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McGinley v. Divel

CHRISTINE M. MCGINLEY and JOHN MCGINLEY, husband and wife, Plaintiffs,

v. RONALD LEE DIVEL, SR., Defendant
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Fulton County Branch
Civil Action — Law, No. 2005–347

Co-tenancy; Determining shares of ownership; When one co-tenant should receive credit for improvements made to the property

1. A conveyance to three parties, two of whom are husband and wife but neither designated as such, shall, in the absence of any language in the conveyance disclosing a contrary intention, be deemed a conveyance of one-third shares.
2. To receive credit for improvements that were made to the property, a co-tenant must prove that the improvements were both necessary and substantial.

Appearances:

Andrew J. Benchoff, Esq., *Counsel for Plaintiffs*

Stephen D. Kulla, Esq., *Counsel for Defendant*

OPINION

Walker, P.J., October 25, 2006

Facts

Christine and John McGinley are suing Ronald Divel for partition of property that they claim a 2/3 ownership interest in. Mr. and Mrs. McGinley (husband and wife) bought property with Mr. Divel. The deed that conveyed the property said that it was being conveyed to all three parties as joint tenants with a right of survivorship. The Court was provided with a copy of the deed attached to Plaintiff's Complaint, which describes the grantees as follows: "RONALD LEE DIVEL, SR., CHRISTINE M. McGINLEY, JOHN McGINLEY, as joint tenants with the right of survivorship." Defendant has not alleged that this is an inaccurate copy of the deed.

Mr. and Mrs. McGinley contributed a total of $14,900 towards the property. Mr. Divel contributed $15,000 and also took out a loan of $30,000. The money from this loan was also used to purchase the property. According to Mr. McGinley's deposition, Mrs. McGinley was supposed to pay Mr. Divel $300 every two weeks, until the entire amount of the loan was paid off. Mr. McGinley indicated that he and his wife would therefore pay a total of approximately $45,000 towards the purchase price. Mr. Divel would pay $15,000.

Legal Discussion

Both parties cite Heatter v. Lucas, 80 A.2d 749 (Pa. 1951). This case states that "a conveyance to three parties two of whom are husband and wife but neither designated as such, shall, in the absence of

any language in the conveyance disclosing a contrary intention, be deemed a conveyance of one-third shares. The presumption and even desirability of the qualitative holding arising out of the marital union is not so strong that it may be permitted to affect the qualitative holdings otherwise apparent on the face of the instrument. **But intention is the cardinal and controlling element**, and if intention that the husband and wife shall take as such (i.e. by the entireties) sufficiently appears, it will be given effect." Id. at 752 (emphasis in original). In that case, the language of the conveyance stated that the deed was transferred to: "Francis Lucas, a single man, and Joseph Lucas and Matilda Lucas, his wife." Id. at 750. The court held that because of the second "and" it was evident that the testator wanted to have the husband and wife share one unit, because otherwise the second "and" would have been surplusage. Id. at 752.

Mr. and Mrs. McGinley argue that the amount of money paid for the property by either party is inadmissible, because "(1) … the nature and quantity of the interest conveyed must be ascertained from the instrument itself and cannot be orally shown in the absence of fraud, accident or mistake and we seek to ascertain not what the parties may have intended but what is the meaning of the words; (2) effect must be given to **all** the language of the instrument and no part shall be rejected if it can be given a meeting; [and] (3) the language of the deed shall be interpreted in the light of the subject matter, the apparent object or purpose of the parties and the conditions existing when it was executed." Highland v. Commonwealth, 161 A.2d 390, 402 (Pa. 1960). In other words, Plaintiffs believe that the deed speaks for itself.

Mr. Divel argues that he should be given credit for the time that he spent improving the property and cites cases to this effect. Although In Re Huffman's Estate, 36 A.2d 638 (Pa. 1944), stands for this proposition, a more recent case that Mr. Divel cites states that a person should only be given credit for repairs "of a necessary and substantial nature." Bednar v. Bednar, 688 A.2d 1200, 1205 (Pa. Super. 1997). This claim must be pled with specificity unless both parties testify that Defendant is equitably entitled to compensation for repairs that he performed. Id.

Finally, Mr. Divel argues that Mr. and Mrs. McGinley would be unjustly enriched by his loan because there was an oral contract to reimburse Mr. Divel for the loan. Mr. and Mrs. McGinley, on the other hand, argue that Mr. Divel made a gift when he purchased the property with the loan. Therefore, according to Mr. and Mrs. McGinley, no evidence of the contract should be admitted. Mr. McGinley, however, has admitted to the existence of this oral contract during his deposition.

Legal Analysis

After an examination of Heatter v. Lucas, 80 A.2d 749, it appears that this Court is not permitted to consider extrinsic evidence as to who owns what shares of the property, since the ownership interests are apparent from the face of the deed, as quoted above. This case can be distinguished from Heatter because the deed does not even mention the fact that two of the parties are husband and wife.

This Court is not permitted to consider the purchase price that the parties each contributed towards the property when there is a joint tenancy with right of survivorship. See DeLoatch v. Murphy, 535 A.2d 146 (Pa. Super. 1987).

Since, under Heatter v. Lucas, this Court is bound to only consider the evidence on the face of the deed, the Court will order that all evidence of amounts contributed (whether through loans or cash) towards the purchase of the property be suppressed. Defendant has not alleged fraud, accident, or mistake, which is the only reason that this Court would be permitted to examine extrinsic evidence.

After the purchase of the property, however, it is alleged that Mr. Divel made improvements to the property. The Court does not consider these improvements to be part of the purchase price of the property. Therefore, evidence of these improvements would not be affected by the suppression ruling discussed above. To succeed, Mr. Divel would have to prove that these improvements were "necessary and substantial." Bednar v. Bednar, 688 A.2d 1200, 1205. (Pa. Super. 1997). The evidence of his improvements would be relevant to proving that he should be reimbursed for these items. Relevant evidence is generally admissible. See P.R.E. 401 and 402. Therefore, this evidence is deemed admissible.

ORDER OF COURT

And now this 25th day of October, 2006, after review of the parties' briefs, the Court orders that any evidence of oral agreements made regarding the property or amounts contributed to the purchase of the property is inadmissible, since the deed is clear on its face. Evidence relating to improvements to the property performed after purchase of the property will be admissible.