STATE OF MICHIGAN

COURT OF APPEALS

THE ESTATE OF EDMUND K. RIASHI, Deceased,

Plaintiff-Appellee,

v

RENEE FRANGEDAKIS,

Defendant-Appellant.

UNPUBLISHED
March 3, 1998

No. 190819
Macomb Circuit Court
LC No. 92-003900-CH

Before: McDonald, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff filed the instant action seeking a judicial determination of his daughter's interest in a certain piece of real estate and for declaration of an equitable mortgage. The trial court entered judgment in favor of plaintiff. Defendant now appeals as of right. We affirm.

On appeal, defendant argues that the trial court erred in declaring an equitable mortgage for the property and in determining the terms of the equitable mortgage. Defendant claims that plaintiff failed to meet his heavy burden and did not produce any evidence of the terms and conditions of the mortgage. We disagree.

This Court reviews a trial court's declaration of an equitable mortgage de novo. *Schultz v Schultz*, 117 Mich App 454, 457-458; 324 NW2d 48 (1982). However, this Court will not reverse the trial court's determination of an equitable mortgage unless its decision is clearly erroneous. *Id*.; *Grant v Van Reken*, 71 Mich App 121, 125; 246 NW2d 348 (1976).

A court may declare a deed absolute on its face to be an equitable mortgage. *Schultz, supra* at 457; *Grant, supra* at 125. However, a party who asserts that an absolute deed is a mortgage bears a high degree of proof and must clearly indicate to the trier of fact that the parties did not contemplate an absolute sale. *Schultz, supra* at 458. There are two instances under Michigan law where courts declare equitable mortgages when there is no writing to evidence an agreement. First, where a deed is executed between two parties and one party stands in a relationship of trust or guidance to the other party, but the relationship has been abused, an equitable mortgage will be declared to balance the

inequities. *Schultz, supra* at 458. Second, courts will impose an equitable mortgage where a creditor abuses the "power of coercion" which he may have over the debtor because of the circumstances surrounding the transaction. *Id.* at 459. In this situation, courts will interfere between the parties' negotiations in order to avoid oppression. *Id.*

In the instant case, we find that the doctrine of equitable mortgage was properly declared because the testimony and evidence reveals that the parties contemplated and intended for defendant to repay plaintiff the purchase price for the property in order to obtain an ownership interest in the real estate. We cannot ascertain any other reason, and none was suggested to us by defendant, for which plaintiff included his name on the deed, and then proceeded to regularly accept payments from defendant as consideration for equity in the property. In addition, defendant admitted on the record that from the time her father purchased the property for her, she assumed that she was required to repay him the full purchase price in order to own the property outright. Therefore, we are persuaded that, under the circumstances, the trial court did not err in declaring an equitable mortgage.

Defendant alternatively argues that plaintiff's claim for equitable relief should be barred by the doctrine of unclean hands. Defendant maintains that plaintiff failed to report the income he received from the property on any of his income tax returns from 1987 to 1991. Apparently, plaintiff did not even report that he acquired the property until 1992, at which time he claimed a depreciation for the real estate. Nor did plaintiff claim the $8,500 defendant paid to him in consideration for greater equity in the property.

A suit to quiet title or remove a cloud on a title is one in equity. MCL 600.2932; MSA 27A.2932; *Crawford v Hamrick*, 327 Mich 591; 42 NW2d 751 (1950); *McKay v Palmer*, 170 Mich App 288, 293; 427 NW2d 620 (1988). The maxim that "one who seeks the aid of equity must come in with clean hands" is an integral part of any action in equity and is designed to preserve the integrity of the judiciary. *Isbell v Brighton Area Schools*, 199 Mich App 188, 189; 500 NW2d 748 (1993).

While we agree with defendant that plaintiff's conduct was clearly questionable, we do not find that such misconduct precludes him from recovering in equity under the circumstances. Plaintiff's alleged failure to report the money did not in any way impact his relationship with defendant or the agreement they had regarding ownership of the property. The alleged wrongdoing occurred after the property was purchased, after the agreement between the parties was made, and after defendant began making payments to plaintiff. Thus, we do not find any overreaching or unfairness in the transaction that influenced defendant's decision to purchase the property. Moreover, at the time the purchase was made, and even thereafter, there is no evidence that plaintiff misled or deceived defendant in a manner that affected her rights and ownership in the property. Thus, plaintiff's relationship with the IRS is an entirely different issue that will be addressed in the appropriate forum if necessary.

Lastly, defendant argues that the deed is unambiguous and, pursuant to contract law, must be construed strictly against the drafter to give effect to the true intentions of the parties. Defendant contends that the unequivocal language of "tenants in common" indicates that she owned that property to the same extent as her father from the time of purchase. We disagree.

If the language contained in a contract is clear and unambiguous, its meaning is a question of law for the court. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996); *Pakideh v Franklin Mortgage*, 213 Mich App 636, 640; 540 NW2d 777 (1995). Contractual language is construed according to its plain and ordinary meaning, and technical or constrained constructions are to be avoided. *Id.* The primary rule in construing a contract is to ascertain the intent of the parties. *Damerau v C L Rieckhoff Co, Inc*, 155 Mich App 307, 311; 399 NW2d 502 (1986).

A tenancy in common is a legal estate whereby each tenant has a separate and distinct title to an undivided share of the whole. MCL 554.43; MSA 26.43; *Quinlan Investment Co v The Meehan Cos*, 171 Mich App 635, 639; 430 NW2d 805 (1988). Each tenant is entitled to possession of the whole and every part thereof, subject to the same rights in other cotenants. *Id.*

Although we agree with defendant that the warranty deed, on its face, is unambiguous and indicates that the parties were tenants in common with no limitations, as we noted above, there are certain circumstances where courts may declare a deed absolute on its face to be an equitable mortgage. *Schultz, supra* at 457. We find this case to be one such instance. Thus, we must look beyond the plain language of the deed and consider the conduct of the parties and circumstances surrounding the purchase in order to ascertain the true intentions of the parties.

In doing so, we find several reasons why the deed in question should be deemed an equitable mortgage, rather than a deed absolute. First, we find that plaintiff would not have placed his name on the deed at all if his intentions were to provide defendant with the condominium as a pure gift. Instead, we are convinced that he included his name on the deed to ensure that he maintained ownership rights and interest in the property until the purchase price was paid. Second, if the property was truly a gift from plaintiff to his daughter, as defendant suggests, he would not have accepted her monthly payments of $500 as remuneration, nor would he have been willing to accept a lump sum of $8,500 to increase defendant's equity interest. This would have been unnecessary if she already owned the property. Third, we find it interesting to note that plaintiff offered to pay for the property in cash so that defendant would not have to pay high interest rates and excessive fees and costs associated with a mortgage. We are not persuaded that he intended to give her the property for free; rather, it appears that he intended to make the purchase easier and less expensive for his daughter. Finally, defendant's conduct and testimony demonstrates that she intended to repay her father for the property and that each payment she made was increasing her equity in the condo. There was no suggestion by either party at the time the deed was executed that this was to be a gift. Thus, despite the seemingly clear language in the deed, we find that the facts of this case clearly warrant the imposition of an equitable mortgage.

Affirmed.

/s/ Gary R. McDonald
/s/ Henry William Saad
/s/ Michael R. Smolenski