

Case No. B253697

THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION TWO

MARY A. FLOWERS,
Plaintiff & Respondent

vs.

GEORGE W. HIGHTOWER.
Defendant & Appellant

APPELLANT'S OPENING BRIEF

Appeal from the Los Angeles County Superior Court
The Honorable Terry A. Green, Judge
Case No. BC470927

GOODSON, WACHTEL & PETRULIS
A Professional Corporation
Kenneth G. Petrusis, SBN 058011
Jennifer F. Hudson, SBN 235002
10940 Wilshire Blvd., Ste. 1400
Los Angeles, CA 90024
(310)208-8282

ORREN & ORREN
Tyna Thall Orren, SBN 107150
1100 East Green Street
Pasadena, CA 91106
(626)793-7989

Attorneys For The Appellant, George W. Hightower

STATEMENT OF THE CASE

I. PROCEDURAL SYNOPSIS

A. COMPLAINT, CROSS-COMPLAINT, & DISMISSAL OF COMPLAINT

Flowers' Complaint For Partition and Accounting was filed on October 5, 2011. (1CT 15 et seq.) Hightower answered and cross-complained. (1CT 27, 35.) He admitted that he and Flowers were co-owners of the property, and that partition by sale was appropriate (1CT 28, 36); he alleged it was Flowers who should be required to account (1CT 30-31, 38); as an affirmative defense, he alleged Flowers had excluded him from the property (1CT 38-40, 42); he contended the exclusion amounted to a legal ouster, entitling him to either (a) reimbursement for Flowers' use and occupation of the property or (b) a set-off of amounts owed to him for Flowers' use and occupation against any amounts he might owe to Flowers. (1CT 42-43.) In the cross-complaint, Hightower prayed for damages for physical ouster. (1CT 30-32.) Answering the Cross-Complaint, Flowers denied ousting Hightower. (1CT 61-62.)

On April 20, 2012, Flowers filed a motion for leave to amend her complaint to delete the partition cause of action and replace it with causes of action for quiet title, fraud and related causes of action. (1CT 164, 169.) The motion was denied. (2CT 319.) Flowers thereafter dismissed her complaint. (2CT 321-322.)³

³ Flowers later filed a new action, No. BC491067, alleging essentially the same matters as the proposed amendment in this action. (6CT 1333 et seq.) Case No. BC491067 was dismissed on May 16, 2013. (See Los Angeles County Superior Court case summary, www.lasuperiorcourt.org/civilcasesummrynet/ui/casesummary.aspx?CT=CI.)

III. FACTUAL HISTORY⁵

A. HIGHTOWER AND FLOWERS BECOME ROMANTICALLY INVOLVED AND BUY A HOUSE TOGETHER, BUT NEVER MOVE INTO IT TOGETHER

1. Flowers And Hightower Become A Couple And Buy A Home

Hightower and Flowers met in 1986. At the time, she was a physician, early in her career; he was an engineer, transitioning to a second career as a lawyer. (3RT 1895-1896, 2113.) The two became romantically involved (2RT 1592; 4RT 2469) and, in the fall of 1986, decided to buy a house together as cotenants. (2RT 1580-1581; 4RT 2423.) The house they bought was a 5900 square foot, five bedroom, five bath single-family home in the Hancock Park section of the City of Los Angeles, with a pool and guest house in back. (2RT 1578-1581.) They purchased it for \$790,000, financed with a \$610,000 first trust deed and a \$55,000 second. (2RT 1583-1584; 3RT 1919; 6RT 3350, 3358; TE 10, p. 2; TE 33.) Its value at the time of trial was estimated at \$3.35 million. (2RT 1249.)

2. The Relationship And, With It, The Real Estate Purchase Agreement Sour

In 1986, Hightower was married and was going through divorce proceedings. (3RT 1819; 4RT 2422, 2470.) Flowers testified she first learned of this while the escrow was open on the house. (4RT 2422, 2470.) She said that when she found out Hightower was married, she “stopped liking” him. (4RT 2470.)

An additional strain on the relationship arose on the strictly financial front. When deciding to buy the house, Flowers and Hightower had agreed that each would pay half of the \$128,000 down payment. But as matters turned out, Flowers could not afford her half. (2RT 1591-1592; 3RT 1825.) Thus Hightower deposited

⁵ A Timeline of Critical Events is attached to this Brief as Appendix I.