
REAL ESTATE

The Supreme Court of Kentucky held that in the dispersal of proceeds from the sale of joint property, absent an agreement to the contrary, a cotenant of real property is entitled to proportional contribution from other cotenants when the cotenant has paid more than her portion toward liens, taxes, and other encumbrances. *Talley v. Paisley*, 525 S.W.3d 523 (Ky. 2017).

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In *Talley v. Paisley*, 525 S.W.3d 523 (Ky. 2017), the Supreme Court of Kentucky considered whether joint partners of a property should divide the proceeds of sale solely on the basis of ownership, rather than also considering the respective contributions of each partner. The court ultimately held that a joint tenant is entitled to recover a contribution for payments made towards the property on a cotenant's behalf. Consequently, the proceeds of sale should be used first to equalize the amount of expenses paid and then divided based on percentages of ownership.

This case arose out of the sale of jointly held property in Lexington, Kentucky. In 2004, Anne Talley ("Talley") and Daniel Paisley ("Paisley") purchased a tract of land to construct a residential home. Because Talley was legally married to another person, the parties placed the property solely in Paisley's name. In October 2006, after Talley finalized her divorce, the parties placed the property in their joint names with a right of survivorship. At that point, Talley had contributed \$120,000 for the down payment of the land, and Paisley had allegedly contributed \$109,942 for construction and loan costs. In November 2006, the parties acquired two mortgage loans secured by the property for \$225,000 and \$250,000, respectively. Both Talley and Paisley were co-mortgagors and co-makers on the notes. However, Paisley and Talley failed to execute an agreement regarding the disposition of the property if the joint tenancy relationship was to end.

After the creation of their joint tenancy relationship, Paisley began making all payments associated with the property. In July 2007, Paisley paid \$200,000 towards the \$250,000 mortgage and then paid off the

balance in December 2009. In addition, Paisley paid \$19,119 towards the \$225,000 mortgage and \$3,052 to close a construction loan. Further, from 2007 to March 2014, Paisley made all of the mortgage payments in full. Paisley stated that he never demanded payment from Talley because he believed Talley would pay him back after she received her \$350,000 divorce settlement. In January 2013, Paisley moved out of the property and his relationship with Talley ended, but Paisley continued making mortgage and insurance payments.

Several months later, Paisley brought an action under KRS § 389A.030 requesting the sale of the property and dispersal of all equity based on each party's respective contribution. The property eventually sold for \$715,000, resulting in \$477,397 of equity. "Paisley proposed that these proceeds be divided based on the parties' proportionate contribution and to reflect the fact that he had contributed more to the residence." His calculations showed that Talley had contributed \$120,000, and he had contributed \$383,921. Consequently, Paisley asserted that Talley should only receive \$105,500 from the proceeds and he should receive the remaining \$369,500.

Following a bench trial, the court rejected Paisley's request to disburse the proceeds based on contribution. Instead, the court held that the proceeds should be equally divided. The court also emphasized that, had Talley and Paisley specified in an agreement regarding disposition of the property, the court would have been required to consider both parties' contribution. Paisley appealed the trial court's decision.

On appeal, the Kentucky Court of Appeals maintained the trial court's finding that there was no contract regarding division but reversed the holding that Paisley was not entitled to proportional reimbursement. Specifically, the court stated that, as a matter of law, Paisley was entitled to proportional reimbursement for payments made during the joint tenancy, despite the absence of a contract mandating such division. In response, Talley petitioned for discretionary review, and the Kentucky Supreme Court granted her petition.

Talley argued that there is a presumption that property held in joint tenancy is to be held equally and, therefore, equal division of sales proceeds is appropriate. She further claimed that even "if Paisley could

rebut the presumption of equality by clear and convincing evidence, he waived any right to contribution or intended his contributions to Talley to be a gift.”

The Supreme Court of Kentucky affirmed the appellate court’s decision, holding that “to the extent one tenant contributed more than his or her half to the discharge of encumbrances, liens, [and] taxes, that tenant is entitled to contribution from the other.” In making its determination, the court considered its decision in *Larmon v. Larmon*, 191 S.W. 110 (Ky. 1917), where the court established the general rule that a joint tenant is entitled to reimbursement from his cotenant for liens and encumbrances, including mortgages and taxes. The court also revisited its decision in *Petty v. Petty*, 295 S.W. 863, (Ky. 1927), where it clarified this rule of recovery.

Finally, the court briefly discussed its decision in *Bishop v. Wolford*, 291 S.W. 1049 (Ky. 1927), which recognized that a contract is not a prerequisite to recovery. The court further explained that “[e]quitable contribution[s] between co-tenants of undivided interests in real estate has often been recognized and enforced, even without a contract between the parties to that effect.” The court acknowledged that the record did not reflect that Paisley intended to waive any rights to contribution or intend his contributions to be gifts. The court simply attributed the absence of an agreement between Talley and Paisley to a failure of the parties to anticipate the ending of their relationship. Ultimately, the Kentucky Supreme Court affirmed the Kentucky Court of Appeals’ decision and remanded the case to the Fayette Circuit Court with instructions to award Paisley an amount “which will equalize [his] respective contribution.” After such an amount is determined and distributed, the court provided that the remaining proceeds shall be split equally.

Justice Keller dissented stating that, under property law, the proceeds should have been divided based exclusively on equity. In addition, he stated that such a holding misattributed family law principles into the joint tenant relationship.

Overall, *Talley* seems to indicate that, absent an actual agreement, courts will likely find an implied contract between joint tenants that requires them to equally assume expenses. This may be contrary to the original intentions of the parties, but courts are reluctant to equally divide

proceeds of a sale, when dealing with joint tenants, if one cotenant contributed more than the other. Practitioners should be aware that this ruling differs from common law principles of joint tenancy, where both parties to the relationship are treated as owning equal shares of the property. As such, practitioners should ensure that agreements among parties are documented and stipulate the disposition of the property in the event that the joint tenancy is terminated. Moreover, if a joint tenant agrees to pay all of the expenses when the joint tenancy is created, only a binding contract will preclude the joint tenant from proportionate recovery if she changes her mind.

SECURITIES

The Supreme Court of the United States held that the Dodd-Frank Wall Street Reform and Consumer Protection Act’s whistleblower protection provision only protects individuals who have reported the alleged violation to the Securities and Exchange Commission. *Dig. Realty Tr., Inc. v. Somers*, 138 S.Ct. 767 (2018).

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In *Dig. Realty Tr., Inc. v. Somers*, the Supreme Court addressed whether the anti-retaliation provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Act” or “Dodd-Frank”) extends to individuals who have not reported the violation to the Securities and Exchange Commission (“SEC” or “Commission”). The Act was created to shield whistleblowers from retaliatory action by their employers. A whistleblower is, “any individual who provides . . . information relating to a violation of the securities laws to the Commission” 15 U.S.C. § 78u-6(a)(6). The anti-retaliation provision also offers protection to individuals who were terminated or otherwise retaliated against after making required disclosures under the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”), or any other law subject to the jurisdiction of the SEC. 15 U.S.C. § 78u-6(h)(1)(A)(iii). Through a careful reading of the whistleblower definition, comparisons between Sarbanes-Oxley and Dodd-Frank, and an analysis of the Act’s Senate report, the Supreme Court concluded that Dodd-Frank’s definition of a “whistleblower” also