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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. MON-C-161-22

MIKE SCHREIBER,

Plaintiff,

v.

EDWARD MARANTZ,

Defendant.

OPINION

Decided April 15, 2024.

Lawrence H. Shapiro, Esq., and Kelsey M. Barber, Esq. (Ansell, Grimm & Aaron, attorneys) for plaintiff.

Richard C. Sciria, Esq. (Hanlon, Niemann & Wright, attorneys) for defendant.

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

The parties dispute whether plaintiff Mike Schreiber gifted or lent funds to defendant Edward Marantz to enable him to purchase an Eatontown residence, which he still owns. When the money was conveyed, plaintiff was married to

defendant's mother. After plaintiff and defendant's mother separated and divorced, plaintiff commenced this action, seeking, among other things, rulings that the money conveyed was a loan and that he is entitled to an equitable mortgage on the Eatontown property.

Though plaintiff also sought partition, that remedy is not available here. The power to order a partition exists in both equity, Newman v. Chase, 70 N.J. 254, 263 (1976), and law, N.J.S.A. 2A:56-2. Once that right is established, a court must determine whether partition can be ordered "without great prejudice to the owners." Ibid. In considering partition, a court should initially attempt to divide the property in kind – an approach not feasible here – or direct a sale of the property and make an equitable division of the proceeds. See, e.g., Swartz v. Becker, 246 N.J. Super. 406, 412-13 (App. Div. 1991).

To obtain partition, however, the claimant must show, as relevant here, an ownership interest in the property.[1] Plaintiff recognizes in his written summation[2] that this is not the essence of his claim. Plaintiff acknowledged in his testimony that he was not a party to defendant's purchase of the Eatontown

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[1] To be sure, a creditor may seek partition of property owned by others but only once the creditor obtains a judgment against the owners. See, e.g., Newman, 70 N.J. at 266-67.

[2] The case was tried on March 26 and 27, 2024. The parties submitted their written summations on April 12, 2024.

property, and it was never intended he would obtain a legal or equitable ownership interest in the property. He contends only that he lent – not gifted – $389,000 that defendant needed to buy the property and that, in exchange, defendant agreed to repay him and to secure that obligation with a mortgage in plaintiff's favor. These circumstances do not support an order of partition.

Instead, the court turns to the other theories asserted by plaintiff, namely, his claim for a judgment declaring that he lent – not gave – defendant $389,000, and his argument that this court should impose an equitable mortgage in his favor on the Eatontown property. The court – having assessed the credibility of the parties – concludes that the better remedy is to grant judgment in plaintiff's favor for the unpaid portion of the loan.

All the credible evidence points in that direction that there was a loan, not a gift. First, even though the claim, at least in part, turns on plaintiff's word against defendant's, the court finds plaintiff to be the far more credible witness. Not only is that finding based on how he forthrightly testified but also because what plaintiff said had the ring of truth.

Second, what plaintiff claims is substantially buttressed by the fact that all the other relevant evidence – the contemporaneous text messages and communications between the parties – demonstrate that the money conveyed was a loan, not a gift. As the purchase of the property became a reality with

plaintiff's funding of the purchase, defendant provided plaintiff with a handwritten description of how he would repay plaintiff in five years, and accompanied that written outline with a comment to plaintiff that he "[w]anted to run [these numbers] by [plaintiff] to see if they'd be acceptable" (P-3). At or about the same time, defendant referred to his proposal and his factoring in his brother's rent payments, which would be forwarded to plaintiff, that would also "go into the paying off <u>the loan + interest</u>" (P-4) (emphasis added). Days after the closing on the Eatontown property, defendant stated in an email to plaintiff that he would "work up a payment plan for me to you" (P-14). Later, payments were periodically provided to plaintiff that included defendant's brother's rent and other payments on defendant's behalf (P-17).[3] At the end of July 2021, defendant felt compelled to ask plaintiff for a "monthly mortgage forbearance" that not only further demonstrated the debt to plaintiff but that the repayment of the debt would be ensured by a mortgage (P-19). Also, it should not be overlooked that defendant had provided plaintiff with a substantial partial repayment of $12,000, which addressed the amount of the deposit on the purchase of the property (P-17). None of these actions and not one of these statements makes any sense if plaintiff had gifted the money to defendant; those

[3] While confusing, it appears that at least part of defendant's brother's rent was paid by their father, and those payments were directed to plaintiff, as were other small payments made by defendant, following the closing (P-17).

actions and statements make sense only if the conveyance was understood to be a loan.

Third, the parties' relationship itself corroborates the finding of a loan. Defendant was a teenager when plaintiff married defendant's mother. Plaintiff took an interest in him like a father, not just a stepfather. As defendant became a young adult and pursued secondary schooling, including the obtaining of a master's degree in business, defendant expressed to plaintiff his interest in being a successful businessman like plaintiff, who has his own business and has also invested in rental properties here and in Canada. In seeking to fulfill his desire to become a wealthy businessman, defendant listened to plaintiff's advice and understood the advisability of owning property like plaintiff. And so, while in his mid-twenties, defendant became interested in owning his own home and obtained mortgage pre-approval for that purpose (D-7). Once that was in place, plaintiff put defendant together with a tenant of his who also happened to be a realtor. On plaintiff's recommendation, defendant sought out a newer property with a price at or under $400,000 (D-11), and eventually located the Eatontown property in question. On further discussions, and because the loan pre-approval defendant previously obtained would not be sufficient, plaintiff agreed to supply the funds ($389,000) defendant would need to purchase the property without being saddled with a mortgage from a banking institution. Defendant entered

into a contract with the seller in November 2020 (D-1), and with the funds provided by plaintiff (D-2), defendant was able to close on the transaction (D-3) and become the sole legal owner of the Eatontown property in January 2021 (D-4). It is clear from plaintiff's testimony, which the court finds credible, that it was a better life lesson for his stepson to lend the money and have him work hard to pay it back rather than merely gift the money.

Their agreement about those funds took on a partially business-like approach as is evident from every action and statement. Because the arrangement emanated in part from a fatherly approach, plaintiff also sought – as the means of keeping defendant responsible for his own obligations – his execution of a note and mortgage, although those documents were never executed through some alleged error by plaintiff's former attorney. Because he had utilized money from a line of credit, plaintiff also spoke with defendant about putting together a five-year plan for repayment, so that he (plaintiff) could pay back the funds he had borrowed from the line of credit for this purpose. Evidence of this understanding comes not just from the parties' testimony. As observed above, the record contains notes and messages written by defendant and sent to plaintiff that provided an outline of defendant's plan to repay plaintiff.

To be sure, there was a general understanding hanging over the entire situation that defendant's ability to fully repay plaintiff within five years was unlikely. Defendant was working for plaintiff's business, and the nature of his employment as a salesman would not immediately empower him to comply with the five-year plan. And this too is apparent from how the repaying of the loan started slowly. A component of the overall arrangement was that defendant's younger brother, Danny, would also reside in the Eatontown property and pay rent; these rent payments came in part from Danny's father, but were forwarded to plaintiff. Again, this is memorialized by the payments made, which went to plaintiff, and contemporaneous records maintained by plaintiff (P-17). If plaintiff had gifted the funds, there would have been no reason for anyone – whether it was Danny, defendant, or their father – to make any payment to plaintiff.

Defendant's response to plaintiff's claim of a loan is unavailing and not credible. Among all those texts and other communications about this transaction, nothing suggests a gift was made and everything suggests that the money was lent to defendant. The contention that the handwritten notes memorializing a five-year plan for repayment was simply an exercise, and the contention that a text (P-19), in which defendant asks for "mortgage forbearance" on their "deal," was merely defendant's texting what plaintiff asked him to text, are nonsensical

and unworthy of belief. So too is the contention that the five-year repayment agreement, which is memorialized in the unsigned mortgage note (P-10), is a figment of plaintiff's imagination because plaintiff had to have understood – from the limited income defendant was receiving from plaintiff's company – that defendant's ability to repay him that quickly was an impossibility. The unsigned mortgage note (P-10) and defendant's handwritten notes (P-3) corroborate each other because they both have as their basic theme the repayment of the loan in five years. That the five-year repayment may have been highly likely or even impossible to meet, does not mean that the parties did not agree to it. What is clear is that it wasn't plaintiff's intention to set defendant up for failure so he could foreclose and take over the property. He wanted instead defendant to devote himself to shedding his air of entitlement and put in, as plaintiff had when he was younger, the maximum effort to make a success of himself.

To be sure, there is nothing in the record or in plaintiff's testimony to suggest that he was going to strictly hold defendant to the letter of the five-year plan. Almost from the beginning, as the "mortgage forbearance" text reveals, defendant required relief from the plan, and plaintiff readily agreed. Based on plaintiff's credible testimony and the contemporaneous communications, the court is satisfied that plaintiff has proven his claim that the $389,000 was a loan.

Other than the testimony of defendant and his mother, none of which the court finds credible, there is no evidence or even indicia that the money was intended to be a gift. Not a single text or portion of a text during all the communications between the parties conveys a suggestion that a gift was intended. It is a convenient approach to avoid his obligation, but defendant's claim of a gift is simply not credible. Indeed, plaintiff credibly testified that he never made a gift anything near this amount to his own children or, for that matter, to any of defendant's siblings. Even defendant's mother could not provide an example of when she alone, or she and plaintiff together, made a gift to any of their children anywhere near the size of what defendant claims here.

Finding no doubt about the fact that the money provided to allow defendant to purchase the property constituted the proceeds of a loan and not a gift, and that the loan's repayment was to be ensured through a mortgage, the court concludes that the credible evidence – whether applying the preponderance or the clear and convincing standard – would support the imposition of a mortgage in plaintiff's favor on the Eatontown property. This relief is founded on the equitable maxim that equity regards as done that which ought to have been done and both sides intended on the execution of a mortgage note and a mortgage. See Zaman v. Felton, 219 N.J. 199, 216 (2014).

But the court is also satisfied that the terms of such an equitable mortgage would not appropriately be commensurate with those in P-10 and P-11 because those documents do not reflect plaintiff's proven willingness to forbear at appropriate times because the debtor was his stepson.[4] Because that willingness to forbear is now gone, the court cannot safely impose terms in an equitable mortgage that which would embody that willingness and what the parties originally intended. Moreover, imposing on the parties a mortgagor/mortgagee relationship at this time would also not be the best way of redressing the problem because it would only lead to further litigation.

In addition, imposing an equitable mortgage would not adequately take into consideration what has happened over the last two years. That is, notwithstanding the difficulty in either crafting or enforcing an equitable mortgage that would fit or approximate the parties' original intentions, the court is satisfied that the more equitable result is simply to allow plaintiff a judgment for the unpaid loan on which defendant has long been in default. Under any

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[4] This willingness to give defendant more time to repay than suggested by the note and mortgage is amply revealed by P-19, which contains two text messages from defendant to plaintiff. The first states: "Can we extend our deal on the monthly mortgage forbearance? Just paid basically my months pay in property taxes it's going to be real tight for me until I get a raise/start getting some commission in. my checks have been pretty light lol." The second, a little more than an hour later, states: "I originally said 3 months so maybe we can do another 3 and re-evaluate?" Plaintiff responded "OK" to both.

understanding of the parties' original undertaking about repayment, there is no evidence that anyone contemplated that an unconsented two-year failure to pay any amount – even the small amounts reflecting defendant's brother's rent (credible testimony was that he still resides in the property) – would constitute anything other than a default; that is, there is no evidence that allowing defendant to cease paying anything for two years would have been agreeable to plaintiff and would have precluded the declaration of a default on the mortgage note. That being the case, the court, in finding that plaintiff lent defendant the funds in question, also finds that defendant defaulted in its repayment at some reasonable point over the last two years, and that the entire debt should not be due. So, plaintiff should be awarded a money judgment for the amount of the unpaid loan at the interest rate of 3%, which is reflective of the rate applicable to plaintiff when he borrowed the funds from his line of credit (P-7), and which is consistent with all the other contemporaneous documents (P-9, P-10), to supply defendant with the funds needed for the home purchase.

For these reasons, plaintiff is entitled to a judgment in his favor and against defendant for the principal sum of $356,000,[5] plus interest at the rate of

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[5] The original loan of $389,000 was reduced by a $12,000 payment in December 2021, and periodic payments on defendant's behalf that amounted to $21,000, until the payments stopped altogether in March 2022, when plaintiff separated from defendant's mother (P-17).

3%. Plaintiff's counsel is directed to submit a proposed judgment, under the five-day rule, in conformity with this opinion.