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Neighbour's "management plan" did not improperly divert equity from plaintiff's property

By James R.G. Cook

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The case of *Rivas v. Anobile*, 2022 ONSC 3446 (CanLII), demonstrates the issues that may arise when all the terms and objectives of an unconventional property management agreement are not put into writing.

In 2013, the plaintiff and her spouse were experiencing marital problems and separated. The couple owned a matrimonial home which was valued at $500,000. The plaintiff wished to remain at the property with her children. However, she was facing financing problems.

At around the same time, the plaintiff met the defendant—her neighbour—and they became friends. They soon entered into an unconventional type of business/ trust arrangement, which the trial judge called a "management plan."

Essentially, the plaintiff agreed to transfer the property to the defendant. He would then hold the property in trust for her while he attempted to secure better financing. The plaintiff would continue to reside at the property.

The parties entered into an agreement of purchase and sale (APS), which fixed the sale price at $610,000. They set up a joint bank account and the defendant paid a deposit of $50,000 into the account. Aside from the APS, the "management plan" was not put into writing.

The defendant paid the sum of $571,300 upon closing. That sum was partially made up of secured financing from TD Bank and $141,600 of the defendant's funds. After paying off the existing mortgages (approximately $457,200) and other costs, the deposit was repaid to the defendant out of the account along with the rest of the funds to repay his advance.

For the next two years, the plaintiff resided at the property together with her children. She was responsible for

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mortgage payments and all expenses. The defendant borrowed further amounts from his sister, secured with a third mortgage on the property, that were used to pay off a car loan in the plaintiff's name and her bills and expenses. Other expenses and miscellaneous items paid for the plaintiff, included insurance, utility bills, car lease payments, moving expenses, and renovations to her father's home.

In 2015, due to the burden of mortgage payments and expenses caused, the parties decided to list the property for sale on the open market and it was sold for $645,000.
At closing, the amount owing to TD totalled approximately $430,000, and the defendant's sister was paid slightly more than $101,890 to discharge her mortgage. The balance, after payment of taxes and other charges, was paid to the defendant.

The plaintiff then sued the defendant for the "fraudulent diverting" of her equity from the property. She claimed the sum of $130,321.63, premised on the assertion that when the property was initially transferred to the defendant, the available equity was $152,800, based on the sale price ($610,000) less the then mortgage debt ($457,200). The plaintiff argued that had the defendant not forced the sale upon her, she would still own a residence worth more than $1 million in today's market, and that she had lost the opportunity of owning approximately $400,000 in equity.

In response, the defendant argued that the plaintiff was a full, willing, and knowing participant in both the transfers and the management plan. She understood how she would benefit from the two transfers. She acknowledged that these transactions were to be at no cost to the defendant and that he was supposed to be repaid everything he advanced or lent to the plaintiff pursuant to their "management plan".

At trial, the plaintiff's overall credibility was damaged when, under cross-examination, she contradicted or recanted much of her evidence contained in an earlier affidavit where the theme was that she had been largely ignorant of many of the transactions involved in the sale of the property and the joint bank account and had been the victim of fraud and even forgery.

The plaintiff largely conceded at trial that the payments made by the defendant were on her behalf and for her benefit and that she was aware of both transfers. She admitted to knowing about the terms, conditions and amounts of the mortgages and to having online access to statements for the joint account and use of the only bank card for the account, which she used to pay monthly bills and her day-to-day expenses.

The trial judge stated, however, that the plaintiff's contradictory evidence was not germane to the central issues in this case. Rather, it came down to a simple accounting and whether, under the "management plan," the defendant breached any fiduciary duty owed to the plaintiff.

The defendant provided a full accounting to both the court and the plaintiff for the proceeds of sale from the two transfers and for any funds he loaned and recouped during the period of the management plan. The plaintiff received a benefit from the management plan since she was able to stay in a home that she could not afford for more than two years. She was able to extract some equity to pay off some of her bills. The defendant arranged for additional mortgages and loans for her benefit and used his personal resources to prop the plaintiff up financially. None of the plaintiff's money or assets went missing or were unaccounted for and the trial judge found that the defendant's arithmetic was largely unassailable.

The issue, then, was whether the defendant was liable for the plaintiff's alleged loss of equity and opportunity.

The court had no hesitation in concluding that the defendant had established himself as a trustee, with fiduciary duties owing to the plaintiff, as a result of engaging with her, devising and implementing the management plan, obtaining new and manageable financing, and maintaining and co-managing a joint bank account with the plaintiff for several years.

What was unclear, even after trial, was the rationale and benefit received by the defendant for devising and implementing the management plan. The defendant appeared to be a shrewd and experienced businessperson who would have been unlikely to involve himself in such a venture without some expectation of profit. However, his ultimate goals remained speculative.

Based on all the evidence outlined in the Reasons for Judgment, the defendant was found not liable for fraudulent diverting any of the plaintiff's equity. While the defendant obtained title in 2013, the property was heavily encumbered by conventional charges and he bore sole responsibility as a mortgage debtor for the duties and obligations had the plaintiff defaulted on her responsibilities under the management plan. When the property was sold two years later, it was to an arms-length third party for market value. There was no evidence that the defendant benefitted in any inappropriate way as the accounting showed that the proceeds of sale were properly disbursed and used to pay off legitimate mortgages, expenses, charges and loans from which the plaintiff had derived a benefit.

Whether the plaintiff could have avoided the sale of the property had she not entered into the management plan is unknown. The court noted that she was faced with an imminent separation, a limited income, the upcoming maturation of unattractive mortgage loans, and the inability to secure financing to continue ownership of her home. While she may have had little choice but to either sell the property or turn to a private lender/broker such as the defendant, she was a willing participant and partner in the management plan.

At the end of the day, the evidence was that she was repaid out her modest equity from the property following the transfer to the defendant and she acknowledged that he was entitled to be repaid everything that he contributed to the sale. All funds were duly accounted for. Her claims were therefore dismissed.

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If you have a litigation matter and are in need of legal advice, please do not hesitate to contact James Cook, at 416.865.6628 or jcook@grllp.com.