

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: Honorable LAWRENCE V. CULLEN
Justice

IAS PART 6

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KIRIAKI RALIS,

Index No.: 27074/05
Hearing Date: October 30, 2007

Plaintiff,

-against-

Decision and Order After Hearing

JAMES KAKIVELIS,

Defendant.
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The Court having conducted a hearing in this matter on October 30, 2007 with respect to a Motion of the Proposed Intervenor, Dino Ralis, seeking an Order permitting Dino Ralis to intervene in the above entitled action based upon the theory that Dino Ralis has an equitable interest in the subject premises under the doctrine of constructive trust.

The Court having heard the testimony of plaintiff, KIRIAKI RALIS, and the proposed intervenor, DINO RALIS, and having received into evidence documentary exhibits from both parties.

Based upon a preponderance of the credible evidence, the Court finds and determines as follows:

Background

The underlying action was commenced by the plaintiff on December 19, 2005 for a judgment of partition and sale of premises 22-75 35th Street, Long Island City, New York 11106 (hereinafter referred to as "subject premises").

The proposed intervenor, Dino Ralis, submitted a Motion to Intervene on November 9, 2006 alleging that under the theory of constructive trust, he has an equitable interest in the subject premises, and therefore should be permitted to intervene in this action, be added as a party defendant, and granted leave to serve an answer to plaintiff's complaint for partition.

Plaintiff and Dino Ralis are husband and wife, having been married on May 15, 1987 in Queens County, New York. Their marriage has never been dissolved and there is no action to dissolve the marriage pending.

It is undisputed that Dino Ralis owned several pieces of property prior to his marriage to the plaintiff. Furthermore, plaintiff testified that at the time of the marriage she owned no assets. Mr. Ralis testified that there was a pre-nuptial agreement at the time of the marriage, but that it no longer exists because he destroyed the same.

The testimony of the parties, as well as the documentary evidence proffered herein, evidences the following real property transactions that occurred during the marriage:

On September 27, 1990, Dino Ralis transferred the premises located at 32-17 Broadway, Long Island City, New York from Dino A. Ralis to Dino A. Ralis and Kiriaki Ralis, his wife. [Copy of said Deed was marked as Plaintiff's Exhibit 2]

On June 6, 1994, Dino Ralis transferred the premises located at 209-22 30th Avenue, Bayside, New York from Dino A. Ralis to Dino A. Ralis and Kiriaki Ralis, husband and wife, as tenants by the entirety. [Copy of said Deed was marked as Plaintiff's Exhibit 3].

On September 14, 1998, Dino Ralis and Kiriaki Ralis transferred the premises located at 32-17 Broadway, Long Island City, New York from Dino A. Ralis and Kiriaki Ralis, his wife, back to Dino A. Ralis. [Copy of said Deed was marked as Plaintiff's Exhibit 4]

Also on September 14, 1998, Dino Ralis transferred his interest in the premises located at 22-75 35th Street, Long Island City, New York from Dino Ralis to Kiriaki Ralis. [Copy of said Deed was marked as Plaintiff's Exhibit 1] This is the transfer of property that is subject of the instant hearing.

Dino Ralis testified that he transferred the subject premises to his wife in order to provide her with financial stability in the event of his death. Mr. Ralis further testified that prior to said transfer, his wife and he agreed that the property would continue to be their family property and in the event anything happened to plaintiff, the property would be transferred back to him.

The further testimony adduced from Mr. Ralis was that prior to the transfer of the subject premises, he and his partner, James Kakivelis, managed the building. After subject premises were transferred to the plaintiff, the plaintiff did not assume any of these responsibilities, and the defendant and Mr. Ralis continued to manage all aspects of the building.

Moreover, Mr. Ralis stated that subsequent to the transfer of the subject premises to the plaintiff, the income derived from said premises was included in their joint tax returns, and any taxes due and owing thereon was paid by him.

Furthermore, Mr. Ralis stated under oath that if the plaintiff was permitted to sell the subject premises, he would be exposed to substantial capital gains ramifications.

Plaintiff testified that Mr. Ralis transferred the subject premises to her because he wanted her to transfer the property located at 32-17 Broadway back to him. Plaintiff further testified that there was no agreement nor promise between Mr. Ralis and herself regarding the subject premises.

With respect to the testimony offered by Mr. Ralis that plaintiff felt financially unstable, plaintiff testified to the contrary stating that she had already received an interest in the Broadway property, as well as the marital residence located in Bayside. However, on cross examination, plaintiff did affirm that the reason she was not “afraid” was because Mr. Ralis transferred the assets to her, which provided her with security.

Plaintiff admitted under oath that she did not pay any taxes on the money she received from the subject premises; that she did not collect any of the rents at the subject premises; and that she did not manage the subject premises in any way. Plaintiff stated that Mr. Ralis and the defendant would not let her do anything, and that Mr. Ralis did not provide her with any information regarding the income and expenses of the subject premises. Other than this general statement, there was no other evidence offered concerning demands by plaintiff, or refusals by Mr. Ralis. Said testimony was contradicted by Mr. Ralis’ testimony that he informed the plaintiff of the income, expenses, and all information she wanted pertaining to the subject premises, but that plaintiff did not want said information.

Findings

It is well settled that the requirements for the imposition of the equitable remedy of constructive trust are: (1) confidential or fiduciary relationship; (2) a promise; (3) a transfer in reliance thereon; and (4) unjust enrichment. (Sharp v. Kosmalski, 40 N.Y.S.2d 119, 351 N.E.2d 721 [Ct. App. 1976]).

By the very nature of the plaintiff’s relationship with Mr. Ralis, in that they are husband and wife, the element of confidential relationship is satisfied herein. (Goodman v. Goodman, 84 A.D.2d 344 [1st Dept. 1982]).

A formal writing or express promise is not essential to the imposition of a constructive trust. Rather, a promise may be implied or inferred from the transaction itself. (Sharp v. Kosmalski, *supra*)

Since the salutary purpose of the remedy of constructive trusts is to prevent unjust enrichment, the application of said doctrine is not rigidly limited. Instead, its scope shall be sufficiently expansive, and shall be applied on an individual basis. (Goodman v. Goodman, *supra*.)

The *Goodman* Court imposed a constructive trust upon property transferred from the husband to the wife during their marriage. The facts relied upon by the *Goodman* Court was the existence of a confidential relationship wherein the wife knew that the transfer was made in furtherance of an estate plan with the property remaining for the spouses' common use; that the transfer was in reliance on the parties confidential relationship; that a promise was implied therefrom; and that the wife would be unjustly enriched if the husband were prevented from sharing in the transferred asset.

Furthermore, the *Goodman* Court held that a promise, articulated or not, was clearly implied by the testimony of Mrs. Goodman that there were no discussions between her and her husband as to the status and use of the transferred property in the event of a separation or divorce. Said testimony rendered it apparent that Mrs. Goodman knew and understood that during the lifetime of the parties the property was to be held for their common use.

Many similarities are present herein. The testimony of Mr. Ralis stating the property was transferred to plaintiff to provide financial security in the event of his demise, was substantially corroborated by plaintiff own testimony that she was not "afraid" of her financial stability due to the transfers of property to her from Mr. Ralis.

Additionally, both parties testified that Mr. Ralis' duties of maintaining the property was not affected by the transfer, and that he did in fact continue to manage all aspects of the subject property. It would be remarkable to find one who intends to relinquish all rights to an asset, yet continues to manage and control said asset without receiving any benefit therefrom. Accordingly, Mr. Ralis' transfer and continued management of the subject premises was on reliance of his confidential relationship with the plaintiff, and the promise implicitly flowing therefrom.

Furthermore, when plaintiff was questioned as to whether or not there were any conversations between her and Mr. Ralis concerning the subject premises in the event she passed away, plaintiff indicated that there were none and that she did not have a will. It is manifest by plaintiff's testimony that the subject premises were to continue to be held for the benefit of both her and husband.

Based upon the foregoing, this Court holds that facts and circumstances warrant the imposition of constructive trust, in favor of Mr. Ralis, on the subject premises herein.

Accordingly, it is hereby

ORDERED that the Motion to Intervene is granted based upon the proposed intervenor's equitable interest in the subject premises; and it is further

ORDERED that the proposed intervenor shall be added as a party defendant to this action; and it is further

ORDERED that the summons and complaint shall be amended to add Dino A. Ralis as a party defendant; and it is further

ORDERED that the plaintiff shall serve the Amended Summons and Complaint upon Dino A. Ralis, by serving his attorney herein; and it is further

ORDERED that Dino A. Ralis shall serve an Answer within twenty days after service of the Amended Summons and Complaint herein; and it is further

ORDERED that a copy of this Decision and Order, together with Notice of Entry, shall be served upon the Clerk of the Court.

Dated: January 23, 2008

LAWRENCE V. CULLEN, J.S.C.