

Pflumm v Ryan

2007 NY Slip Op 31075(U)

May 3, 2007

Supreme Court, Suffolk County

Docket Number: 0001170/2005

Judge: Emily Pines

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Short Form Order

Index Number: 1170-2005

Supreme Court - State of New York
I.A.S. Term, Part 23, Suffolk County

Present:

Hon. Emily Pines
Justice Supreme Court

RICHARD PFLUMM, X

Plaintiff,

-against-

JACQUELINE RYAN,

Defendant .
_____ X

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DECISION AFTER TRIAL

Plaintiff, RICHARD PFLUMM, brought this action, seeking to impose a constructive trust on real property, located at 27 Noah's Path in Rocky Point, and titled in the name of the Defendant, JACQUELINE RYAN. It is Plaintiff's claim that under the circumstances surrounding their prior relationship, Defendant's promises and Plaintiff's actions, that he has met the criteria necessary for imposition of the equitable doctrine. As a remedy, Plaintiff asks this Court, upon imposition of the trust, to effectuate the transfer of the residential property from the Defendant to the Plaintiff and the Defendant either as joint tenants or as tenants in common. Defendant opposes the action, asserting both that no promise of a transfer ever existed and , in any case, that Plaintiff's actions in deceiving and manipulating their relationship, preclude him from use of an equitable remedy. The case was tried before the Court for two days, during which the Plaintiff, the Defendant and the

Defendant's father all testified, and twenty-six exhibits were admitted into evidence. The Court had the opportunity to observe the witnesses and to assess their credibility.

Plaintiff testified that he moved into a basement apartment, located at the residence on Noah's Path in 1992, as a tenant. The property was owned, at the time, by Plaintiff's brother and sister-in-law. Plaintiff lived in the apartment alone until Defendant moved in with him in the Fall of 1999. During this period, Plaintiff asserts that he had discussions with his brother about purchasing the house from him and he claims that he entered into a written agreement to that effect with his brother and sister-in-law in 1994. The "Agreement" (**Plaintiff's 5**), dated October 19, 1994, states that the brother and sister-in-law will aid the Plaintiff in acquiring their property from them. Plaintiff is obligated to pay them \$20,000 and obtain a mortgage for the remainder of the purchase price of \$120,000. The so-called agreement, unsigned by any party, also states that RICHARD PFLUMM paid \$3,000 toward the \$20,000 down payment on March 19, 1994 and that if he defaults that his brother and sister-in-law will not be required to refund any of such funds. The "agreement" also has handwritten notations, which Plaintiff states are not in his handwriting, stating essentially that \$1,000 of the original \$3,000 was still owed the brother and sister-in-law in January 1998.

According to Plaintiff, he was unable to accomplish the purchase in the period between 1994 and 1999, when he asserts that he asked the Defendant, his then girlfriend, and her young child, to move in with him and to purchase the property with him as partners. Plaintiff testified that he brought Defendant to mortgage brokers and that the two of them attempted to obtain a joint mortgage so that they could purchase the home, but that his credit and income were insufficient. Therefore, he requested that the Defendant purchase the home and obtain the necessary

mortgage, with the understanding that in five years, after significant contribution by Plaintiff, to the upkeep of the premises, Defendant would transfer title from her name alone to the parties as joint tenants with rights of survivorship. Plaintiff states that Defendant agreed, and with Plaintiff's help finding the broker and paying some of the closing costs, Defendant purchased the premises for \$115,000 in the Fall of 1999. Thereafter, during the five year period, Plaintiff agreed to help the Defendant with childcare for her young son and to contribute the majority of cash needed to carry the mortgage and utilities. Plaintiff claims he fulfilled his part of this bargain but that after several years, Defendant began to ask him to move out. Plaintiff consulted an attorney in 2003 and had papers prepared to effectuate the transfer (**Plaintiff's 8**); however, although she signed one of many necessary forms, Defendant failed to consummate the transfer and reneged on the deal.

Plaintiff claims that Defendant has become unjustly enriched as a result of her actions, since the Plaintiff not only procured the sale, but also contributed substantially to the home's upkeep over a five year period after the agreement was made. In addition, Plaintiff avers that he received gifts from his family from time to time that he utilized to effectuate repairs and upkeep for the home (**Plaintiff's 11**). Under all of the circumstances, Plaintiff believes he is entitled to at least one half of the value of the house which has increased from \$115,000 in 1999 to at least \$235,000, its alleged appraised value in 2005, when this action was commenced.

Defendant's version of events is quite different. When she began dating the Plaintiff in the Summer of 1998, Defendant states he was living in the basement of his brother's home on Noah's Path in Rocky Point as a tenant. When she and the Plaintiff decided to live together in 1999, they agreed that they

Plaintiff decided to live together in 1999, they agreed that they would purchase the residence together and both be on the mortgage. However, when they went to apply for a mortgage, she learned that only she would qualify. At the Plaintiff's request, Defendant cashed in her then existing 401k and borrowed \$8,000 from her father, in order to put down the necessary payment for the purchase of 27 Noah's Path. According to Defendant, not only did she make the entire down payment, but all substantial closing costs, including payment for the title survey, the land survey, the attorney's fee for the sellers' attorney, and appraisal costs (**Defendant's G,H, L**). The only contribution Plaintiff made was toward the mortgage application fee of several hundred dollars. Thus, while Defendant admits that it was her initial intention to purchase the property with Plaintiff, he simply had no funds, and therefore she provided them. In retrospect, Defendant believes that Plaintiff knew all along that he would not be approved for a loan and that he lied to her in order to induce her to accomplish the purchase, understanding that he would never be able to do so. No promises were made at the time.

In terms of the parties' living arrangements, Defendant testified that she worked full-time and that when she moved into the premises, Plaintiff was working at home as a website consultant. On a weekly basis, Defendant gave Plaintiff her paycheck and also gave him control over the parties' banking and finances. The checking account, where the Plaintiff deposited Defendant's checks and some of his own income was in Defendant's name. Defendant states that the parties both contributed to the daily living expenses connected with remaining in the home; but that Plaintiff's statement that he contributed the lion's share is just not possible, since they were constantly being threatened by the various utility companies, and several times, she was required to ask her father for help to pay back utility bills. A review of the parties' tax returns for the years in question demonstrates that neither earned very substantial adjusted gross incomes; however, while Defendant's income over the period stayed

in the range of \$15,000 to \$16,000 per year (**Plaintiff's 14**); Plaintiff's adjusted gross for the same period between 1999 and 2003 ranged from approximately \$4,000 to \$12, 500 (**Defendant's B**).

According to Defendant, Plaintiff convinced her to purchase the home; took all of the Defendant's income and essentially took over her checking account, sometimes paying bills and then failing to pay them, so that the parties were constantly getting late and shut off notices. Defendant stated that she rarely, if ever, saw any evidence of the Plaintiff's income, since he never discussed it with her and insisted on being in total control over any joint finances. As far as contributions to the structure itself, Defendant states that although the Plaintiff did receive certain sums from his mother, he never used them for the home; but rather for vacations and to purchase his own automobiles or cameras utilized for his consulting work. With regard to the Plaintiff's insistence that Defendant sign transfer documents in 2003, Defendant claims that Plaintiff barricaded her in the basement until she signed one of the transfer forms, but that she knew enough not to complete the necessary documents and never intended either to place Plaintiff's name on the deed or to transfer any part of the home to him. Finally in late 2004, Plaintiff moved out of the premises and then commenced the instant lawsuit.

Defendant's father testified that he gave the Plaintiff \$8,000 toward the purchase price of the home and that he did make several utility payments over the period when the Defendant would ask him to do so.

CONSTRUCTIVE TRUST

In order to prevail in an action to impose a constructive trust, the Plaintiff is generally required to prove the existence

relationship; 2) a promise; 3) a transfer by the Plaintiff in reliance upon such promise; and 4) unjust enrichment to the promisor. **see, Consumers Union of U.S., Inc. v State**, 5 NY 3d 327, 806 N.Y.S. 2d 99, 840 N.E. 2d 68 (2005); **Doxey v Glen Cove Community Development Agency**, 28 A.D. 3d 511, 813 N.Y.S. 2d 743 (2d Dep't 2006); **Bontecou v Goldman**, 103 A.D. 2d 732, 477 N.Y.S. 2d 192 (2d Dep't 1984). The remedy, being equitable in nature, is not subject to an unyielding formula; but, rather, is designed to be applied where necessary to satisfy the demands of justice. **see, Simonds v Simonds**, 45 NY 2d 233, 408 N.Y.S. 2d 359, 380 N.E. 2d 189 (1978).

In the case at bar, the parties stipulated, and it was indeed borne out through the evidence presented, that Plaintiff and Defendant had a confidential relationship. However, the testimony concerning the second prong of the test is far less clear. While the Plaintiff asserts that he received a promise from the Defendant that she would, within a five year period, transfer ownership of the property to the parties as joint tenants, Defendant claims there exists no such agreement implied or in fact. The testimony in this case weighed quite evenly on this issue. While the Defendant admitted that she went into the process of seeking to purchase the property at Noah's Path with the understanding that she would be doing this together with the Plaintiff, she learned quickly that such was not to be the case, due to Plaintiff's poor earning and poor credit. While Plaintiff may indeed have believed that he was entitled to fulfillment of such "promise" upon his contributions to the home over a period of time, the Court is not convinced there was ever a meeting of the minds on this issue.

Furthermore, even if such promise did exist, the Court does not find that the Plaintiff made the requisite "transfer" in reliance upon a promise to transfer the ownership of the residence. While he clearly must have contributed some monies to the daily upkeep, the only clear evidence presented is that he used all of the Defendant's paychecks for that purpose. While

those checks were insufficient to pay all the bills, the Defendant took over the parties' finances, only received cash payments for his own services, and was extremely secretive about money matters with the Defendant and in general. There is simply insufficient evidence of any thing other than that Plaintiff obviously made some payments for the utilities and mortgage and that he also lived in the house for those five years.

In addition, there does not appear, in this case, to be any evidence of unjust enrichment absent the transfer of ownership. It was the Defendant and her father who made the substantial down payment for the house; on those occasions where the utilities were not paid, the Defendant's father helped the parties out; there is no evidence that Plaintiff made any improvements to the premises. While it is true, that the plaintiff provided the Defendant with the access and opportunity to purchase the home, he lived there for five years and did not have to move when his brother apparently desired to sell it.

CLEAN HANDS

The clean hands doctrine applies to all equity actions and proceedings to the extent that one who seeks the equitable aid of the Court must show that he has not been guilty of his own breach of trust. **McGrath v Hilding**, 41 NY 2d 625, 394 N.Y.S. 2d 603, 363 N.E. 2d 328 (1977). Thus, one who seeks the Court's equitable aid in imposing a constructive trust must himself come to the court free of wrongdoing on any related matter. **see, Lagonegro v Lagonegro**, 187 A.D. 2d 490, 589 N.Y.S. 2d 571 (2d Dep't 1992).


Upon consideration of the evidence presented in this case, the Court is convinced that Plaintiff should not prevail in the action, despite the fluidity of the constructive trust requirements, because his own actions were somewhat questionable. While the Plaintiff testified that he paid for 50% - 75 % of the

home expenses for the years 2000 through 2003, his Adjusted Gross Income on his filed tax returns for those years was extremely low (in several years in the \$4,000.00 - \$6,000.00) range. If Plaintiff's disposable income was essentially nonexistent during that period in his filed returns to the government, his testimony that he used disposable income to support the parties' living expenses is simply not credible. In addition, Plaintiff presented a typed document to the Court which was unsigned and stated that Plaintiff had paid his brother \$3,000 in March 1994. In his direct testimony Plaintiff confirmed that he had made such payment at the time; yet the handwritten notations on the document set forth that monies were being paid over a period of time through 1998. Finally, the document is unsigned and the Plaintiff never presented the testimony of his brother or sister-in-law to confirm or explain what occurred. Finally, the Court found credible the Defendant's testimony that the Plaintiff actually barricaded her in the basement of the home in order to force her to sign a transfer document against her will. Although the document in and of itself has no legal effect, this Court will not permit a party using such tactics to avail itself of the Court's equitable powers.

In sum, based on all of the above, the Plaintiff has failed to sustain his burden of demonstrating entitlement to the remedy of constructive trust and the Court's verdict is in favor of the Defendant.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: May 3, 2007
Riverhead, New York


EMILY PINES
J. S. C.