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Husband and Wife - Conveyances to Husband and Wife - Whether the Proceeds from the Sale of Real Estate Owned in Joint Tenancy by Husband and Wife Are also Held in Joint Tenancy

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harm.[19] Much less effect has been given the argument that the broker is typically paid when the transaction is closed, regardless of the time when the commission is earned, and that it is a matter of practical expediency that he should control the transaction to its conclusion.

Against the background of the present increased activity of the real estate market and the admittedly long-continued practice of brokers in the selection and completion of prepared forms incident to the closing of real estate transactions, the Supreme Court of Arkansas has spoken and thus appraised the public interest while resolving the proprietary conflict between brokers and attorneys. It is apparent that the circumstances presented are not peculiar to Arkansas so it is not illogical to suggest that similar controversies will arise, either again or for the first time, in other jurisdictions. The significance of the instant decision lies in the fact that it is the latest one. Since it has viewed all considerations in the light of the expanded activity, it behooves potential parties to similar disputes, including the courts which will hear them, to ponder the reasons for this pronouncement.

Real estate brokers might well consider the obvious fact that, without regard to the reasons supporting their activity, they are competing with attorneys. They might well carefully weigh their own convenience and necessities against the possible alienation of a prominent segment of society, with a view toward diminishing, where possible, the area of conflict. Attorneys, on the other hand, would do well to evaluate the possibility that the public will construe their attitude as a manifestation of selfishness or greed; understandably so since the public will ultimately have to pay for any change. Despite this, attorneys should not forget that it remains their responsibility to originate dispute when the public interest is threatened. Since the embers of controversy are continually being fanned by economic pressures, it would be well for both sides, in consideration of public as well as private interests, on their own initiative, to adopt some common-sense policies to prevent, or at least to mitigate, future flare-ups.

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HUSBAND AND WIFE—CONVEYANCES TO HUSBAND AND WIFE—WHETHER THE PROCEEDS FROM THE SALE OF REAL ESTATE OWNED IN JOINT TENANCY BY HUSBAND AND WIFE ARE ALSO HELD IN JOINT TENANCY—The question of whether the proceeds from the sale of land held in joint tenancy were also held in joint tenancy was presented to an Illinois reviewing court for

[19] Ingham County Bar Association v. Neller Co., 342 Mich. 214, 69 N. W. (2d) 713, 53 A. L. R. (2d) 777 (1955); Caneer v. Martin, 238 S. W. (2d) 828 (Tex. Civ. App., 1951).

the first time[1] in the recent case of *Illinois Public Aid Commission* v. *Stille*.[2] Therein, the defendant and her husband had sold certain land which they had owned as joint tenants and had placed the sale proceeds in a safety deposit box.[3] Subsequently, the defendant's husband died. The plaintiff, in a supplementary citation proceeding to discover assets,[4] sought to reach one-half of the proceeds in satisfaction of a judgment debt owed it by the defendant's spouse. The defendant resisted on the ground that the proceeds of the sale were held in joint tenancy with right of survivorship and had become her sole property. The trial court dismissed the citation proceeding and the plaintiff appealed directly[5] to the Supreme Court of Illinois. That tribunal reversed and remanded the case when it concluded that the proceeds from a completed sale of land owned in joint tenancy were not automatically taken in joint tenancy by the sellers.

A joint tenancy in personal property must be established in the same manner as a joint tenancy in realty.[6] The person claiming such form of ownership must establish the intent and the common law unities of time, title, possession and interest in the property.[7] That such a common law joint tenancy existed in the immediate case is not to be questioned, but conformation with applicable statutory requirements must also be shown[8] if the arrangement is to be upheld.

The only statutory requirement to be met in the immediate case is the one embodied in the so-called Joint Rights and Obligations Act.[9] One section of that statute clearly and unequivocably abolishes the right of

[1] The Supreme Court treated the instant case as one of first impression and cited no other case in point. It would appear, however, that the abstract opinion in the case of Schreiber v. Lovewell, 314 Ill. App. 201, 40 N. E. (2d) 803 (1942), reached the same conclusion.

[2] 14 Ill. (2d) 379, 153 N. E. (2d) 59 (1958).

[3] The defendant further contended that, by virtue of the terms of the lease to the safety deposit box, the contents thereof were held in joint tenancy. This contention was rejected on the ground that the lease did not comply with Ill. Rev. Stat. 1959, Vol. 2, Ch. 76, § 2.

[4] This procedure is authorized by Ill. Rev. Stat. 1959, Vol. 2, Ch. 110, § 73.

[5] Direct appeal is provided for in all cases relating to state revenue or in which the state is interested, as a party or otherwise: Ill. Rev. Stat. 1959, Vol. 2, Ch. 110, § 75.

[6] In re Wilson's Estate, 336 Ill. App. 18, 82 N. E. (2d) 684 (1948), affirmed in 404 Ill. 207, 88 N. E. (2d) 662 (1949).

[7] Klouda v. Pechousek, 414 Ill. 75, 110 N. E. (2d) 258 (1953); Welch v. James, 408 Ill. 18, 95 N. E. (2d) 872 (1951); Tindall v. Yeats, 392 Ill. 502, 64 N. E. (2d) 903 (1946); Porter v. Porter, 381 Ill. 322, 45 N. E. (2d) 635 (1942); Hood v. Commonwealth Trust & Savings Bank, 376 Ill. 413, 34 N. E. (2d) 414 (1941); Deslauriers v. Senesac, 331 Ill. 437, 163 N. E. 327 (1928); Liese v. Hentze, 326 Ill. 633, 185 N. E. 428 (1927); David v. Ridgely-Farmers Safe Deposit Co., 342 Ill. App. 96, 95 N. E. (2d) 725 (1950).

[8] David v. Ridgely-Farmers Safe Deposit Co., 342 Ill. App. 96, 95 N. E. (2d) 725 (1950).

[9] Ill. Rev. Stat. 1959, Vol. 2, Ch. 76, § 2.

survivorship in a joint tenancy of personal property and permits such right to exist only by way of exception to the general rule.[10] The one important exception enumerated in the statute is that wherein personal property is transferred by means of a will or other instrument in writing which expresses an intention to create a joint tenancy with right of survivorship in the property so transferred. When some "other instrument in writing"[11] is relied upon, such instrument should comply with the general requirements of a will in regard to the certainty of description, the parties and the objective purpose. If the property is money, the amount should also be specified in the instrument, as of the time the title passes to the joint tenants.[12] While the statute does not change the required elements for the creation of a joint tenancy, it does establish how such a common law joint tenancy must be evidenced.

The defendant in the instant case made no claim to the existence of any special writing on the point nor do the reported facts indicate that there was any provision in writing contained in the sales contract which could be said to satisfy the statutory requirement or bring the case within any of the statutory exceptions. Notwithstanding this lack of the required evidence, the defendant sought to retain the funds by right of survivorship on the basis that the proceeds from the sale of the real estate took on and assumed the same qualities of survivorship as the property from which they were derived. The case of *Watson* v. *Watson*[13] was cited as authority for this contention. Therein, a husband and wife, who owned land in joint tenancy, entered into an installment contract to sell the land. The husband died while the contract was executory to the extent of several unpaid installments on the price and as to the ultimate conveyance of the title. The administrator of the husband's estate claimed a portion of the proceeds which were paid by the vendee to the surviving widow after the death of her husband. The relevant holding therein ran merely to the effect that the court would not apply the doctrine of equitable conversion so as to divest the survivor of her right, by way of survivorship, to the sums remaining unpaid at death.

There is a basic factual difference between the Watson case and the one at hand and it is to be found in the status of the two sales contracts at the time the joint tenant died. In the Watson case, the contract was still executory on both sides; in the instant case, it had been fully per-

[10] In re Wilson's Estate, 404 Ill. 207, 88 N. E. (2d) 662 (1949); David v. Ridgely-Farmers Safe Deposit Co., 342 Ill. App. 96, 95 N. E. (2d) 725 (1950); Vaughn v. Millikin Nat. Bank, 263 Ill. App. 301 (1931).

[11] Ill. Rev. Stat. 1959, Vol. 2, Ch. 76, § 2.

[12] See the first two cases cited in note 10, ante.

[13] 5 Ill. (2d) 526, 126 N. E. (2d) 220 (1955).

formed by all of the parties to it. If the two cases are to be legally distinguishable, this distinction must provide the justification. But that it does not is clear when reference is made to the fact that the legislature, in unequivocably abolishing the right of survivorship in personal property except when evidenced in statutory form, excepted no particular form or forms of personal property.[14] It must be concluded, therefore, that the statute was equally applicable to both cases, so the Watson case should be treated as an aberration in law.

While the decision in the Watson case, and the one attained in still another prior Illinois case,[15] represent a deviation from the legislative mandate in relation to personal property, this deviation, though contrary to the holding in the majority of cases, is not totally frivolous. If courts were to apply the statute strictly in all instances, there would be times when they would achieve results contrary to reason and directly opposite to the contemplation of the parties. In a majority of the cases, the courts have construed the statute as requiring compliance with exacting formalities to be insisted upon even though this required apparent disregard of intent of the parties[16] and their seemingly reasonable efforts to make a formal statement of such intent.[17] But the harsh and unreasonable result which could stem from an inflexible application of the statute as written can be exemplified by consideration of the anomaly that could result in a situation wherein the joint tenant owners of a building acted to let the premises or a portion of the space therein. It would appear that, unless the lease contained a provision respecting the rent paid which satisfied the statute, the money paid as rent would be held under a tenancy in common, prior to division, even though the real estate which produced the cash rent was jointly owned. In the same way, claims to money accruing under policies of insurance on the premises, or the proceeds received therefrom, would likewise be held in common, absent an adequate provision in the policies to cover the point.

It is pertinent to note that, in situations of this character, the personal property involved is so closely connected and identified with the real estate from which it is produced that it does violence to the very relationship of the parties and to their apparent intent if the usufruct is to be

[14] The legislature in no way indicated that less than all kinds and types of personal property were to be included in the operation of the statute. The only exceptions named therein are based on factors other than the intrinsic character of the personal property.

[15] In re Jogminas' Estate, 246 Ill. App. 518 (1927).

[16] See notes in 41 Cornell L. Q. 154 and 43 Ill. B. J. 928.

[17] Harvey v. United States, 185 F. (2d) 463 (1953); In re Sneider's Estate, 12 Ill. App. (2d) 485, 139 N. E. (2d) 651 (1957); In re Wilson's Estate, 336 Ill. App. 18, 88 N. E. (2d) 662 (1949); In re McIlrath's Estate, 276 Ill. App. 408 (1934).

treated as a separate asset for the purpose of determining the applicability of the statute here concerned. So long as the cash is still identifiable as being the product of the real estate, why should it not be held under the same form of ownership until the parties clearly demonstrate that it is their wish to do otherwise? Also to be considered is the fact that the joint tenancy form of ownership is used, perhaps most commonly used, between a husband and his wife. Acting as a "poor man's will," it is uniquely adaptable to that relationship since it provides a practical and usually an inexpensive way of passing title on death without resort to a formal will or to the administration of an estate. Under holdings of the type illustrated by the instant case, however, the exacting formal requirements of the statute have worked to destroy, to a great extent, the practical and dollar-saving features of the joint tenancy. As the law now stands, it would require the services of a lawyer to establish a joint tenancy at the outset and further legal services each time an item of property so held was sold and the proceeds reinvested if continuity in the joint tenancy is to be achieved.

It is the application, by the court, of the exception enumerated in the statute that has created the problems discussed above. It cannot be told, from a simple reading of the legislative language, whether the unyielding strictness was intended by the legislature or has been developed through judicial construction and application. The evolution of the idea is academic; the need of an active community is not. That need calls for legislative enactment and judicial determination sensitive to its requirements. As a practical proposition, therefore, there is evident occasion to reappraise the law in this area to make it serve the reasonable expectations and desires of the community.

N. MERMALL

LANDLORD AND TENANT—LIABILITIES FOR TAXES AND ASSESSMENTS—WHETHER, ABSENT AGREEMENT ON POINT, LESSEE IS LIABLE FOR INCREASED REAL ESTATE TAXES ATTRIBUTABLE TO HIS IMPROVEMENT OF DEMISED PREMISES—The Supreme Court of New Jersey dealt with a situation unique to the appellate tribunals of that state when it decided the case of *The Crewe Corporation* v. *Feiler*.[1] The plaintiff therein, as lessor-owner, and the defendant, as lessee, had entered into a lease of a specified tract of land and the building thereon for a term of fifteen years which included an option to purchase. The premises were industrial in nature. Immediately after taking possession, the defendant effected a complete conversion of the building from its industrial character to that of an office

[1] 28 N. J. 316, 146 A. (2d) 458 (1958).