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UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Chancery of Delaware.
Judith C. RAMSEY, Petitioner,
v.
Scott J. TOELLE and Carol J. Snyder, Respondents.
C.M. No. 3404-S.

Submitted: April 10, 2008
Draft Report: Sept. 2, 2008.
Final Report: Sept. 30, 2008

West KeySummary
Brokers 65 ⚿31

65 Brokers
65IV Duties and Liability to Principal
65k31 k. Individual Interest of Broker. Most Cited Cases

Brokers 65 ⚿34

65 Brokers
65IV Duties and Liability to Principal
65k34 k. Fraud of Broker or His Agent. Most Cited Cases

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289 Partnership
289I The Relation
289I(A) Creation and Requisites
289k18 k. Assent of Parties in General. Most Cited Cases

A real-estate broker's self-dealing in property, without the consent of her client, made an agreement to purchase property as co-tenants and partners voidable. The parties maintained two relationships; one as real-estate broker and client, and another as 50% partners in real estate. While the real-estate broker claimed that the parties willingly entered into partnership for the real estate, the clients claimed that the real-estate broker induced fraud to get her name on the title. The court reconciled the factual disputes and held that the real-estate broker was unable to demonstrate that the client consented having her as co-purchaser of the real estate. As a result, the agreement to purchase the property as partners was voidable.

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MASTER'S REPORT

GLASSCOCK, Master.

***1** The petitioner in this matter, Judith C. Ramsey ("Ramsey") is the record owner of a half-interest in a house and lot in South Bethany ("the Delaware property"), for which she seeks a partition. The parties agree that Ramsey has made out a *prima facie* case for partition. The respondents, Scott Toelle ("Toelle") and Carol J. Snyder ("Snyder"), are record title holders of the remaining 50% of the property, as joint tenants with right of survivorship. In 2002, at the time Ramsey, Toelle and Snyder obtained the property, Toelle and Snyder were boyfriend and girlfriend; they are now husband and wife.

Toelle and Snyder oppose the partition on equitable grounds and have counterclaimed, seeking equitable recission of Ramsey's purchase of a share in the property, along with other remedies. The matter has been tried. This is my decision on the petition for partition and the counterclaim.

Facts

It is difficult to present a statement of facts in this matter, because to a remarkable extent, the factual positions of the parties are contradictory. To the extent they are undisputed, the facts are these. In 1999 Toelle and Snyder were living together in a house in Virginia (the "Virginia property") They intended to refinance the mortgage. Both Toelle and Snyder had recently emerged from bankruptcy.[FN1] On the recommendation of an acquaintance, they hired McLean Mortgage Group, Inc. ("McLean"), with which they were not otherwise familiar, to obtain a refinance mortgage loan for the Virginia property. McLean was a Virginia mortgage brokerage company owned and operated by Ramsey. The company had several employees in addition to Ramsey. Its purpose was to obtain mortgage loans from lenders for its customers. McLean was able to secure refinancing for the Virginia property, in December 1999

> FN1. Even on this point, the record is unclear. The pre-trial stipulation states that Snyder was still under bankruptcy protection at this time; the testimony, that she had recently emerged.

At this point, the parties' factual assertions diverge.

Ramsey's Version

According to Ramsey, at about the time she was able to obtain the refinancing for the Virginia property, she was approached by Snyder and asked to be the co-buyer of a beach house in Delaware Ramsey was interested in investing in a beach house, and because Snyder was an interior decorator who did business in the Delaware coastal area, Ramsey was receptive to being Snyder's partner in a beach house Snyder began looking for a suitable property and sent photographs to Ramsey of many potential beach houses for her consideration. According to Ramsey, these pictures were "in her car" at the time of trial; however, Ramsey failed to produce them in response to discovery requests. Ultimately, Snyder decided upon the Delaware property Although Ramsey never inspected the property, she agreed to buy it with Snyder The cost of the property was $455,000. Ramsey and Snyder, along with Toelle, would have to finance the purchase of the home, but Ramsey did not want to be on a loan with either Toelle or Snyder because of their credit problems. She feared the effect on her credit-worthiness. The three worked out an agreement whereby Ramsey would buy half of the property and Toelle and Snyder would buy the other half. Toelle alone would be liable on the note for the loan that Ramsey would obtain. Ramsey would provide half of the funds for closing, and Toelle and Snyder would provide the balance The property would be purchased in June of 2000, and the rental proceeds (the property was already under a rental contract for the summer of 2000) would go to pay the mortgage. Once the lease terminated, in the Fall of 2000, Ramsey would pay half of the mortgage and expenses, and Toelle and Snyder would pay the other half. The plan was to use the Delaware property as a vacation beach property for the use of its owners.

***2** As mortgage broker for the deal, Ramsey approached Greenpoint Mortgage and was able to obtain a mortgage and loan for 90% of the value of the property, payable by Toelle. Because of Toelle's bad credit, the interest was set at the high rate of 10% Ramsey put nearly $30,000 into Toelle's account as her share of the down payment and closing costs. She also found it necessary to loan Toelle $7,000 so that he would appear to have sufficient funds to close on the Delaware property.

The closing took place in the offices of Harold Dukes, Esquire on June 16, 2000. After the closing, the co-owners agreed that Ramsey would maintain a joint bank account for their partnership in the property and pay the mortgage from that account Ramsey also gave Snyder her credit card to use to repair and upgrade the Delaware property. Ultimately, $17,000 of Ramsey's money was spent in the renovation.

Eventually, the lease terminated on the Delaware property and as a consequence the partners were no longer receiving rental payments. A mortgage payment was due from the partners in April, 2001. For some reason Ramsey cannot explain, Toelle removed nearly all the remaining money from the joint account, and as a result, Ramsey was unwilling to place her share of the mortgage funds into the account, and has not contributed any part of the mortgage payments. At the end of June, 2001, when Ramsey arrived for a scheduled vacation in the Delaware property, she found that the property had been rented by Toelle and Snyder to a third party, without Ramsey's permission. Inexplicably, Toelle and Snyder called the police and reported that she was destroying the property. The police investigated but found no damage. Subsequently, Toelle and Snyder have excluded her from the property, resulting in this petition for partition.

Toelle and Snyder Version, Mark I-The Counterclaim

In the amended counterclaim filed in this matter, Toelle and Snyder alleged a version of the facts substantially different from that testified to by Ramsey. According to the counterclaim, Toelle and Snyder had engaged Ramsey and her company, McLean Mortgage, as a mortgage broker for the refinance of the Virginia property and later to obtain a loan for the Delaware property. Snyder and Toelle intended to purchase the Delaware property on their own. Snyder did not invite Ramsey to become a co-owner of the property.

After theoretically pursuing a mortgage for Toelle, Ramsey informed Toelle and Snyder that Toelle did not qualify for a mortgage loan on his own. Unbeknownst to Toelle and Snyder, this was a false representation; in fact, Toelle did qualify for the loan. This misrepresentation of Ramsey's was intended to further her plan to benefit personally from the purchase of the Delaware property. Based on the false representation that Toelle was unable to qualify for a loan, Toelle and Snyder agreed to allow Ramsey to become a partner in the purchase and ownership of the Delaware property, with Ramsey to pay 50% and Toelle and Snyder to pay 50% of all costs of the investment, and with each to share in any profits.

Toelle and Snyder Version, Mark I-The Testimony.

***3** A third version of the history of this investment gone awry was recited by Snyder at trial. In this version, as in the counterclaim, Snyder contended that she viewed Ramsey only as a mortgage broker and not as a friend or potential co-tenant. Snyder wanted a beach house like the one she had once owned with her ex-husband, and she and Toelle decided to purchase the Delaware property. The Delaware property was in a run-down condition, and Snyder intended to use her design expertise to renovate and add value to the property. As in the counterclaim, Snyder testified that Ramsey convinced her that Toelle would not be able to obtain a mortgage loan by himself, based on his poor credit, and that Ramsey (and perhaps Snyder as well) would have to go "onto the loan." Snyder got a call from Ramsey on June 7, 2000, about a week before the closing. Ramsey told Snyder that she was at Toelle's bank, Burke and Herbert (the "bank"). Ramsey was adamant that Toelle did not have sufficient money in his account to convince Greenpoint Mortgage that he could go to closing. Snyder told Ramsey she would bring more funds to place in Toelle's bank account, but Ramsey told her it was "too late," and that Ramsey would place her own funds in the Toelle account to make it appear that Toelle was sufficiently solvent to close. Ramsey put approximately $36,000 of her own money in the account. If this was a loan, it was made without agreement between the parties and without any term, interest or repayment conditions specified. Also, without speaking to Toelle or Snyder, Ramsey managed to arrange for a line of credit in Toelle's name from the bank. Snyder thought all this strange, but was satisfied that it was a part of the "creative financing" that mortgage brokers resort to. She assumed the money was a loan, and al-

though no repayment conditions were discussed, Ramsey had told her in the telephone call from the bank that the parties would "settle this all up later."

At the closing, despite signing an affidavit indicating that Ramsey was a co-owner, neither Toelle nor Snyder understood that Ramsey would be on the title. To the extent title issues were explained to them, they were confused by the terminology, thinking that a "deed" was a kind of security instrument. They were surprised to eventually discover that Ramsey was on the title.

After the closing, Ramsey, Toelle and Snyder went to the real estate rental agency that was overseeing the lease of the property. There, according to Snyder, Toelle and Snyder first learned that Toelle had, in fact, qualified for a loan on his own credit. Snyder was shocked and dismayed. However, Ramsey told her not to worry, that they would renovate the property and refinance it and "settle everything out." Ramsey offered to contribute to the cost of the renovation, which she did in the amount of $15,000 to $17,000. Ramsey also offered to, and did, take care of the business end of this arrangement, administering the joint checking account and paying the mortgage from the lease payments. Meanwhile, Snyder, using funds of her own as well as Ramsey's, renovated the property. After the renovations were completed in October, 2000, Snyder had the property reappraised. It was now valued at $590,000 (as opposed to the appraised value of $460,000-and the purchase price of $455,000-at the time of closing just four months earlier).[FN2] Snyder and Toelle then discussed refinance options with Ramsey so that they could repay the "loan," but Ramsey refused to cooperate. When the money from the lease payments ran out, Toelle and Snyder took over the payment of the mortgage, and have made all payments to date. Due to the high interest on the mortgage on the Delaware property, Snyder and Toelle could not afford to keep the Virginia property, and the Delaware property is now their primary home (although they have also purchased a second home at the beach).

FN2. The Delaware property is currently appraised at $940,000.

***4** Ramsey appeared unannounced at the Delaware property at the beginning of the July 4, 2001 holiday week, for which the house had already been rented. When Snyder and Toelle confronted her regarding the refinancing, for some reason she sprayed Coca-Cola all over the just-cleaned living room, and then left. Ramsey has not been to the Delaware property since.

Toelle also testified at trial. His testimony generally supported Snyder's

Findings of Fact

Obviously, these three versions of the facts cannot be harmonized. Equally obvious is that each is riddled with implausibility. According to Ramsey, who had by 2000 spent several years running her own mortgage brokerage house, she agreed to become partners with Toelle and Snyder and buy a beach property with them, although she was not willing to be on a loan and note with them because of their bad credit ratings. Ramsey was willing to enter a partnership for a beach residence with two casual acquaintances she had met only months before. She agreed to purchase a $455,000 property with them, sight unseen. Although an experienced businesswoman, she entered into a partnership with Snyder and Toelle with no writing indicating how or by whom mortgage payments and payments for other expenses would be made, when and to what extent the Delaware property would be rented, when the parties were to have possession, or explaining any of the other issues involving relations among the parties.

In their counterclaim, by contrast, Toelle and Snyder allege that they were misled by Ramsey into believing that Toelle could not qualify for a loan, and so decided to bring in their mortgage broker, Ramsey, as a partner. Strangely, they agreed with Ramsey that she would be liable for half of the

mortgage payments and expenses, but that Toelle himself would be solely liable on the note.

Finally, in the version of the facts testified to at trial by Snyder, Ramsey misled Toelle and Snyder into thinking that she was merely loaning them money as part of her "creative financing" legerdemain as a mortgage broker. Despite signing documents indicating that Ramsey was to be a co-owner, Toelle and Snyder were unaware until after the closing that Ramsey was on the title as a 50% owner of the property. Notwithstanding the fact that the note and disclosure forms indicate that Toelle was the sole borrower obligated under the note, they were unaware until after the closing that he had qualified to be the sole borrower on this loan. Oddly, after obtaining the information that Ramsey had mislead them, Toelle and Snyder allowed Ramsey to make a further $17,000 investment in the renovation of the property, and allowed her to control the business affairs with respect to the partnership, including control of the joint account into which the rental payments were made.

To be blunt, none of these versions is credible.

I make the following findings of fact, based on the credibility of the witnesses and the documentary evidence. During the refinance of the Virginia property, and thereafter, the relationship between Toelle and Snyder, and Ramsey, was that of client to mortgage broker. Snyder wished to purchase a house at the beach in Delaware, similar to the one she had lost in her divorce. Toelle was willing to buy one with her. Snyder was not a social friend of Ramsey, she did not discuss purchasing a beach house with Ramsey, she did not send Ramsey many photos of prospective properties for Ramsey's consideration, and she did not contact Ramsey until after Snyder had found a house she wished to purchase and was instructed by the realtor to obtain a pre-qualification letter for Toelle. This led Snyder to contact McLean and once again engage Ramsey as a mortgage broker. I make these findings, despite Ramsey's testimony to the contrary, because the documentary evidence indicates that McLean/Ramsey viewed Toelle as a client with respect to financing for the Delaware property until shortly before closing, and because the physical evidence and the testimony of Greenpoint Mortgage's employee Charlotte Harvey [FN3] indicate that documents produced by Greenpoint Mortgage were altered shortly before closing, that they did not as drafted contemplate Ramsey as a purchaser of the Delaware property,[FN4] and that Harvey was unaware that Ramsey was to be a co-owner with Toelle and Snyder. Thus, I find that the parties did not intend Ramsey to be a co-purchaser until sometime after the Delaware property went under contract.

> FN3. Ms. Harvey was the closing manager for the loan to Toelle used to purchase the Delaware property.
>
> FN4. The Greenpoint Mortgage documents, as originally drafted, do not indicate that either Ramsey *or* Snyder were to be co-owners with Toelle, but Harvey testified that she was aware that Snyder was going to be added to the title.

***5** McLean's own files indicate that McLean was engaged as a mortgage broker on behalf of Toelle, in connection with the Delaware property, as of May, 2000. Toelle engaged McLean, as disclosed by documents Toelle executed on May 24, 2000, to gather confidential financial information on his behalf, obtain a credit report and appraisal, and obtain a loan for him in return for a fee. Ramsey did not inform Greenpoint Mortgage that she would waive her (McLean's) broker's fee until June 8, 2000, only shortly before the closing. Ramsey testified that her reason for waiving the fee was that taking a fee in a transaction in which she was involved would have been like charging herself-in addition to the fact, as she also allowed, that taking a fee for a transaction in Delaware, a state in which she was not a licensed broker, would have been illegal. Toelle testified that he was never informed that Ramsey intended to waive her fee.

I find that at some point prior to closing, Toelle and

Snyder agreed to let Ramsey become a co-tenant of the Delaware property. I say this, despite Snyder's testimony to the contrary, because I find it most unlikely that the closing would have proceeded without Toelle and Snyder noticing and understanding that Ramsey was on the deed as a half-owner of the property. Although Snyder claims real-property naivete, and even though Ramsey was far more sophisticated concerning the purchase of real estate, both Toelle and Snyder had owned real property before the purchase of the Delaware property. Toelle and Snyder signed the mortgage with Ramsey. They signed an affidavit indicating Ramsey's co-ownership of the property as of the closing. The attorney who handled the closing, Mr. Dukes, testified that Snyder told him Ramsey was to be a co-tenant. In addition, I find it extremely unlikely that, on learning that they had served as mark to Ramsey's alleged hustle, they would blithely agree to accept *more* cash from her as a further undefined investment or loan, and would create a joint bank account with Ramsey and allow her control of that account and the business function of the property. Finally, I find Snyder's version improbable because it is contradicted in part by her own counterclaim.

Analysis

Ramsey, as the record owner of a one-half interest in the Delaware property, is entitled to a partition of the Delaware property unless Toelle and Snyder can demonstrate an equitable defense sufficient to prevent a partition sale.[FN5] 25 *Del. C.* § 721. Given the unsettled nature of the testimony from the parties as I have described it above, if the relationship between Ramsey, and Toelle and Snyder, were that of friend-to-friends or investor-to-investors, it is unlikely that the respondents could meet this burden. As I have found, however, the relationship was that of a mortgage broker to her clients.

> FN5. The parties agree that the Delaware property cannot be equitably partitioned in kind.

1) *Fiduciary Duty.*

I find that Ramsey was a fiduciary for Toelle with respect to the purchase of the Delaware property. Toelle first hired Ramsey in 1999 in connection with the refinancing of the Virginia property. In connection with that refinance, Toelle gave Ramsey a great deal of confidential information, including the extent of his income, property, debts and tax liability. As a mortgage broker, Ramsey had access to Toelle's bank accounts. This information was given by Toelle to Ramsey so that she could act on his behalf with respect to a particular transaction: to secure a refinancing and mortgage loan for the Virginia property. Under Virginia law, Ramsey, as a mortgage broker engaged on behalf of her principal, Toelle, to enable him to obtain a loan and purchase a property, was in a fiduciary relationship to Toelle. "An agent is a fiduciary with respect to matters within the scope of his agency. [A] broker owes his principal the duty to use utmost fidelity to him and must disclose to him all facts within the broker's knowledge which may be material to the transaction, or which might influence the principal in deciding on a course of action." *Byrd v. Crosstate Mortgage & Investments, Inc.*, 1994 WL 1031124 (Va.Cir.Ct.) at 2-3 (internal citation omitted).

*6 When Snyder and Toelle decided to buy the Delaware property, they again engaged McLean and Ramsey. Snyder solicited a pre-qualification letter, which was written by McLean on May 10, 2000, on behalf of Toelle for purposes of making an offer on the Delaware property. Ramsey authorized McLean to issue such a letter,[FN6] relying on data supplied by Toelle during the 1999 transaction involving the Virginia property. The letter stated that "We at McLean ... look forward to being of service to you [Toelle] in your residential transaction needs. Should you or any of the parties involved have any questions, please feel free to contact this office." This letter indicates strongly that Ramsey and McLean were dealing with Toelle as a mortgage broker deals with a client. Thereafter, as

described above, Toelle executed documents indicating that he had engaged McLean as his mortgage broker. As a mortgage broker, Ramsey was again privy to confidential personal and financial information about her principal, Toelle, provided for her use in obtaining financing for the Delaware property. Importantly, among the information gained by Ramsey in her role as broker was knowledge of the opportunity to purchase the Delaware property. It was Ramsey, as Toelle's mortgage broker, who had Toelle's confidential information regarding income, assets and debts. It was Ramsey who had the ability to shop for a mortgage loan on behalf of Toelle. It was Ramsey who had the expertise to determine whether Toelle and Snyder were sufficiently solvent to obtain a mortgage on the Delaware property, whether the terms of the loan were appropriate, and whether Toelle and Snyder could obtain sufficient credit to purchase and renovate the Delaware property.

> FN6 The letter was signed on behalf of McLean by employee Kris Wise, at Ramsey's direction

A mortgage broker is an agent engaged to obtain a mortgage contract on behalf of his principal. *Byrd,* at 3. While the relationship of agent to principal, under Delaware law, does not of itself give rise to fiduciary duties, where an agent represents a principal in a matter where the agent is provided with confidential information to be used for the purposes of the principal, a fiduciary relationship may arise. *See, Prestancia Management Group, Inc. v. Virginia Heritage Foundation II, LLC,* Del. Ch., 2005 WL 1364616, at 6. Where, as here, the principal reposes confidence in the agent, the agent is dominant in the transaction, and the agent has special knowledge upon which the principal relies, the relationship is fiduciary in nature. "The hallmark of this [fiduciary] form of principal/agent relationship is when matters are peculiarly within the knowledge of the agent." *Id.* Toelle had a right to assume that actions taken by Ramsey in this matter were for his benefit. *See Byrd,* at 2-4; *Goodrich v. E.F. Hutton Group, Inc.,* Del. Ch., No. 8279, Hartnett, V.C. (June 7, 1991)(Mem. Op.) at 2 (holding that broker with authority to trade securities on behalf of principal is a fiduciary). Whether the broker/client relationship arose under Delaware or Virginia law, then, Ramsey was a fiduciary for Toelle in this transaction.

*7 At some point after the relationship between Toelle as principal and Ramsey as mortgage broker was re-established for the purposes of obtaining a mortgage for Toelle so that he and Snyder could obtain the Delaware property, and before the closing on the that property, Ramsey became involved in the transaction as a co-purchaser in addition to her fiduciary role as an agent attempting to obtain a loan for her principal. Toelle and Snyder argue (via the counterclaim) that this partnership opportunity was extended to Ramsey as a result of active fraud on her part, in that Ramsey mislead them into believing that Toelle was ineligible to receive a sufficient loan to purchase the property. Ramsey denies any fraud, and points to evidence indicating that Toelle was or should have been aware that he had qualified on his own for a sufficient loan. I need not resolve this issue, however, because at the time Ramsey dealt herself into this transaction, she stood in a fiduciary relationship to Toelle. Toelle and Snyder had developed the opportunity to purchase the Delaware property. Ramsey became aware of that opportunity, and the extent of Toelle and Snyder's ability to seize it, because of her confidential relationship with Toelle. She knew the extent of his income, property, and debts and, in fact, used that information to secure the loan through which the Delaware property was ultimately purchased. She also, however, used her knowledge of the Delaware property opportunity to obtain a one-half interest in the transaction. This was self-dealing.

Of course, a fiduciary may engage in a self-dealing transaction involving her principal, but only where the principal has consented to the self-dealing after full disclosure by the fiduciary. *E.g., Schock v. Nash,* Del.Supr., 732 A.2d 217, 224 (1999). The

burden is on the fiduciary to demonstrate fair dealing *Id* at 225-26.

Here, the record is devoid of any such disclosure. Ramsey herself makes the assertion-which I have found not credible-that, with respect to the Delaware property transaction, her relationship from the beginning with Toelle and Snyder was as a co-buyer and partner, and *not* as a fiduciary. The record is insufficient to demonstrate that Ramsey explained to Toelle his ability to qualify for the full mortgage on the property without an investment on her part, explained the advantages and disadvantages of accepting Ramsey as a partner, and that Toelle then, with full knowledge, consented to waive any objection to Ramsey obtaining for herself some of the benefit of the transaction Because Ramsey cannot show that her principal knowingly consented to her assumption of half the opportunity in the Delaware property, the Ramsey-Toelle-Snyder agreement to purchase the Delaware property as co-tenants and partners is voidable. *Id* Voiding a self-dealing transaction on the part of a fiduciary, made at the expense of the principal, is the proper remedy here.

It is very difficult to disentangle the varying and contradictory strands of testimony to decipher what happened in this transaction. Fortunately, it is not difficult to untangle the transaction itself Ramsey became a one-half owner of the property through self-dealing. She is unable to demonstrate that the self-dealing was made after an informed consent on the part of Toelle or was otherwise entirely fair. Therefore, the transaction is voidable. The parties must be returned to a position, no better and no worse, than if Ramsey had not inserted herself in the transaction as a principal, rather than honoring her duty as an agent for Toelle.

Remedy

***8** It is not the purchase of the Delaware property that is voidable; instead, it is the agreement that Ramsey would be a partner and co-tenant with Snyder and Toelle that must be undone. To void that transaction, it requires that I find that Ramsey holds her one-half interest in the Delaware property in trust, resulting from her self-dealing, for the benefit of Toelle and Snyder, and that I order Ramsey to deed over her one-half interest to the respondents. Because Toelle and Snyder should be put in the position that they would have occupied had Ramsey not participated, they must return to her a sum composed of two parts. First, the amount paid by Ramsey which ultimately went to the down payment and closing costs on the Delaware property, $36,651 11. This includes $7,000 which Ramsey testified was a loan to Toelle that she believed had been repaid. Toelle admitted receiving this $7,000 and testified that it had not been repaid. To this amount must be added interest at the legal rate commencing on the date the amounts were placed in Toelle's bank account. Second, the $17,000 which Ramsey advanced to Toelle and Snyder that was used in the renovation of the Delaware property must be repaid, with interest. As with all testimony about this remarkably casual and undocumented, but very substantial, transaction, the parties are unclear as to how and when this sum was made available to Toelle and Snyder, although there was general agreement that approximately $17,000 is the amount of Ramsey's funds invested in the renovation of the Delaware property. The date on which the parties entered the agreement that Ramsey would make funds available was the date of the closing: June 16, 2000 In the face of the dearth of evidence as to the date the funds actually passed from Ramsey to the use of Toelle and Snyder, this amount should be repaid with legal interest running from June 16, 2000.

Conclusion

The parties engaged in a very substantial transaction without documentation of any kind regarding their agreement This was foolish on all sides However, the consequences of this foolishness must redound largely to Ramsey. Ramsey was a specialist in the mortgage field; Toelle and Snyder were

not. Ramsey was a fiduciary, Toelle was her client and principal. Ramsey, not Toelle or Snyder, bears the burden of demonstrating fairness in her dealings with her principal

Because Ramsey cannot demonstrate that her entry into the transaction for the Delaware property was made with Toelle's knowing consent or was otherwise entirely fair, the transaction between Ramsey and Toelle and Snyder is voidable. Therefore, I find that Ramsey holds her legal title in trust for Toelle and Snyder. For that reason, the petition to partition is denied The parties should confer and agree on a form of order indicating the amount that must be returned to Ramsey consistent with this report, providing a date upon which that reimbursement shall be made, and directing Ramsey to sign a deed transferring her legal title to Toelle and Snyder as of that date

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