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Margot Alison Clarke v Christopher Michael Harlowe (2005)

LTL 31/8/2005

12/08/2005

Barristers
Stephen Lyon

Court
Chancery Division (Leeds)

Facts
Where the parties' relationship had ended and they had separated, their interests in the proceeds of sale of a property were governed by the declaration of trust made when the property was acquired and the fact that one party had paid for improvements to the property while the relationship was continuing was not to be taken into account in distributing the proceeds since in the ordinary case equitable accounting only operated after the date of separation.

The claimant (C) claimed a half share of a property held by her and the defendant (H) as joint tenants. C and H had met in 1977 and had had a relationship which lasted for about 25 years and had terminated in early 2003. In 2001 they had purchased a house to live in. The transfer signed by both of them stated that they were to hold the property on trust for themselves as joint tenants. After their relationship had ended and the house had been sold, C claimed half of the net proceeds of sale. H accepted that the express declaration of trust in the transfer governed the parties' entitlement to share the proceeds equally but relied on the principle of equitable accounting. H contended that in making the distribution of the net proceeds of sale of the house the court should take account of the fact that he had spent £90,000 on making improvements to the property and that he should be entitled to a credit of half that sum. C submitted that since the money was spent when the relationship was continuing there was no room for the principles of equitable accounting to come into play.

Held
HELD: The considerations leading to equitable accounting involved a breach or failure by the accounting party to honour the arrangements or agreements between the parties as to the payments for the outgoings or the improvements to the property. Before there could be a duty to account by one party to the other there had to be a breach of or failure to comply with some obligation owed by that party to the other. In the ordinary case of cohabitation the common purpose of the implied trust subsisted while the relationship subsisted. During that period whilst the ordinary arrangements for the discharge of the outgoings subsisted there was no breach or failure by one party to honour any obligation owed to the other. Thus in the usual case there was no room or reason for equitable accounting. After the relationship ended and the parties separated an obligation to discharge a proportionate share of the outgoings arose.

Therefore in the ordinary case equitable accounting only commenced at the date of the separation. There could however be equitable accounting before separation in an exceptional case where a party was in breach of arrangements to pay for specified improvements or outgoings, Bernard v Josephs (1983) FLR 178 and Pavlou (A Bankrupt), Re (1993) 1 WLR 1046 considered. All the improvements to the house had been carried out in 2001 and 2002. It had been clearly understood that they would be paid for by H. There had been no breach by C of any obligation to contribute to the cost and no reason why equity should compel her to contribute and no room for any equitable accounting.

Preliminary issue determined in favour of claimant.

Permission
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