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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

BONNIE MOGAN,

Plaintiff and Respondent,

v.

ROBERT WONG,

Defendant and Appellant.

2d Civil No. B236538
(Super. Ct. No. CV090350A)
(San Luis Obispo County)

Robert Wong appeals from a judgment voiding two gift grant deeds that purportedly grant Wong a joint tenancy interest in a house on Placentia Way (Placentia) and a second house on Wawona Way (Wawona) in Shell Beach. Bonnie Mogan, Wong's ex-girlfriend, was the original owner of Placentia and, much to her regret, is the owner of record of Wawona which has gone down in value. The trial court awarded Wong \$33,675 for his services in the construction/remodel of Placentia, to be offset against \$110,129.59 Wong owes Mogan for a mortgage/property tax delinquency on Wawona. We affirm.

Facts and Procedural History

Wong, a real estate developer/investor, was Mogan's boyfriend from 1995 to 2006. In 1999, Mogan purchased a small house on Placentia in Shell Beach as her principle residence. In 2003, Wong offered to help Mogan knock down the existing

house and build a new house. After Mogan took out a \$310,000 open line of credit, Wong supervised the work and paid the subcontractors.

Before the construction was completed, Wong asked Mogan to purchase a house on Wawona for him, using her good credit. Wong was in the business of buying and "flipping" homes— something he had done in Fresno." Wong could not buy Wawona because he owed taxes and had poor credit.

Acting on Wong's request, Mogan bought Wawona for \$625,000 and financed the purchase with a \$500,000 first mortgage and a \$93,750 second mortgage. Wong contributed \$35,096.87 for the down payment and promised to pay all the mortgage payments and property taxes.

Wong also asked Mogan to execute gift grant deeds on Placentia and Wawona based on the representation that he would not record the grant deeds unless something "happened" to Mogan. Mogan trusted him and signed the grant deeds.

A few months after Wawona was purchased, Wong and Mogan "broke up." Wong recorded the gift grant deeds, leased Wawona to renters, and kept the rent for himself. Between 2008 and 2010, the fair market value of Wawona dropped from \$650,000 to \$307,2000. Wong defaulted on the mortgage and property taxes, which resulted in a \$110,129.59 mortgage/property tax deficiency and a possible deficiency judgment against Mogan.

Mogan sued for breach of contract, cancellation of the gift grant deeds, quiet title, fraud, and declaratory relief. Wong filed a first amended cross-complaint to partition the properties, reimbursement for his services and construction costs, a partnership accounting, and declaratory relief.

The trial court, in a written statement of decision, ruled that the gift grant deeds were void and there was no partnership. The court awarded Mogan \$110,129.59 damages on the Wawona mortgage/property tax deficiency and awarded Wong \$33,675 for the reasonable value of his services. Denying a motion for new trial, the court entered judgment which provides in pertinent part that:

1. Full title to Placentia and Wawona is to be restored to Mogan as an unmarried woman.

2. That Wong pay \$110,129.59 damages for the Wawona mortgage/property tax deficiency, subject to a \$33,675 offset for Wong's services, for a net judgment of \$76,454.59 against Wong.

3. That Wong can satisfy the judgment by paying the mortgage and property tax delinquency, transferring the Wawona mortgages and encumbrances to his name, and removing Mogan as the obligor and Wawona owner of record. If Wong "meets these conditions then [Mogan] shall relinquish her title in the Wawona Property" and Mogan would have to pay Wong \$33,675.

Partnership

Wong argues that the trial court erred in finding no partnership or joint venture. "Whether a partnership or joint venture exists is primarily a factual question to be determined by the trier of fact from the evidence and inferences to be drawn therefrom. [Citations.]" (*Bank of California v. Connolly* (1973) 36 Cal.App.3d 350, 364.) "An agreement by a landowner to share with another profits to be derived from the sale of land does not, without more, create a partnership or joint venture relationship [Citations.]" (*Ibid.*) The trial court discredited Wong's testimony that Wong and Mogan agreed to jointly own property, share profits and losses, sell Placentia, or build a new house on Wawona. In the words of the trial court, "Mogan did not consider [Wong] a business partner but rather her boyfriend." This is consistent with Wong's testimony that he "showed her a lot of love" and they were "partners for life."

The trial court reasonably concluded that Wong's contracting services and love did not create a partnership. (See *Brockman v. Lane* (1951) 103 Cal.App.2d 802, 805 [no partnership where land owner "ran all the risk of loss" and man who farmed it on behalf of owner was paid a monthly salary and share of profits].) It is uncontroverted that Mogan purchased Placentia, obtained the \$310,000 open line of credit to rebuild the house, and planned to move back into the house and make it her principal place of residence. Mogan bore the entire risk of loss, which contravenes all principles of

partnership law. (*Ibid.*) A "partnership" connotes co-ownership of property, with a sharing in the profits and losses of a continuing business. (Corp. Code, § 16101, subd. (8)(B)(9); *Chambers v. Kay* (2002) 29 Cal.4th 152, 151.) From a legal stand point, the interrelationship of partners and joint ventures is virtually the same. (*Weiner v. Fleischman* (1991) 54 Cal.3d 476, 482.)

Gift Grant Deeds

Wong relies on *Machado v. Machado* (1962) 58 Cal.2d 501 for the principle that a joint tenancy deed creates a rebuttable presumption that the property is held in joint tenancy. (*Id.*, at p. 506.) But joint ownership of property "does not by itself establish a partnership, even if the coowners share profits made by the use of the property." (Corp. Code, § 16202, subd. (a)(1).)

Mogan executed the gift grant deeds based on Wong's representation that they would not be recorded until something "happened" to her. The grant deeds were testamentary in nature, to provide for Mogan's children after her death.

The trial court correctly found that the gift grant deeds transferred no interest to Wong. Any attempt to convey property by a deed that is to become effective on the grantor's death is ineffective and void. (Miller & Starr, Cal. Real Estate (3rd ed. 2011) § 8:43, p. 8-121.)

"A deed delivered with the intent that it shall take effect only on the death of the grantor is an attempted testamentary disposition and therefore void.' [Citation.] The applicable rule is well-stated in *Henneberry v. Henneberry*, 164 Cal.App.2d 125[]: 'In addition to physical delivery, and an acceptance by the grantee, to constitute a valid delivery there must exist a mutual intention on the part of the parties, and particularly on the part of the grantor, to pass title to the property immediately. . . . Even if the document is manually delivered, but the evidence shows the parties or the grantor intended the document to become operative only upon death, the document is testamentary in character and void as a deed.' [Citation.]" *Meyer v. Wall* (1969) 270 Cal.App.2d 24, 27.)

Reasonable Value of Services

With respect to Wong's claim for reimbursement of construction costs and services, the trial court awarded \$33,675. Wong was not a licensed contractor. He was new to the area. Wong supervised the Placentia construction because of the relationship with Mogan and to establish a name for himself on the central coast as a property development manager. The trial court found: "During the time that Placentia was being remodeled [Wong] . . . was still 'flipping' houses in Fresno." Wong testified that he "'flipped' at least 12 in Fresno and that at least 6 of those were in 2006. This contrasts with his testimony that he spent 8, 10 or 12 hours a day, every day, on the Placentia job. Additionally, there was testimony that during this time frame he was working for others (Schiro) on additional projects in the coastal area. . . ."

Paul Schiro, a licensed general contractor, testified that the standard fee for an unlicensed contractor was 10 to 12 percent of the project hard costs. Schiro estimated that the Placentia hard costs were \$336,750, which was consistent with Mogan's testimony that the \$310,000 line of credit plus \$15,623 was spent on the construction. The trial court discredited Wong's testimony that the hard costs were \$500,000 and that Wong put \$195,000 of his own money into the project. Wong had no bills, cancelled checks, receipts, or records to verify that he used his own money or that the hard core costs exceeded \$300,000.

Wong asserts that he spent tens of thousands of dollars on "soft costs" (i.e., building permits, tear down and disposal costs, engineering costs, architect fees, etc.) but failed to produce a single receipt, bill or, cancelled check. Mogan, on the other hand, produced records documenting every mortgage payment on Placentia, all the improvements, and virtually all the construction costs including architect fees and permit fees. After the \$310,000 line of credit ran out, Mogan spent another \$15,623.14 for floor materials, a house sound system, gates, landscaping, window coverings, and a soft water system.

Substantial evidence supports the finding that the reasonable value of Wong's services and construction costs advanced by Wong did not exceed \$33,675.

Statement of Decision

Wong argues that the trial court erred in not fully responding to his request for statement of decision which lists "controverted issues" predicated on the theory that a partnership did in fact existed.¹ A trial court is not required to respond point by point to each issue posed in the request for statement of decision. (*Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1126.) "[A]ll that is required is an explanation of the factual and legal basis for the court's decision regarding the principal controverted issues at trial as are listed in the request. [Citation.]" (*Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230.)

The statement of decision explains in detail why there was no partnership and why the gift grant deeds and Wong's services did not create an implied partnership. It fairly discloses the court's determination as to the ultimate facts and material issues in the case. (*Golden Eagle Ins. Co. v. Foremost Insur. Co.* (1993) 20 Cal.App.4th 1372, 1380.) On appeal, we do not reweigh the evidence or determine credibility. (*Hirshfield v. Schwartz* (2001) 91 Cal.App.4th 749, 771.) An equitable decree is reviewed under the abuse of discretion standard, under which "we resolve all evidentiary conflicts in favor of the judgment and determine whether court's decision "'falls within the permissible range of options set by the legal criteria.'" [Citations.]"

Conclusion

Unhappy about the outcome, Wong rhetorically asks, "If Mogan bore the entire risk of loss on both Placentia and Wawona, then how did Wong end up owing Mogan over \$76,000?" The reason is simple. Wong convinced Mogan to purchase Wawona and promised to pay all the mortgage payments and property taxes. After the

¹ The request for statement of decision asks whether Mogan breached the partnership agreement "by backing out of the parties' 'agreement' to build out the 'Placentia' property, sell it and use the proceeds to build out 'Wawona'. . . ." It asks, "What was the amount of money that each partner contributed to the partnership?" and "What is each partner entitled to receive from the partnership?"

romance ended, Mogan asked Wong to refinance Wawona and "get it into his name." Instead, Wong surreptitiously recorded the gift grant deeds, pocketed the rents, and failed to pay \$110,129,59 in mortgage payments and property taxes as Wawona plummeted in value.

The trial court gave Wong the choice of either (1) paying Mogan \$110,129,59 and taking a \$33,675 offset for his services, or (2) curing the mortgage and tax deficiencies, take Mogan off title and the Wawona mortgages, and accept \$33,675 for his services and money advanced on Placentia. The court found "[t]his is the only equitable solution"

We concur. The predicament in which Wong finds himself is of his own doing. "No one can take advantage of his own wrong." (Civ. Code, § 3517.)

The judgment is affirmed. Mogan is awarded costs on appeal.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Dodie Harmon, Judge

Superior Court County of San Luis Obispo

Eddie Adams, for Appellant.

Gregory A. Connell; Belsher, Becker & Roberts, for Respondent.