

# **Appeals Court Affirms Rights of Surviving Joint Tenant**

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On November 15, 2011, the case of Trotta v. Ollivier was decided by the New York State Appellate Division, Second Department. This important case affirms the right of a joint tenant to inherit (by operation of law) a property held in a joint tenancy without the potential for a claim for equal contributions to the property by the Estate of the deceased joint owner.

## **Facts**

On November 17, 1992, Susan Leone and Charles Ollivier purchased property as joint tenants with the right of survivorship. The property was located in Effort, Pennsylvania. Mr. Ollivier and Ms. Leone lived together as an unmarried couple for a period of time after the property was purchased. Susan Leone used \$90,000.00 of her own funds to purchase the property and incurred expenses relating to a construction loan and other closing costs. Over the period of time she owned the property, up to her death, she expended \$226,500.00 from her own funds in connection with the property. Ollivier allegedly did not contribute any funds to the purchase of the property or the carrying costs. In any event, there was no evidence that Mr. Ollivier contributed anything comparable to what Ms. Leone paid out.

After the relationship between Ms. Leone and Mr. Ollivier terminated, Ms. Leone continued to use and occupy the house. Mr. Ollivier was never asked to remove his name from the deed.

Ms. Leone died unexpectedly on February 3, 2008 and her Executrix commenced an action against Mr. Ollivier (a) alleging unjust enrichment on the part of Ollivier who inherited full ownership of the property as a result of the joint tenancy; and (b) requesting reimbursement of \$7,500.00 for carrying charges on the house which were paid by the Estate of Susan Leone after Ms. Leone's death.

## **The Lower Court Decision**

The matter was heard in the Surrogate's Court in Kings County on December 4, 2009. The Court granted Mr. Ollivier's motion to dismiss. The Executrix of Susan Leone's Estate then appealed to the Appellate Division regarding both issues (i.e., the lack of contribution from Mr. Ollivier and the reimbursement of the \$7,500.00 carrying charges).

## **The Appellate Court Decision**

The four judges of the Appellate Division affirmed the lower court ruling that the Estate had no claim against Charles Ollivier even though Mr. Ollivier became the sole owner of the property upon Ms. Leone's death, even if he did not contribute comparably to the purchase of the property or to its carrying costs. As to the \$7,500.00 paid by the Estate toward property expenses after Ms. Leone died, the Appellate Court reversed the lower court judgment and stated that the Estate had a proper cause of action to recover the \$7,500.00 which apparently was mistakenly paid.

### Why is This Case Important?

This case addresses the legal claim of “unjust enrichment”. There are three elements required in order to recover in a claim for unjust enrichment:

1. The other party was enriched;
2. At that party’s (the Plaintiff’s) expense; and
3. It is against equity and good conscience to permit the other party to retain what is sought to be recovered.

The Court noted that unjust enrichment “does not require a showing that the party enriched committed a wrongful act, as innocent parties may frequently be unjustly enriched.”

### “Joint Tenancy” Defined

The Court states that a joint tenancy, as is the case here, is an estate held by two or more persons jointly who have equal rights to share in its enjoyment during their lives, and where each joint tenant has a right of survivorship. The right of survivorship has been defined as “a right of automatic inheritance...”.

The Court then analyzed whether Ms. Leone took any action to sever her joint tenancy. The Court noted that Ms. Leone could have “sought a partition of the property and an equitable adjustment of the interest she and Ollivier held in the property.” The evidence indicated that Leone never attempted to sever her joint tenancy.

The Court differentiated between a joint tenancy and a tenancy in common. Where a tenancy in common is applicable, such tenancy in common allows “a decedent’s share of property to pass under the rules of inheritance.”

The Court therefore ruled that Ms. Leone, who “was free to manage her finances and spend her money as she saw fit...” made a decision to hold title with Mr. Ollivier and continue to pay the expenses even after Mr. Ollivier moved out. The Court, therefore, determined that the complaint of the Executrix failed to state a cause of action for unjust enrichment.

### Ownership Versus Income

The Court also interpreted Real Property Actions and Proceedings Law Section 1201. This Section states in part:

**“A joint tenant or a tenant in common of real property, or his executor or administrator, may maintain an action to recover his just proportion against his co-tenant who has received more than his own just proportion, or against his executor or administrator.”**

The Court interpreted this provision to indicate that the Estate of Ms. Leone was not in a position to seek to recover one-half of the payments made by Ms. Leone for the purchase and upkeep of the real property. If on the other hand, the property was a rental property and one co-tenant received more rent than the other, RPAPL 1201 would apply. The Court concluded

“there is no authority by which RPAPL 1201 has been applied in a retro-active fashion to allow a decedent’s *estate* to reach back in time and undo the financial acts of a decedent...”.

### Conclusion

This important case highlights the need for consumers to be advised by counsel as to the correct form of ownership to be considered when a property is acquired. Husbands and wives, who take ownership of property together, become “tenants by the entirety” as a result of their being married to each other. A tenancy by the entirety includes a right of survivorship.

When acquirers of property are not married, a conscious decision must be made as to whether or not to take property as a joint tenancy or as a tenancy in common. A joint tenancy results in the property passing to the surviving tenant by operation of law at the time of the death of the first to die. A tenancy in common allows each of the parties to specify, in his or her last will and testament, to whom their interest in the property is to pass. Ownership of the entire property does not pass by operation of law to the survivor when a “tenancy in common” is established. Deeds between unmarried persons must specify whether the property is being taken as “joint tenants” or as “tenants in common”, two very different legal forms of real property ownership. In the event the words “as Joint Tenants” are not included in the deed in favor of the “grantees” (i.e., the acquirers of the property), the presumption is that a tenancy in common is applicable. In order to avoid confusion, it is best that the deed specify exactly how the parties intend to take title (i.e., as “Joint Tenants” or as “Tenants in Common”).

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