

Carter v Rouse

2014 NY Slip Op 30236(U)

January 28, 2014

Sup Ct, Wayne County

Docket Number: 74203/2012

Judge: John B. Nesbitt

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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

GARY CARTER,

Plaintiff,

-vs-

Index No. 74203

MARY ROUSE

2012

Defendant.

APPEARANCES: DeValk, Power, Lair & Warner
(Richard L. DeValk, Esq., of counsel)
Attorney for the Plaintiff

J Mark Krause, Esq.
Attorney for Defendant

MEMORANDUM - DECISION

John B. Nesbitt, J.

I. Introduction and Issues Presented.

This litigation resulted in a two day non-jury trial over the ownership of certain personal property acquired by the parties, either jointly or separately, during their five year relationship and cohabitation. Resolution of this case brings with it the typical difficulties that present when untangling the mingled financial affairs of an unmarried couple, where dealings are not conducted or documented with the exactitude of arms-length business transactions. The reason, of course, is that the parties never anticipate that their contractual or property rights vis-a-vis each other will ever become an issue. Divorce law deals with this problem through statutory concepts such as marital and separate property and equitable distribution that are tested and refined through decisional law. While case law has addressed some of the issues involving the separation of unmarried couples in various contexts (i.e. partition and constructive trust actions, for example), there is no overall, conceptually clear body of law providing genuine practical guidance to courts facing these issues. In the main, the courts are left to divine the intent of the parties regarding their separate rights, when, in fact, there probably was no such intent. This case presents similar issues, with the addition of an apparent property settlement agreement the validity of which is disputed.

II. Background and Contested Facts.

At the time of the first day of trial on May 15, 2012, the plaintiff, Gary Carter, was sixty-five years old and a long-term resident of the Town of Sodus, Wayne County, currently residing at 5316 Route 14 (TT 05/15/2013 p. 5).¹ Carter was living at 5608 North Geneva Road, Sodus, in 2006 when he met defendant Mary Rouse, who moved in with him at that address the same year. They lived at the Geneva Road address for about a year until moving together to 5316 Route 14. At the time Carter met Rouse, she was working at Parker Hannifin in Lyons, and he was an over-the-road truck driver, owning and operating his own truck, and primarily engaged in multi-state deliveries of windmills (TT 05/15/2013 p.6).

The parties' move to 5316 Route 14 was precipitated by a couple of factors. Most immediately, the Geneva Road residence had been the site of a farming operation that Carter ran as a sideline to his trucking business. Corn and beans were the crops planted and harvested by Carter; however, the operation was not able to sustain the debt obligation to the Farmer's Home Administration, which foreclosed, eventuating the farm being sold as well as the equipment secured with it (TT 05/15/2013 p.31). Foreclosure had been forestalled temporarily by Rouse's payment of almost \$5000 to FHA(Id.). Loss of the Geneva Road property did not impede Carter's second sideline business of baling hay, which was done off site, although he apparently began to phase this out around this time (TT 05/15/2013 p. 33).

The second factor behind the move to 5316 Route 14 was its fit with Carter and Rouse's interest in developing a horse business. 5316 Route 14 was used as Carter and Rouse's residence and was acquired from, and financed by, a purchase money mortgage with Bonnie Miller as mortgagee (TT 05/15/2013 p. 12). Across the road was 5319 Route 14, which was a house and extensive outbuildings, which was acquired from, and financed, by a lease/installment sale agreement with William Halling as contract vendor. (TT 06/10/2013at 19). Carter and Rouse owned separately or collectively two or three horses, which they had been boarding at Alasa Farms at the intersection of

¹ The abbreviation "TT" represents the stenographic trial transcript. The transcript used by the Court for purposes of this decision is one denoted as "rough draft" by the court reporter and used by the Court to refresh its recollection of the testimony and/or confirm the accuracy of the court's notes. Thus, in the event a certified transcript is produced, it is possible that the cited page numbers may differ from that used in this decision and/or any quoted material may appear slightly different.

Shaker and Red Mill Roads north of the hamlet of Alton in the Town of Sodus. They decided to do their own boarding, so they acquired the Halling property, and started boarding other horses for pay as well as their own (TT 05/15/2013 p. 17-18).

As Carter and Rouse took up residency at 5316 Route 14 and began horse boarding operations across the road at 5319 Route 14, they began to acquire various types of equipment useful to the enjoyment and maintenance of the two properties and the horse boarding business. From the record, it appears that there was no real financial plan and that it was basically a hand-to-mouth operation. In fact, it is telling that during Carter and Rouse's joint occupation of these properties, Mr. Carter did not file any income tax returns or pay any income taxes, notwithstanding that he was apparently doing well as an over-the-road truck driver. Mr. Carter testified at trial that he presently owes approximately \$90,000 in back taxes relating to the period he was living with Ms. Rouse. (TT 05/15/2013 p. 47). Ms. Rouse testified at an EBT that she pumped \$42,000 of her own separate earnings into the partnership with Carter towards bills and acquisitions (Plaintiff's Ex 12 [3/4/2013]at p. 26).

The Carter Rouse relationship ended in 2009, three years after it started. Mr. Carter ended up with the residence at 5316 Route 14 and Ms. Rouse with the horse farm at 5319 Route 14. The termination of their relationship led to an attempt to resolve their interests and expectancies in the various equipment and sundry personal property acquired during their partnership. Ms. Rouse prepared a document that she and Mr. Carter signed and dated September 18, 2009. Ms. Rouse proffered a writing at trial purporting to be this document, which was received as Plaintiff's Exhibit 7. This exhibit is typewritten and reads as follows:

I Gary Carter agree that Mary Rouse is now the owner of the following:

- 1456 International Tractor w/Loader and attachments
- 265 Massey Fergusson Tractor w/Loader and attachments
- Vermeer Tedder
- 4 Basket Hay Wagons
- Yamaha Grizzley 600 4-wheeler
- 2 carts for 4-wheeler (one came with the farm)
- battery charger
- box trailer (came with farm)
- New Idea Cutditioner
- Horse (Miller)
- Weed Sprayer
- Round Pen

Conveyor
 Seeder
 Bush Hog Mower

It is understood that equipment will continue to be shared.
 Equipment will not be loaned to a third party without permission.
 In the event of death or incapacitation of either person the above becomes the property of the survivor.
 It is also agreed that Mary can continue to use the shop/tools if necessary.
 Mary can use the Dodge pickup to pull the horse trailer and for snowplowing.
 Also, in the event of an extended power outage, the generator can be used to power the horse barn at least long enough to obtain a water supply. If the generator is to be sold, Gary needs to inform Mary so that she is aware that it is no longer available.
 If equipment is to be traded or sold for any reason such as for replacement both people need to reach an agreement on the how's and why's and what it is to be replaced with.
 Gary can use the horse trailer, hay baler, and manure spreader. Also if there are other things that Mary owns more than likely an agreement on usage can be agreed on.
 If more items/issues may come up, we agree to discuss them like civilized adults.

/s/ Gary Carter
 Gary Carter
/s/ Mary Rouse
 Mary Rouse

Date: 9-18-09

Date: 9-18-09

Ms. Rouse testified that both she and Mr. Carter signed the agreement with the content quoted above. Mr. Carter testified that the agreement as set out in Plaintiff's Exhibit 7 is altered from that which he signed. He testified that the language reciting his agreement that Rouse was "now the owner" of the enumerated items was not there when he signed the agreement. So too, he claims that the language reciting Rouse's right to use the Dodge pickup and his shop tools was not there in the original as well (TT 05/15/2013 p.11).

The legitimacy and validity of this alleged agreement became the subject of this litigation when Mr. Carter commenced action for declaratory relief (determining ownership), replevin (directing return of property), and compensatory damages (denial of possessory right). In his Amended Complaint, Mr. Carter not only disputes the validity of the agreement with regard to ownership of the listed items - which he claims are his - but argues alternatively that (1) the agreement fails for want of consideration and (2) that, in any event, Ms. Rouse repudiated the same by selling and allowing others to use certain of the listed property.

Assessing the respective claims of the parties regarding the September 18, 2009, agreement requires application of basic principles of contract law. At root, “[a] contract is a promise or a set of promises for the breach of which the law give a remedy, or the performance of which the law in some way recognizes as duty” (*Ledain v Town of Ontario*, 192 Misc.2d 247, 249-250 [Sup. Ct., Wayne Co. 2002], *affd. for the reasons stated* 305 AD2d 1094 [4th Dep’t 2003])[quoting Restatement (Second) of Contracts §1). The elements of a legally enforceable contract are “(1) at least two parties with legal capacity to contract, (2) mutual assent to the terms of the contract, and (3) consideration” (2B NY PJI3d 4:1, at 3 [2013]). The Court finds, based upon a preponderance of the credible testimony, that the parties did sign the agreement set forth as Plaintiff’s Exhibit 7 indicating mutual assent and that the mutual rights and obligations contained therein constitute adequate consideration.

The Court does also find, however, that Ms. Rouse, by her own testimony, repudiated the agreement by disposing of and loaning certain of the items subject thereto in violation of its terms. The law in this area is clear.

“In general, rescission of a contract is permitted for the repudiation of the contract or any essential part of it.

Where one party to a contract repudiates its obligations thereunder, the other party may elect to treat the contract as terminated.

The theory is that where one party renounces a contract without cause before the time for performing it has elapsed, the party authorizes the other party to treat it as terminated” (22A NY Jur., Contracts §513 [2013]).

Plaintiff’s exhibit 12 is a transcript of a portion of an Examination Before Trial where Ms. Rouse admits that she loaned out hay wagons to others without Mr. Carter’s assent and that she sold the conveyor. In doing so, she testified that she “had considered that our contract was null and void as far as selling the equipment, sharing the equipment with anyone else”(Plaintiff’s Exhibit 12 p. 27) At trial, Ms. Rouse reaffirmed that she “thought the restriction on sale was null and void” and stated the reason as:


I had moved out of the house I was no longer living there, [and] there was an agreement on there [the contract] that he remain civilized to me which he had not, there’s also agreements that he would continue to share the shop and his Dodge pick up with me which he had ceased to do that long, long before. I felt he had broken the terms of the sharing agreement and that there was no more sharing, and I actually owned the equipment” (TT 06/10.2013 p. 53).

If Ms. Rouse took the position that Mr. Carter was the first party to breach or repudiate the contract, her remedy was to seek its enforcement. It did not give her the license to also repudiate her obligations under the contract, but retain the benefits thereof, i.e. ownership of the enumerated equipment. By repudiating her obligation to share the equipment subject to each party's right of ownership if he or she survived the other, she relinquished her claim of ownership of the equipment, but, of course, only so far as it may be based upon the contract. The effect - so far as this litigation is concerned - is to eliminate the September 18, 2009, agreement as a dispositive instrument so far as ownership of the disputed property is concerned.

Based upon the record, the Court concludes that Mr. Carter has established his individual title and ownership of the Vermeer Tedder, the Bush Hog Mower, the Massey Tractor, two hay wagons, and the Cutditioner. Declaratory relief to that effect is granted, together with direction that those items be returned to Mr. Carter. Regarding the remaining items, the burden of proof was on Mr. Carter to establish his claim of ownership. The Court does not find that he did so by a preponderance of evidence. This, of course, does not mean that Ms. Rouse is the sole owner, but indicates to the Court that the parties are joint or co-owners of the remaining disputed property.

Counsel for the Plaintiff shall submit a proposed judgment consistent with this decision upon notice to defendant's counsel.

Dated: January 28, 2014
Lyons, New York



JOHN B. NESBITT
Acting Supreme Court Justice