

Jon Z.Bowser v. Sarah B. Daly;

Docket Number: 05-00443

Superior Court of Massachusetts, Middlesex,ss.

Decided: November 1, 2006

Judge: Fremont-Smith, Thayer, J.

FINDINGS, RULINGS, AND ORDER FOR JUDGMENT

In this case, which was tried jury-waived October 25-27, 2006, the plaintiff ("Jon") seeks the return of an engagement ring and the value of the improvements that he made to defendant's home before the termination of their unwed relationship, and defendant counterclaims for the return of her real estate and the value of her contributions to him.

The parties have filed motions to dismiss or for directed verdict and requests for findings and rulings which, to the extent deemed relevant, are addressed herein.

The parties (who will be referred to as Jon and Sarah), who were both married at the time, began their romantic relationship in late 2002 or early 2003. Jon told Sarah that his marriage had failed, and that he intended to sell his marital home and to move out, which he did in June 2003. He deposited the sale proceeds (approximately \$184,000) in a savings account in the Middlesex Savings Bank, and soon added Sarah as a joint owner of the account. At about this time he moved into Sarah's marital home, her husband having earlier departed.

About the same time, Sarah expressed to Jon her dismay that her husband had returned to take possession of her engagement ring while she was away from her house. Jon and Sarah went shopping together to look at engagement rings, and, in August 2003, he purchased a diamond ring for her for about \$8,500. Shortly thereafter, he gave it to Sarah. Sarah testified that at first she expressed reluctance to accept it, in view of her recent unhappy marriage experience, but that Jon told her that, if she didn't want to wear it, to give it back. She kept it.

Around August 2003, Sarah added Jon as an authorized user of her credit union account, so that he could write checks, which he never did. In March 2004, Sarah sold her marital home, paid her former husband one-half of the equity in the property, and jointly signed, with Jon, a new note and mortgage to the bank on her real estate, as to which Jon was made a joint owner.

On June 19, 2004, Jon and Sarah engaged in a heated altercation which ended the relationship; and Jon left the home. Following this, Sarah demanded that Jon take his name off the deed, which he refused to do. Jon demanded that Sarah return the ring, which she refused to do.

## Exchange of Cash

Jon was employed as a band musician and did "gigs" at night, earning between \$400-\$800 a week in cash. He would keep what he needed, and leave the remainder of the cash on Sarah's bureau for her to use. Neither made any written recording of these amounts, but the Court finds, from the testimony, that they probably amounted to about \$20,000 over the eleven months of their co-habitation (July 2003 - June 2004).

On the other hand, Sarah paid the household expenses including the payment due to the bank for mortgage, interest and taxes on their jointly-held real estate. Jon benefitted equally from these payments, to the tune of about \$20,000. Thus, Jon's cash contributions to Sarah were substantially off-set by the amount of Sarah's cash contributions to Jon, so that neither party was unjustly enriched in that respect.

In any event, even if the contributions had been unequal, neither party to an unwed co-habitation arrangement is entitled to an accounting of monies received by the other, nor to the imposition of a constructive trust for such contributions, absent a finding of fraud, breach of fiduciary duty or other misconduct. *Collins v. Guggenheim*, 417 Mass. 615 (1994). The Court finds that there was no such misconduct by either party here.

## The Home Improvements

It was stipulated that the value of the home improvements was in the order of \$10,000, and I find that substantially all of this expense was paid by Jon, out of the Middlesex Savings account.[1] To be successful on a claim for quantum meruit, Jon must show that: (1) he conferred a measurable benefit upon Sarah; (2) Sarah accepted the benefit with the expectation of compensating Jon; (3) a reasonable person would have expected to pay; and (4) Jon had a reasonable expectation of receiving compensation from Sarah. *Home Carpet Cleaning Co., Inc. v. Baker*, 1 Mass.App.Ct. 879 (1974) at 880.

I find that, although Jon did confer a measurable benefit on Sarah, he had no expectation he would be paid therefore, and Sarah had no expectation that he provided the benefit expecting to be paid. Indeed, Jon had been made a joint owner of the property, and both parties expected to live there together in a permanent relationship, without any expectation of monetary compensation in regard to these improvements.

As stated, the Court is of the view that neither party intentionally deceived the other about their intentions or engaged in other misconduct, but finds that each hoped for and expected a permanent relationship. In these circumstances, it is not unjust for Sarah to retain the benefit of these improvements. See *Sutton v. Valoris*, 66 Mass.App.Ct. 258, 262 (2006) and *Collings v. Guggenheim*, supra.

## Ownership of Sarah's Home and of the Middlesex Savings Account

As noted above, when Sarah refinanced in order to buy out her husband's joint interest in the property, she made Jon a joint owner of the property and he co-signed the note and mortgage. I find that Jon had no fraudulent intent in this regard, but that both were anticipating a permanent co-habitation in the home. With the same expectation, he had made Sarah a joint owner of his Middlesex Savings Bank account. When the relationship failed, neither had any equitable claim to the other's property as Sarah never deposited any of her own funds in the savings account, and Jon never made any payments to the bank on the note or

mortgage. The bank account now has been closed by Jon, but he remains co-owner of her real estate. In the circumstances, Jon's joint ownership of the property is no longer justified, and the Court orders restitution of Jon's one-half interest in the real estate to Sarah upon Sarah's deletion of Jon as a co-signer of the note and mortgage.

#### The Ring

Jon contends that he purchased the ring and gave it to Sarah in contemplation of marriage, so that he is entitled to have it returned whereas Sarah says that it was an unconditional gift. The Court finds that Sarah made known her desire to replace her prior engagement ring, and that they together shopped for a ring which Jon shortly thereafter purchased and gave to her. It was not disputed that when he gave her the ring, he stated his intention that the ring should be returned if she rejected his implied proposal, i.e., if she did not intend to wear it. She accepted it. In the circumstances, the Court concludes that the ring was not intended to be an "unconditional gift," but was given in contemplation of marriage or of at least a permanent romantic relationship.

While both engaged in a heated altercation in a car on June 19, 2004, it was undisputed that it was she who struck him, and the Court finds that this blow, rather than anything that he did, was the precipitating cause of their break-up. In these instances, he is entitled to have the ring returned. See *DeCicco v. Barker*, 339 Mass. 457 (1959).

Accordingly, the ring is ordered restored to Jon. See *Keller v. O'Brien*, 425 Mass. 774 (1997) at 778.

#### ORDER FOR JUDGMENT

Therefore, it is ORDERED that:

1. Plaintiff shall forthwith restore to defendant his entire right, title and interest in the real estate located at 180 Newbury Street, Framingham, Massachusetts. The defendant shall forthwith arrange with the bank to have plaintiff's name deleted from the note and mortgage on the property;
2. Defendant shall forthwith return the engagement ring to the plaintiff.
3. Upon the occurrence of the above, all counts of the complaint and of the counterclaim are hereby DISMISSED with prejudice and without costs or attorney fees.

Thayer Fremont-Smith

Justice of the Superior Court

Dated: November 1, 2006.

[1] This money came from the sale of Jon's home, and no deposits were made into the account by Sarah, so that, equitably, it was Jon's money which paid for the improvements, even though it had been made a joint account.

