

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Gerald J. Zionkowski,	)	
Petitioner,	)	C.A. No. 6859-MA
	)	
v.	)	
	)	
Sherry Tina Dilks,	)	
Respondent.	)	

MASTER’S REPORT

Date Submitted: August 6, 2012
Draft Report: March 15, 2012
Final Report: November 19, 2012

Pending before me are exceptions filed by Petitioner Gerald J. Zionkowski to my oral draft report issued at the conclusion of trial on March 15, 2012. In my draft report, I concluded that Zionkowski failed to demonstrate by clear and convincing evidence the existence of an oral contract between himself and Respondent Sherry Tina Dilks whereby Dilks had agreed to pay half Zionkowski one-half of the monthly mortgage payments for which he was liable after borrowing against his Elkton, Maryland home to purchase the property that is the subject of this partition action. I have now reviewed the entire record, including the pretrial briefs, trial transcript, documentary evidence, and the briefs filed in support of and opposition to the exception. In my final report that follows, I am withdrawing my draft report, and recommending that Zionkowski’s request for an equitable lien and the imposition of a resulting trust be granted.

Procedural History

On September 13, 2011, Zionkowski filed a Petition for Partition and Complaint for an Equitable Lien, Constructive and/or Resulting Trust concerning property located at 25827 Lingo Lane, Unit 13, Lingo Estates, Millsboro, Delaware 19966 (the "Property"). In his petition, Zionkowski alleged that in December 2006, he and Dilks had purchased the Property as joint tenants with right of survivorship with funds that he had obtained by borrowing against his residence in Elkton, Maryland. According to Zionkowski, the parties had agreed that they would share equally in repaying the loan used to purchase the Property, and that they would also share the closing and post-closing costs of the Property equally. In June 2010, the parties ended their relationship and filed cross-petitions for protection from abuse in the Family Court. Consent orders were entered into by the parties and approved by the Family Court on June 10, 2010.¹ Zionkowski is now seeking a partition sale of the Property, and has requested that this Court impress an equitable lien against the Property in the amount of the mortgage loan against his Elkton, Maryland residence, and impose a constructive and/or resulting trust upon the proceeds of the partition sale in an amount equal to Dilks' half of the mortgage loan including the payments missed by Dilks since the Property was purchased.

On October 18, 2011, Dilks filed a response in which she denied that any agreement had existed between the parties, although she admitted that she had contributed funds towards the settlement costs for the purchase of the Property and had voluntarily contributed towards the monthly household expenses. Dilks included in her

¹ Joint Trial Exhibits 1 & 2.

response a counter-petition to sell the mobile home that is currently located on the Property and titled in the names of both parties, and for the net proceeds from the sale of the Property and mobile home to be distributed in equal shares. On November 1, 2011, Zionkowski answered the counter-petition, agreeing to Dilks' request for the sale of the mobile home as part of the trustee sale through the partition process, but denying that the proceeds should be equally divided between the parties for the reasons set forth in his petition. After a trial on March 15, 2012, I issued an oral draft report in which I concluded that Zionkowski had failed to present clear and convincing evidence of an agreement between the parties, and denied Zionkowski's request for an equitable lien on the Property and imposition of a constructive and/or resulting trust on the net proceeds in an amount equal to half of the mortgage loan including the missing mortgage payments.

Factual Background

The parties were the only witnesses at trial and, not surprisingly, much of the testimony was disputed. What was undisputed is as follows. Zionkowski owned a primary residence in Elkton, Maryland, and for approximately 12 years he had also kept a boat and travel trailer at the Holly Lake Campground in Sussex County, Delaware. Zionkowski and Dilks had been acquainted for a long time, and their relationship blossomed into a romantic one about eight or nine years prior to this litigation. The couple lived together in Zionkowski's home in Elkton for a few years, but Zionkowski was getting ready to retire, and the couple wanted to move to Delaware. In October

2006, they learned about a property in Lingo Estates that was for sale, and offered to purchase it for \$125,000.

On December 21, 2006, Zionkowski borrowed \$125,000 using his home in Elkton as collateral.² Settlement on the Property occurred on December 28, 2006, with the parties paying cash and taking title to the Property as joint tenants with right of survivorship.³ Zionkowski testified that, “I needed to put her name on [the deed] as such because she was afraid that if something happened to me, my kids would throw her out.”⁴ Dilks testified:

[P]rior to going to the settlement, Mr. Zionkowski had said that he wanted to make sure that I was taken care of upon something happening to him, to make sure that his children did not throw me out of my home, and that I did not lose the property upon him because he was 20 years older than I. And he wanted to make sure that I would reside there if anything were to happen to him.⁵

On December 28, 2006, Dilks wrote a check on her personal checking account made payable to Zionkowski in the amount of \$3,007.00, which she described on the memo line of the check as one-half of the settlement cost for the Property.⁶

Thereafter, the couple thereafter lived together at the Property until their relationship ended in June 2010. According to Zionkowski, the couple’s relationship ended because of their many arguments about Dilks not paying her share of the bills.

² Joint Trial Exhibits 6, 7 & 14.

³ Joint Trial Exhibits 4 & 8.

⁴ Trial Transcript at 13.

⁵ *Id.* at 38.

⁶ Joint Trial Exhibit 3

According to Dilks, it ended because she had learned that Zionkowski was having an affair with another woman, and when she confronted him about the affair, Zionkowski threatened to kill her. Under the Family Court consent order dated June 10, 2010, Dilks was given exclusive use and possession of the Property on the condition that she changed the utilities into her name and sent a check payable to Zionkowski for one-half of his mortgage payment each month.⁷ The Family Court consent orders expired on June 10, 2011. Three months later, Zionkowski filed the partition petition in this Court.

Analysis

Zionkowski alleged that the parties had agreed to purchase the Property jointly and to share the costs of that purchase equally. In his pretrial brief, Zionkowski acknowledged that there was no written agreement to that effect, but he cited *Quillen v. Sayers*, 482 A.2d 744, 747 (Del. 1984), for the proposition that partial performance is a well-established exception to the statute of frauds. Zionkowski pointed to Dilks' payment of one-half of the settlement costs and her routine payments of one-half of the utilities for the Property and his monthly mortgage payment as evidence that a contract existed between them. Zionkowski also argued that he was entitled to the imposition of an equitable lien over the proceeds of the partition sale of the Property to prevent Dilks' unjust enrichment because the Property had been purchased with funds Zionkowski had borrowed using his Elkton, Maryland residence as collateral. *See Branca v. Branca*, 443 A.2d 929, 930 (Del. 1982) ("A principal reason for impressing an equitable lien is to

⁷ Joint Trial Exhibit 1.

prevent unjust enrichment, i.e., where it would be contrary to equity and good conscience to retain a property interest acquired at the expense of another.”).

Relying upon another equitable theory, Zionkowski argued that he was entitled to a resulting trust over the proceeds of the partition sale of the Property because he had supplied the purchase money for the Property, and thus had beneficial as well as legal ownership of the Property. *See Wagner v. Hendry*, 2000 WL 238009, at *6 (Del. Ch. Feb. 23, 2000) (citing *Hudak v. Procek*, 7272 A.2d 841, 843 (Del. 1999)). Finally, Zionkowski argued that the Court should impose a constructive trust in his favor upon the proceeds of the partition sale because “a constructive trust may be imposed when a defendant’s fraudulent, unfair or unconscionable conduct causes him to be unjustly enriched at the expense of another to whom he owed some duty.” *Wagner*, mem. op. at *7, *supra* (citing *Adams v. Jankouskas*, 452 A.2d 148, 152 (Del. 1982)).

At trial, Dilks denied that there had been any agreement to share the mortgage payments or costs of the Property; instead, she claimed that the Property had been a gift from Zionkowski. According to Dilks, after they purchased the Property, Zionkowski told her, “I bought the home. It’s up to you to furnish it. I am not spending another dime.”⁸ Dilks testified that she purchased the furnishings for the Property.⁹ However,

⁸ Trial Transcript at 40.

⁹ *Id.* at 40-41. Zionkowski denied that Dilks had paid for the household furnishing. He testified that the house was already furnished when they purchased it. *Id.* at 34.

Dilks also testified that Zionkowski handled all the finances, and when Zionkowski told her to pay something, she paid it.¹⁰

After the end of the parties' testimony, I issued a draft report in which I concluded that there had been no gift, but I also concluded that the evidence of the cancelled checks did not clearly demonstrate the existence of any agreement between the parties prior to the purchase of the Property. I did not specifically address the equitable theories raised by Zionkowski.

In his exceptions to my draft report, Zionkowski argues that since Dilks did not acquire her interest in the Property by gift, then her interest must have been acquired through a loan from Zionkowski. As a result, Zionkowski argues, the Court is obligated to remedy the injustice that would result from a partition sale of the Property by imposing an equitable lien, constructive or resulting trust over Dilks' share of the net proceeds.

I am now withdrawing my draft report. After a careful review of the record, I have reconsidered the documentary evidence and trial testimony, and have come to the conclusion that the evidence clearly and convincingly demonstrates an agreement between the parties to share the costs of the Property equally. Furthermore, I now conclude that it would be inequitable to divide the proceeds from the partition sale of the Property in equal shares because that would result in Dilks being unjustly enriched because Zionkowski provided all of the funds for the purchase of the Property by borrowing against his own home. Accordingly, I recommend that an equitable lien be

¹⁰ *Id.* at 39.

impressed on the Property in the amount of the mortgage on Zionkowski's Elkton, Maryland residence, and that a resulting trust arise in favor of Zionkowski over the proceeds from the partition sale of the Property.

The record shows that the sole borrower on the Note and Deed of Trust was Zionkowski.¹¹ The funds he borrowed (\$125,000) were used to purchase the Property, but the parties took title to the Property "as joint tenants with right of survivorship and not as tenants in common[.]"¹² At trial, both parties testified that they intended the Property to be titled as such, and understood that if Zionkowski died first, then Dilks would own the entire Property. Their testimony reveals that at the time of settlement, Zionkowski intended to make a future gift of his half of the joint Property to Dilks in the event that he predeceased her while they still owned the Property, which was likely given that he was twenty years older than Dilks. But the following record of payments from Dilks to Zionkowski supports Zionkowski's claim that he made no present gift of one-half of the Property to Dilks.

On the date of settlement, Dilks wrote a check payable to Zionkowski in the amount of \$3007.00, which she noted on the check as representing one-half of the settlement cost on the Property.¹³ Starting on April 13, 2007, Dilks wrote a check payable to Zionkowski in the amount of \$527.41, which she noted on the check as for

¹¹ Joint Trial Exhibits 6 & 7.

¹² Joint Trial Exhibit 8.

¹³ Joint Trial Exhibit 3.

“May 25827 Lingo Lane.”¹⁴ This amount equaled one-half of the monthly principal and interest payment on Zionkowski’s loan.¹⁵ According to the Note, Zionkowski’s first mortgage payment was due February 1, 2007,¹⁶ so Zionkowski presumably paid the first three months. Starting with her May 2007 payment, Dilks thereafter wrote checks to Zionkowski in the amount of \$527.41 each month up to and including February 2009, with the exception of only two months (July 2007 and September 2007). During this same time, Dilks also wrote checks payable to Zionkowski in amounts reflecting her payments for one-half of the utility costs for the Property. These payments ended about the same time of the last check for one-half of the mortgage payment, i.e., February 1, 2009. The couple’s relationship ended in June 2010.

Viewed as a whole, the record of the December 28th check for one-half of the settlement costs followed by 22 months of payments of one-half of the utility expenses and one-half of Zionkowski’s monthly mortgage payments is consistent with Zionkowski’s claim that the parties had agreed to share equally in the costs of purchasing and maintaining the Property. For nearly two years, Dilks paid Zionkowski for one-half of the electric, sewer, water, propane gas, and telephone bills associated with the Property, and for one-half of the monthly mortgage payments on Zionkowski’s residence in Elkton, Maryland. Although Dilks claimed that she was simply paying Zionkowski whatever he demanded to keep the peace in the home, her testimony is not credible in this regard.

¹⁴ Joint Trial Exhibit 9.

¹⁵ Joint Trial Exhibit 6.

¹⁶ *Id.*

Zionkowski provided the purchase money for the Property. Equity presumes, therefore, absent contrary evidence, that he intended that its purchase would “inure to his benefit, and the fact that title is in the name of another is for some incidental reason.” *Wagner*, mem. op. at *6, *supra* (quoting *Hudak*, 727 A.2d at 843)). I am now convinced that title to the Property was put in the parties’ joint names because of their romantic relationship and Zionkowski’s willingness or desire to provide a home for Dilks after his death, but that Zionkowski did not intend to make a present gift to Dilks of one-half of the Property. The concept of a present gift is clearly inconsistent with the pattern of payments that Dilks made to Zionkowski over the course of two years.

For the foregoing reasons, I conclude that Zionkowski should be entitled to an equitable lien and the imposition of a resulting trust over the proceeds of the partition sale of the Property. Given this conclusion, I do not need to reach the issue of whether or not Zionkowski is entitled to the imposition of a constructive trust under the theory that Dilks’ conduct was fraudulent, unfair or unconscionable.

When this report becomes final, the parties shall have ten days to confer and file an agreed-upon proposed form of order that shall identify the precise form the equitable lien and resulting trust should take.