fair value of the Property in June 2003. In her deposition testimony, however, Eastburn estimated the Property at that time to have been worth $85,000 "give or take" "ten thousand dollars." Ex. 1 of Petitioner's Answering Brief,at pp. 42-43. Using the upper limit of Eastburn's estimate of the Property's value ($95,000), Eastburn's equity in the Property in June 2003 would have been

is by no means clear that Eastburn has a better right to the Property than Skrzec. Although Eastburn contends that she did not intend to transfer an ownership interest to Skrzec when she executed the quit-claim deed, the undisputed facts do not reveal any fraudulent or unfair or unconscionable conduct on Skrzec's part, an essential requirement before the Court can impose a constructive trust in Eastburn's favor. *See Greenly v. Greenly*, 49 A.2d 126, 129 (Del. Ch. 1946), cited in *Hogg v. Walker*, 622 A.2d 648, 652 (Del. 1993).

In addition, the undisputed fact that Eastburn and Skrzec never talked about how they would own the Property, i.e., as tenants in common or as joint tenants with right of survivorship, does not demonstrate that the funds provided by Skrzec were a loan.[17] Looking at the evidence in a light most favorable to the non-moving party, there is nothing in the record to indicate that either party had the legal knowledge or sophistication to engage in a discussion about the different forms of property ownership. Therefore, the failure of such a discussion to take place sheds little to no light on this matter. Similarly, the undisputed fact that there was no agreement between the parties that Skrzec would write a check to PNC Bank in return for Eastburn putting his name of the deed does not entitle Eastburn to summary

approximately $19,000 ($23,000 less $4055.19, which was the outstanding balance on Eastburn's second mortgage).

[17] Ex. B of Respondent's Opening Brief, at p. 78.

judgment. It is undisputed that Washington Mutual required Skrzec's name to be placed on the deed and mortgage when he brought current Eastburn's primary mortgage with a single payment of $6,856.22. Looking at the evidence in a light most favorable to the non-moving party, the fact that Eastburn executed the quit-claim deed without first obtaining Skrzec's agreement to pay off the second mortgage on the Property held by PNC Bank does not establish that Skrzec only advanced these monies as a loan. If anything, Skrzec's additional payment to PNC Bank in the absence of an express agreement between the parties buttresses Skrzec's claim to owning a half-interest in the Property.

Conclusion

Eastburn executed and recorded the quit-claim deed legally transferring a half-interest in the Property to Skrzec at a time when she and Skrzec were romantically involved, living together in the Property, and the Property was threatened with foreclosure. Skrzec paid nearly $11,000 to bring current one of Eastburn's two mortgage loans and to pay off the other, thus avoiding foreclosure. The parties' romantic relationship did not last more than a few years, however, and Skrzec vacated the Property. He now seeks a partition sale of the Property. I cannot grant Eastburn summary judgment with respect to Skrzec's claim of owning the Property as a tenant

in common with Eastburn because, viewing the evidence in a light most favorable to the non-moving party, I cannot conclude as a matter of law that Skrzec has only an equitable lien against the Property. Accordingly, the Motion for Summary Judgment must be denied. I am staying the period for taking exceptions to this Final Report until a decision on the merits can be rendered after trial.