

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA**

**ROBERT W. BAKER and
EMMA E. BAKER
Plaintiffs**

CIVIL ACTION

v.

**WILLIAM J. BAKER, and
MARK STRAUCH, jointly, severally
and/or in the alternate ,
Defendants**

NO. 10-CV-1955

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**TIMOTHY R. RICE
U.S. MAGISTRATE JUDGE**

January 10, 2011

This family dispute features wildly divergent accounts of a joint residential living arrangement. Fortunately, corroboration supports the Plaintiffs' account, and inconsistencies undermine the Defendants' account. For the following reasons, and after a bench trial on December 20-21, 2010, I will grant Plaintiffs relief and enter judgment against Defendants, jointly and severally, in the amount of \$149,965.

Introduction

Plaintiffs Robert and Emma Baker are the parents of Defendant William Baker. Defendant Mark Strauch is William Baker's life partner. In 2007, Defendants and Plaintiffs both sold their homes and, on May 24, 2007, Defendants purchased a home in Fleetwood, Pennsylvania, in which both Plaintiffs and Defendants were to reside.

Plaintiffs and Defendants orally agreed Plaintiffs could live in the Fleetwood residence rent-free until they either died or were otherwise incapacitated. Plaintiffs and Defendants also orally agreed to share the food, utilities, and repair and maintenance expenses.

Thereafter, Plaintiffs issued three separate checks to Defendants: (1) Check One was made out to Mark Strauch on March 19, 2007 for \$9,965, and was used to pay off his car loan; (2) Check Two was made out to William Baker on May 15, 2007 for \$13,600, and was used to pay off his car loan; and (3) Check Three was made out to ABN AMRO Mortgage Company on June 20, 2007 for \$126,400, and was used to pay down the mortgage on the Fleetwood residence. The total amount of these three checks is \$149,965.

Plaintiffs and Defendants did not enter into a written agreement designating the \$149,965 as a gift or a loan. Defendants argue the money was a gift of an early inheritance to William Baker. Plaintiffs argue there was an oral contract between Plaintiffs and Defendants establishing the money was a loan to be repaid if their joint living arrangement ended prematurely.

Factual Findings¹

Plaintiffs' claim is corroborated by the following evidence:

□ Plaintiffs testified their relationship with Defendants began to deteriorate in September 2008 and continued to deteriorate until Plaintiffs left the Fleetwood residence in December 2009. Plaintiffs claim Defendants treated them harshly by yelling at them, lecturing them on the house work they needed to complete, and imposing unreasonable and punitive restrictions on their use of the home. Defendants dispute those claims. Plaintiffs' account is corroborated by Defendants' actions on December 12, 2009, when Defendants gave Plaintiffs a farewell gift bag containing a bottle of wine. Upon opening the "gift," however, Plaintiffs discovered a threatening letter from Defendants' attorney. The letter prohibited Plaintiffs from

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In addition to resolving legal issues, my role in a bench trial includes evaluating the credibility of witnesses and weighing the evidence. See Fed. R. Civ. P. 52(a); Inwood Labs., Inc. v. Ives Labs., Inc., 456 U.S. 844, 856 (1982).

entering the Fleetwood home to obtain their belongings, stated the house locks were being changed, and threatened legal action if Plaintiffs defamed Defendants' character. Such passive aggressive behavior undermines Defendants' claim they treated Plaintiffs with kindness and compassion.

□ Plaintiffs gave away more than 50 percent of their \$275,000 net worth and sold their home without a guarantee of a place to live or an agreement to get their money back if things went awry. The only written agreement was an Agreement of Domicile ("Agreement"), prepared by William Baker and signed by Plaintiffs and Defendants. This Agreement stated Plaintiffs could continue to reside in the home until they died or were otherwise incapacitated, but the Agreement did not contemplate what would happen if Plaintiffs moved out before either of these two events occurred. I find Plaintiffs would not have liquidated the majority of their estate unless they believed they had satisfactory living accommodations or the financial means to buy another property.

□ Plaintiffs completed various repairs and improvements both inside and outside of the home. Plaintiffs also contributed financially to purchasing certain household appliances. This demonstrates Plaintiffs treated the home as their own even though their names were not on the deed.

□ Plaintiffs testified Defendants suggested Plaintiffs move from North Carolina to live with Defendants in Pennsylvania. Plaintiffs intended to stay in North Carolina, which was corroborated by Plaintiffs' testimony stating Robert Baker intended to keep his North Carolina driver's license and hoped to avoid having to take a driver's license test in another state. This fact corroborates Plaintiffs' loan theory. Plaintiffs would not give Defendants such a large amount of money and move to a different state without some assurance that the money would be

repaid if the living arrangements did not work out, especially since Plaintiffs originally intended to stay in North Carolina.

I reject Defendants' gift theory based mainly on William Baker's testimony, which I find incredible. My adverse credibility finding regarding William Baker is based on my first-hand observations of his demeanor and tone, along with the following inconsistencies:

- William Baker provided conflicting testimony concerning the current appraisal value of the home. On April 28, 2010, Defendants completed a "Fact Owner's Agreement" to obtain title insurance, in which they stated the home's present estimated market value was \$450,000. This undercuts William Baker's testimony that the property is currently worth less than \$300,000.
- William Baker testified the property was a financial burden for him and Strauch. However, Exhibits P-21 and P-22 undermine this claim. Exhibit P-21 shows that as of 2009, Defendants were making \$10,397 per month, and Exhibit P-22 shows the mortgage payment was \$2,156.40 per month, which is approximately 21 percent of Defendants' net monthly income. These exhibits demonstrate Defendants' mortgage payment was manageable.
- William Baker's testimony concerning a fight with his father on December 2, 2009, when his father came home from his second open-heart surgery, conflicts with Defendants' interrogatories and defies commonsense. First, William Baker testified his father made an obscene gesture during the December 2, 2009 fight. Although William Baker does discuss the fight in his interrogatories and mentions finger pointing, he failed to allege any obscene gesture. Second, William Baker's description of his father's rage is highly improbable since the fight occurred immediately upon his father's return home from having open-heart surgery for the second time in two years.

- William Baker emphasized the confidential nature of the agreement between Plaintiffs and Defendants regarding the “gift,” presumably to explain the lack of any impartial witness testimony or documentary evidence showing the money was a gift. However, testimony from William Baker and Defendants’ real estate agent Linda Miller contradict the portrayal of a confidential agreement. William Baker explained Plaintiffs and Defendants were all present during a conversation with Miller when Plaintiffs described why they chose to provide the money to Defendants. Miller testified she was present during the conversation. Defendants also described conversations about the money between Plaintiffs, Defendants, and Miller in their answers to interrogatories.

- William Baker initially testified the money was an unconditional gift to be used as Defendants desired. Later in his testimony, William Baker described the money as a gift that was to be used to pay down the mortgage. Exhibit P-4 shows Plaintiffs made the check for \$126,400 directly payable to the mortgage company, which demonstrates the money was to be used to pay down the mortgage and was never an unconditional gift, as originally claimed.

- Defendants both testified they did not put any restrictions on Plaintiffs, except minimal restrictions on when the laundry could be done. Plaintiffs’ purchase of a new microwave and a new coffee maker for their use in the “prep kitchen” undermines Defendants’ version of the modest restrictions they claim they placed on Plaintiffs. Plaintiffs, living on a fixed income after giving away more than half of their net worth, would not buy such appliances without good reason. Defendants’ testimony is further undermined by their admission that the heat was kept at 62 degrees in the winter. Defendants kept the heat at this temperature even after Plaintiffs made requests to increase the heat and after Robert Baker underwent open-heart surgeries. Defendants’ claim they did not place onerous restrictions on Plaintiffs is highly

improbable.

Conclusions of Law

Introduction

In Pennsylvania,² to establish the existence of an oral contract, the party asserting there was an oral contract must establish by clear and precise evidence that: (1) both parties have manifested an intention to be bound by the terms of the agreement; (2) the terms of the agreement are sufficiently definite to be specifically enforced; and (3) there is mutuality of consideration. Redick v. Kraft, Inc., 745 F. Supp. 296, 300 (E.D. Pa. 1996) (citing Channel Home Centers v. Grossman, 795 F.2d 291, 298-99 (3d Cir. 1986)); Browne v. Maxfield, 663 F. Supp. 1193, 1197 (E.D. Pa. 1987). I must examine the parties' conduct and intentions in light of the surrounding circumstances and subject matter. Fenestra, Inc. v. John McShain, Inc., 248 A.2d 835, 836 (Pa. 1969); see Commonwealth Dep't of Transp. v. Mosites Constr. Co., 494 A.2d 41, 43 (Pa. 1985).

To establish a breach of contract, Plaintiffs must show: (1) the existence of a contract and its essential terms, (2) breach of a duty imposed by the contract, and (3) the damages that result. Lackner v. Glosser, 891 A.2d 21, 30 (Pa. Super. Ct. 2006) (citing Gorski v. Smith, 812 A.2d 683, 692 (Pa. Super. Ct. 2002)).

To establish an inter vivos gift in Pennsylvania, the party claiming the gift must establish the elements of donative intent and delivery by clear and convincing evidence. Sivak's Estate, 185 A.2d 778, 780 (Pa. 1962); Thompson v. Curwensville Water Co., 162 A.2d 198. 200-01 (Pa. 1960).

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Pennsylvania substantive law applies in this diversity case. See Erie R.R. v. Tompkins, 304 U.S. 64 (1938).

I conclude Plaintiffs proved there was a binding oral contract that Defendants breached. The aforementioned corroborating testimony and inconsistencies establish an oral contract existed between Plaintiffs and Defendants, i.e., Plaintiffs contributed money toward the home in exchange for a lifetime tenancy. Plaintiffs and Defendants did not designate in writing whether

the money needed to be paid back to Plaintiffs upon termination of their living arrangement. However, the exhibits, along with the testimony, show both parties intended to be bound by the Agreement, the terms of the Agreement are sufficiently definite, and Plaintiffs would provide the money in exchange for Defendants allowing Plaintiffs to stay in the home. Plaintiffs' oral contract theory is strengthened by the fact that Plaintiffs sold their home, gave Defendants more than half of their net worth, and subsequently moved in with Defendants with the understanding they would be living in the home Defendants purchased for essentially the duration of their lives. These circumstances and subject matter are crucial in determining whether an oral contract existed. Defendants breached their duty under the contract by creating uncomfortable living conditions, effectively forcing Plaintiffs to leave and then threatening legal action and locking Plaintiffs out of the home. Plaintiffs suffered damages of \$149,965, consisting of the money contributed for the joint residence.

Defendants failed to prove by clear and convincing evidence Plaintiffs' donative intent. I find Plaintiffs did not intend to make a gift to Defendants consisting of more than half of their net worth. Plaintiffs expected to stay in the home and did not intend to give away approximately \$150,000 without an assurance they could stay in Defendants' home or be reimbursed. Plaintiffs are currently residing in a one-bedroom apartment in New Jersey, which I find was not their intention when they left North Carolina.

Defendants do not have to reimburse Plaintiffs for the costs of the dishwasher and double

wall oven. Both Plaintiffs and Defendants made numerous repairs and improvements to the home, and both parties shared such expenses equally.

Accordingly, I enter judgment for Plaintiffs in the amount of \$149,965.

An appropriate order follows.

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ORDER

AND NOW, this 10th day of January, 2011, after a bench trial on December 20, 2010 through December 21, 2010, and upon consideration of the parties proposed findings of fact and conclusions of law, it is hereby ORDERED that judgment is entered against Defendants, jointly and severally, in the amount of \$149,965.

BY THE COURT:

/s/ Timothy R. Rice
TIMOTHY R. RICE U.S.
MAGISTRATE JUDGE