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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-154-22

VILASINI PALLAI,

Plaintiff,

v.

GERALD LOSCHIAVO, and
REENA PILLAI, et al.

Defendants.

OPINION

Decided December 9, 2024

Michael C. Schonberger, Esq., attorney for plaintiff.

Natalie L. Pavone, Esq., attorneys for defendants.

FISHER, P.J.A.D. (t/a, retired on recall).

Plaintiff Vilasini Pallai is the mother of defendant Reena Pallai and mother-in-law of Reena's husband, defendant Gerald Loschiavo. Plaintiff seeks

in this action a determination that she has an equitable ownership interest in a Lake Como residence that is deeded solely in defendants' names; she further seeks, if she is found to have an interest, an order that would partition the Lake Como property. Having considered the testimony of the parties, during a two-day trial that took place on March 25, 2024, and October 21, 2024,[1] and having found as accurate and true defendants' version of the relevant events,[2] the court finds no merit in plaintiff's claims and dismisses her complaint for the reasons that follow.

Both defendants and plaintiff are identified as the purchasers in a 2019 contract for the sale to them of the Lake Como property in question (J-1). This arrangement, however, was later altered with the execution of two addenda to the contract, one signed by plaintiff (D-2) and one that she didn't sign and, in fact, didn't call for her signature (J-3), that were the cause of plaintiff's removal from the transaction as a purchaser. The deed (J-4) provided by the seller at the closing reveals that legal title to the property was conveyed only to defendants

[1] The reason for the unusual, nearly-seven-month delay between the first and last trial days is explained later.

[2] Besides the trial testimony and the documents admitted into evidence, the court has also considered the parties' written summations that were filed by November 15, 2024, and their written replies that were also allowed to be filed out of time on December 6, 2024.

and is held now only by defendants. Notwithstanding, plaintiff claims an interest in the property and seeks a partition.

The purchase price was $665,000 to be conveyed by way of: two initial cash deposits totaling $10,000; the proceeds of a $415,000 mortgage loan; and $240,000 paid at the time of closing. Defendants obtained the mortgage loan; plaintiff was not a borrower in that transaction. Plaintiff provided $250,000 by way of a check payable to her son-in-law (P-1). She also provided a "gift letter" (D-1), which states that the $250,000 was a gift. Both the check and the gift letter were signed by plaintiff and voluntarily provided to defendants, as she acknowledged in her testimony.

This case is not untypical of most chancery cases. The applicable principles are relatively simple and may be easily described, but how they should apply is often rendered difficult by uncertain or starkly disputed facts. The linchpin of plaintiff's action and her claim to an interest in the Lake Como property revolves around whether she gifted the $250,000, whether that fund was instead intended to be a loan, or whether that fund constituted plaintiff's consideration for obtaining a partial interest in the Lake Como property.

Turning to the legal principles suggested by the facts – and this may be putting the cart before the horse – there is no question that our courts are fully empowered to partition jointly-owned property. That power has long been

recognized as a common law remedy that may be issued when the equities require, Newman v. Chase, 70 N.J. 254, 263 (1976), and it has been established by the Legislature as well, N.J.S.A. 2A:56-2. Once a right to partition is established, the court must determine whether that remedy can be imposed "without great prejudice to the owners." Ibid. Courts should initially attempt to divide property in kind – an approach infeasible here – or the court may direct a sale and then equitably divide the proceeds. See, e.g., Swartz v. Becker, 246 N.J. Super. 406, 412-13 (App. Div. 1991).

To obtain partition in these circumstances, plaintiff was first obligated to show she possessed an interest in the property, and it is here that the real dispute lies. That claim, of course, does not rise or fall on the fact that defendants unquestionably hold legal title. Plaintiff seeks a recognition of what she claims is an equitable interest in the Lake Como property. And there is evidence that appears to support her position. For example, as already mentioned, the contract documents identified plaintiff as one of the three purchasers, along with defendants (J-1). Defendants do not dispute this; they acknowledge plaintiff expressed an interest in helping them obtain this property and that the contemplated transaction started with the three of them as joint purchasers; there was no apparent agreement about the percentages of ownership. But defendants further claim that the arrangement soon evolved – as revealed by two contract

addenda (J-3 and D-2) that served the same purpose – and ultimately it was agreed that defendants would be the only purchasers and title holders, and that the $250,000 to be provided by plaintiff would be considered a gift.

Plaintiff's position is that the arrangement did not mutually evolve as defendants contend. She instead claims that defendants simply went behind her back and changed the contractual arrangement so that only defendants would end up the owners, thereby depriving her of an interest in the property. In short, plaintiff claimed she didn't consent to a modification of the contract – and did not sign, electronically or otherwise – either addenda (J-3 and D-2) that memorialized her removal as a purchaser or eventual part owner of the property.

A good deal of the testimony focused on the addenda. The first (J-3) was not signed by plaintiff in any fashion; indeed, there was no signature line provided for her. This momentarily gives credence to plaintiff's claim that the change occurred without her knowledge or consent. But the second (D-2) does have a signature line for plaintiff and an electronic signature appears in that place; defendants also electronically signed this document on their own behalf. This addendum, like J-3, memorializes the parties' instructions to their attorney that plaintiff should be "deleted as a buyer."

What has prolonged these proceedings is the fact that D-2 made a later-than-appropriate appearance in the case. That document had not been turned

over in discovery, it was not marked for identification prior to trial, and it was not utilized by defendants during plaintiff's case-in-chief. Instead, it first surfaced after plaintiff had rested and while defendants were putting on their case-in-chief. When plaintiff objected and defendants were called to explain, defense counsel responded that D-2 had only been provided to her during the course of the trial, and not previously, due to a misunderstanding. Defendants' answers to interrogatories referred to the relevant documents as including an "addendum" and provided what is marked in evidence as J-3, not D-2; the confusion is somewhat understandable since the documents look similar and served the same purpose. In partially ruling on the objection at that time, the court found the exclusion of D-2 – simply because it hadn't been provided when plaintiff answered interrogatories – was too drastic a remedy and would not service the court's ultimate desire to get to the truth of the matter. Instead, the court deemed the better route was to allow plaintiff a full and fair opportunity to respond to the document on its merits and then present whatever evidence she deemed appropriate not only in seeking an adverse inference due to the late turnover but also to respond to D-2 as to its authenticity or otherwise, with further testimony or other evidence if necessary, to rebut its content. The record will further reflect – through a handful of virtual recorded conferences since March 2024 – that plaintiff was given every opportunity and considerable time

to explore and investigate the legitimacy of D-2 or to marshal other evidence that would suggest D-2 wasn't or couldn't have been electronically signed or otherwise authorized by plaintiff.

When the trial resumed on October 21, 2024 – dedicated to whatever the parties felt was probative about D-2 – the court heard the testimony of all three parties, as well as Daniel Erhardt, who, at the time D-2 was executed, was plaintiff's supervisor at her place of business and who approved plaintiff's employment time records on a regular basis, and Sheba Smith, plaintiff's other daughter.[3] As it turns out, after the time allowed to examine and investigate the legitimacy of D-2, the court is left without anything clear or more persuasive – to the extent it may be persuasive – than plaintiff's outright denial of having signed or otherwise authorized D-2. Daniel Earhardt provided testimony that he approved a time record that reveals plaintiff was at work at the time and on the date D-2 was purportedly executed. While this testimony might have been relevant if D-2 purported to have been signed in ink on paper in one physical location while plaintiff was elsewhere, that information isn't terribly relevant or persuasive because D-2 purports to only having been e-signed; neither the distance from the other parties nor the fact that the document may have been e-

[3] These two non-party witnesses testified virtually. All the testimony of the parties on both trial days was in-person.

signed by all at or about the same time is significant or persuasive to plaintiff's position that someone else placed her e-signature on D-2. Considering the simplicity of e-signing a document or the momentary interruption of one's day that such an event may cause, the court does not find meaningful the fact that plaintiff may have been at work or in some place other than where defendants were when D-2 was electronically signed. Plaintiff needed only a cellphone or some other similar device to open her email and click a few times to e-sign and transmit that approval to the requester.

The court is also unpersuaded by plaintiff's contention that D-2 or any other document bearing her electronic signature are inauthentic or somehow forged or concocted. The court is satisfied that D-2 was executed electronically by plaintiff, despite her protestations to the contrary. There is nothing about the document itself that suggests it was either prepared or executed under false pretenses or was somehow forged. And, while it may be true that defendant Reena Pallai had the ability to go into plaintiff's email account – because plaintiff occasionally sought her help or otherwise delegated authority to Reena to take certain similar steps in her other transactions – the court found credible Reena's testimony that she did not go into plaintiff's email or otherwise e-sign D-2 or any other document involving this transaction that contains what purports to be plaintiff's e-signature.

And so, to be more specific, if all the court had to consider was the documentary evidence – the deed, the final version of the contract (J-1), the addenda (J-2 and D-2), plaintiff's $250,000 check (P-1), and the gift letter (D-1) – there would be no doubt that there would be no merit to plaintiff's claim. If the evidence persuades that plaintiff gave defendants $250,000 not as a loan or to buy an interest in the property but as a gift, the matter ends. If the money was a gift – as all the relevant documents reveal – plaintiff would not be entitled to any relief, either in law or in equity. An inter vivos gift, once completed, "is not revocable by the donor." In re Estate of Link, 328 N.J. Super. 600, 604 (Ch. Div. 1999). If the money was a gift, plaintiff obtained no interest in the Lake Como property and, thus, would have no right to the remedy of partition.

To be sure, in considering the propriety of an equitable remedy, the court is not necessarily bound to the writings if it can be shown that those writings do not reflect the parties' true intentions. If the parties had agreed to put certain things in writing, while orally agreeing to something else even diametrically opposed to the writings, the court might relieve a wronged party of the consequences. None of this is particularly unusual. The court would be naïve indeed if it didn't acknowledge that gift letters are often given – as the means of assisting young or new purchasers, or those without the means or credit, to purchase a home or obtain a mortgage – with an understanding that the "gift" is

being made with a nod and a wink and isn't a gift at all but merely a loan or, as here, the means of purchasing an interest.

Plaintiff testified that the money was not a loan but was her share of the purchase of the property for which she would take an interest. Because, as noted above, the writings may not be conclusive on this point, the court must consider whether plaintiff testified truthfully when she testified that the addenda were executed behind her back or that the parties' understanding was always that she would obtain a legal interest in the property in exchange for her $250,000 despite what was written.

In seeking partition, plaintiff had the burden of persuading the court by a preponderance of the evidence of her possession of an interest in the property. Swartz, 246 N.J. Super. at 411 (holding that "[g]eneral rules governing burden of proof apply in partition actions"). That is, plaintiff was required to show that her version of the parties' agreements and understanding about whether, by supplying $250,000, plaintiff would gain an interest in the property, was more likely true than defendants' version that the money was a gift. See Liberty Mut. Ins. Co. v. Land, 186 N.J. 163, 169 (2006) (recognizing that the preponderance standard requires a litigant to "establish that a desired inference is more probable

than not"). The court is not persuaded that what plaintiff claims is more probable than what defendant has asserted.[4]

To summarize, the court bases its determination that plaintiff gifted $250,000 to defendants on the parties' credibility. To be sure, they have expressed two incompatible positions. But the court simply does not believe the truth of plaintiff's protestations that in signing the documents that acknowledged

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[4] The court need not resolve an apparent disagreement between the parties as to the placing of the burden of persuasion as well as the level of persuasion that the burdened party must meet. The court would come to the same conclusions reached here even if the burden to prove all aspects of their positions was placed on defendants and even if the burden required that they prove their version by clear-and-convincing standard. The evidence the court has found credible has produced in the mind of this trier of fact "a firm belief or conviction as to the truth of" defendants' version of what transpired between them and plaintiff. See In re Purrazella, 134 N.J. 228, 240 (1993) (quoting Aiello v. Knoll Golf Club, 64 N.J. Super. 156, 162 (App. Div. 1960)); see also Bhagat v. Bhagat, 217 N.J. 22, 46 (2014). Judge Freund further described this standard when he said for the court in Aiello that the clear-and-convincing standard is satisfied when the witnesses are "credible, . . . the facts to which they have testified distinctly remembered and the details thereof narrated exactly and in due order, and . . . their testimony . . . so clear, direct and weighty and convincing as to enable either a judge or jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." 64 N.J. Super. at 162 (quoting Tapler v. Frey, 132 A.2d 890, 893 (Pa. Sup. Ct. 1957)). Although there may have been times when she was uncertain about some details, the court was particularly impressed by Reena's testimony. She delivered her "distinctly remembered" version of the events "without hesitancy" and with the clarity and conviction of someone speaking the truth. On the other hand, plaintiff was at times quick in her answers to say that which she believed would help her cause, even to the point of not waiting for even a friendly question to be finished; this, as well as the overall tenor of plaintiff's testimony, and the impression of her lack of credibility regarding these issues that was received by the court, has led the court to find unpersuasive much of anything plaintiff had to say about the heart of the matter.

the money was a gift (D-1) she either didn't mean to gift the money or didn't understand its purpose, and the court doesn't believe that plaintiff didn't authorize taking herself out of the original contractual arrangement as both J-2 and D-2 declare. Plaintiff has attempted to support her testimony with allegations that her electronic signatures were not made or authorized by her. She claims, for example, ignorance about how "DocuSign"[5] works and, because of that lack of knowledge, she could not have possibly signed the documents. From the court's observations of plaintiff as she testified and the manner in which plaintiff spoke, however, the court does not find her testimony credible. Moreover, having observed defendants as they testified, the court finds them much more credible in asserting that plaintiff not only signed the critical documents, including the gift letter,[6] but also that it ultimately was plaintiff's intention not to obtain an interest in the property. See also n.4, above.[7] The court

[5] A method by which, rather than putting pen to ink, one may electronically sign a document.

[6] The gift letter was not "Docu-Signed" but was instead signed with pen and ink. And there is no doubt that plaintiff, by hand, filled in the blanks in the gift letter and signed it.

[7] Defendants testified that the reason plaintiff chose to make this gift to them and therefore took herself out of the transaction was because she was concerned that her other daughter (Sheba), who one of the witnesses described as "litigious," would "come after them" after her death about this, and that plaintiff felt she had already "taken care" of or provided for Sheba. Reena testified in this regard and related how plaintiff had taken steps to get Reena's sister into a better home.

finds instead that plaintiff intended to and did in fact give, with no expectation of repayment, $250,000 to defendants so they could purchase the Lake Como home and that plaintiff chose not to be a part owner of the property as a way of further making a gift to defendants. This conclusion is not only militated by the court's view of the parties' credibility – defendants being far more believable than plaintiff – but also by their writings, which, as already noted, reveal that the contractual arrangement evolved to the point where only defendants would be the purchasers of the property and reveal further plaintiff's intent to give $250,000 to defendants for that purpose.[8]

Sheba testified that the arrangement was different and not comparable – and that may be so since plaintiff is the title holder of the home in which Sheba resides – but there appears to be no doubt that Reena's sister's living arrangements were vastly improved by the steps taken on her behalf by plaintiff. So, the court finds that Reena's testimony that plaintiff wanted to make this gift to she and her husband because of some benefit she conferred on her other daughter is credible despite the quantitative differences in the benefits conferred.

[8] That it is not credible that plaintiff believed she had, by conveying $250,000, attained an interest in the property is further buttressed by the fact that the closing occurred in September 2019. And yet, plaintiff never sought written confirmation of the conveyance to her of an interest in the Lake Como property for months after. The parties – as testimony from both sides reveals and suggests – were close; they spent a good deal of time together after plaintiff became a widow. It was only months after the purchase by defendants of the Lake Como home when plaintiff came to feel she wasn't being treated properly by defendants and later commenced this action. This conveys to the court a belief that plaintiff only took this action not because she was, as she claims, hoodwinked by defendants but because of some unfortunate falling out and the consequent remorse it caused for her for having made the gift – then and now irrevocable once conveyed – to defendants.

For these reasons, the court finds no merit in plaintiff's claims. Her complaint will be dismissed.