

STATE OF MICHIGAN
COURT OF APPEALS

LARRY JOSEPH,

Plaintiff-Appellant,

and

RAYMOND P. JOSEPH and SHARON MARIE JOSEPH,

Plaintiffs,

v

PHILIP GOUIN and DIANE GOUIN,

Defendants-Appellees.

UNPUBLISHED

September 19, 1997

No. 195332

Alcona Circuit Court

LC No. 95-009063-CH

Before: Sawyer, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Subsequent to a bench trial, plaintiff Larry Joseph appeals as of right from a judgment for defendants that dismissed plaintiffs' claim. We reverse and remand for proceedings consistent with this opinion.

This dispute arose when Larry Joseph was unable to come forth with sufficient funds for an impending land contract payment. The property interest was conveyed to defendants in order for them to obtain mortgage financing on the property. Joseph claimed that there was an oral agreement by which defendants were to reconvey to him a one-half undivided interest in the property after obtaining mortgage financing and he was to pay one-half of the monthly mortgage payments. Defendants claimed that this agreement never existed and refused to reconvey any interest. Plaintiffs then filed a complaint in equity, requesting that the trial court recharacterize the transaction as an equitable mortgage, or alternatively, impose a constructive trust upon the property.

Joseph first argues that the trial court erred in holding that plaintiffs were not entitled to equitable relief in the form of an equitable mortgage. This Court reviews equity matters de novo. *Chapman v*

Chapman, 31 Mich App 576, 579; 188 NW2d 21 (1971). A court exercising its

equitable powers may deem a deed absolute on its face to be an equitable mortgage. *Schultz v Schultz*, 117 Mich App 454, 457; 324 NW2d 48 (1982). There are two instances where the imposition of an equitable mortgage has been deemed proper. *Id.* at 458. The first instance is where a fiduciary relationship existed between the parties. *Id.* The second is where the parties possess a creditor-debtor relationship vis-à-vis one another, and the creditor used a “power of coercion” to force the debtor into a conveyance. *Id.* Joseph argues that the trial court should have recharacterized the transaction as an equitable mortgage because he conveyed his interest in the property for a fraction of its worth under defendants’ “power of coercion.” However, nowhere in the record is it indicated that the parties possessed a creditor-debtor relationship vis-à-vis one another. Thus, the trial court was correct in denying this equitable remedy.

Joseph next argues that the trial court erred in refusing to impose a constructive trust. Specifically, he argues that the trial court erred in its balancing of the equities when it failed to consider the inadequacy of the consideration received by him in the transaction. We agree. Constructive trusts are imposed only if it would be inequitable to do otherwise. *Arndt v Vos*, 83 Mich App 484, 487; 268 NW2d 693 (1978). Moreover, this remedy may be imposed, without the establishment of fraud, when it is necessary to avert inequity or unjust enrichment. *Ooley v Collins*, 344 Mich 148; 73 NW2d 464 (1955). The Michigan Supreme Court has held:

Fraud in the inception we do not require, nor deceit, nor chicanery in any of its varied guises, for it is not necessary that property be wrongfully acquired. It is enough that it be unconscionably withheld. . . . It is enough, to compel the surrender, that one feed and grow fat on that which in good conscience belongs to another, that he enjoy a windfall resulting in his unjust enrichment. [*Kent v Klein*, 352 Mich 652, 657; 91 NW2d 11 (1958).]

The Court also addressed specifically the requirement of a prior agreement between the parties when it stated: “that defendant made no promise to hold in trust is utterly irrelevant. The constructive trust is as contemptuous of promises not made as of promises broken.” *Id.* at 656. Yet, the constructive trust will not be imposed upon property owners who in no way have contributed to the situation justifying the imposition. *Ooley, supra* at 158.

The trial court noted that defendants paid fair market value for the property and therefore concluded that the equities balanced in defendants’ favor. This analysis, however, focused on the equities of the wrong parties. In essence, the trial court balanced defendants’ interests against that of third parties, the fee title holder and the mortgage lender, who received the fair market value. The proper analysis should have balanced plaintiffs’ interests against defendants’ interests.

This Court will reverse if it would have reached a result dissimilar to that of the trial court. *Chapman, supra*. We conclude that when the interests of the parties are compared, an inequity did occur. As acknowledged by the trial court, defendants purchased property worth approximately \$130,000 and are currently indebted for approximately \$130,000 pursuant to the mortgage. This finding convinced the trial court that no equitable remedy was appropriate. The trial court, however, failed to consider that defendants retired a portion of personal debt in order to qualify for the mortgage

with proceeds from timber extracted from the property in question. Thus, defendants' balance sheet was enhanced in the course of the transaction. On the other hand, Joseph received as consideration one dollar and a subsequently revoked right of entry to the property in exchange for his interest. Thus, defendants actually profited from this transaction while Joseph suffered a considerable loss, presuming that he had any equity in his vendee interest before it was conveyed to defendants. The inequity of this transaction is apparent and the imposition of a constructive trust is therefore appropriate.

Joseph also argues that the trial court erred in its assessment of the property's value because it relied on an ambiguous land appraisal to which the parties stipulated during trial. He claims that the appraisal was ambiguous because the document does not reveal whether the extraction of timber that occurred during the transaction was considered in determining the property's value.

This Court will only set aside the factual findings of a trial court sitting without a jury when such findings are clearly erroneous. *Tuttle v Dep't of State Hwys*, 397 Mich 44, 46; 243 NW2d 244 (1976). The appraisal assessed the value of the property "as of November 1, 1994." Timber was not extracted from the property until November 10, 1994. Thus, when the appraisal was done on November 1, the timber was physically present on the land. Moreover, the appraisal mentioned the wooded nature of the property without listing the existence of a timber contract. Therefore, the trial court's determination that the appraisal did not contemplate the extraction of timber was not clearly erroneous.

The order of the lower court dismissing plaintiffs' claim is reversed and we remand for entry of an order imposing a constructive trust, the beneficial interest in which is contingent upon payment of one-half of the mortgage payments. On remand, the court shall also determine the amount of the mortgage payments that are due defendants.

Reversed and remanded. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Harold Hood

/s/ Joel P. Hoekstra