

COHABITING AND GETTING BACK YOURS WHEN THINGS GO WRONG

Crawford v Goodman (21/37617) [2022] ZAGPJHC 435 (1 July 2022)

It is well known that when a property is co-owned, one owner can apply to court for an order that the co-ownership be terminated, whether by ordering a sale of the whole property to a third party, or a sale of one partner's share to the other. What made this judgment interesting was that the evidence showed that the erstwhile romantic partners had also, tacitly, established a universal partnership when the house was purchased, and that each partner therefore had a claim in respect of the partnership. This is where the difficulty arose because, as was argued here, the partnership did not necessarily terminate with the break-up. The Court agreed, but explained how conduct could signify the break-up of both the personal relationship and the universal partnership.

The Judgment can be viewed [here](#).

FACTS

Crawford and Goodman were once in a romantic relationship, from about 2017 to 2020. During this time, they decided to live together and agreed to purchase a property together as joint owners, each holding an undivided half share in the property.

The facts showed that Crawford and Goodman also entered into a universal partnership, as the property was acquired in June 2018 with the intention of establishing a partnership in which both contributed thereto in money or otherwise with an intention of making a profit. It was understood that, should the partnership ever disintegrate, Goodman would transfer his half share in the property to Crawford against payment of the market value thereof, less Goodman's portion of what is outstanding on the bond.

During 2020 the relationship broke down irretrievably and Goodman moved out.

Crawford now sought to terminate the joint ownership of the property. Goodman refused and argued that the universal partnership still existed, despite the breakdown of the romantic relationship. Hence Crawford's application to court in terms of the *actio communi dividundo*.

HELD

Legal principles

- The *actio communi dividundo* is a well established remedy in our law and is based on the principle that every co-owner of property may insist on a partition of the co-owned property at any time. Even if there is an agreement to constitute perpetual joint ownership, the co-owner may demand partition at any time. If the co-owners cannot agree on the manner in which the property is to be divided, then the court is empowered to make an order which appears to be fair and equitable.
- A court may order the property to be sold by public or private auction or otherwise, and the proceeds to be divided amongst the co-owners according to their share of the property.

Universal partnership and termination thereof

- The essence of the concept of a universal partnership is an agreement about joint effort and the pooling of risk and reward. The elements of such a partnership are, firstly, that each of the parties brings something into

The Big Small Firm

stbb.co.za

Commercial Law | Conveyancing | Development Law | Labour Law | Estates | Family Law | Litigation | Personal Injuries & Third Party Claims

Cape Town
Claremont
Fish Hoek
Helderberg

T: 021 406 9100
T: 021 673 4700
T: 021 784 1580
T: 021 850 6400

Blouberg
Tyger Valley
Illovo
Fourwavs

T: 021 521 4000
T: 021 943 3800
T: 011 219 6200
T: 010 001 2632

Centurion
Bedfordview
East London

T: 012 001 1546
T: 011 453 0577
T: 043 721 1234

the partnership or bind themselves to bring something into it, whether it be money or labour or skill. The second element is that the partnership business should be carried on for the joint benefit of both parties. The third is that the object should be to make a profit. Universal partnerships can extend beyond commercial undertakings and do not require an express agreement.

- Like any other contract it can also come into existence by tacit agreement, that is by an agreement derived from the conduct of the parties. But it is the partnership contract that is the foundation of the universal partnership, not the mere fact of the consortium and the mere contributory efforts to building wealth. A tacit agreement to establish such a partnership is recognized in our law.
- Thus, the date that the relationship (consortium) ends is not always the effective date for the end of the universal partnership. It is possible, for example, for parties to end a longstanding romantic relationship but to continue (for a while or longer) to collaborate in their business ventures, in which they had both previously participated. The date when the latter of conduct and the commercial co-operation ends is the date that the universal partnership ends.

Whether the partnership has terminated in the present matter and whether the actio communi dividundo may be utilised.

- It is trite that a person cannot be forced to remain a co- or joint owner. For this reason, any co-owner has a right to have his or her ownership terminated by placing reliance on the *actio communi dividundo*. It was further common cause that the romantic relationship terminated at the time that Goodman vacated the property. Crawford contended that the ending of the romantic relationship also terminated the universal partnership, whereas Goodman contended that the partnership remained in place until its dissolution by notice or otherwise.
- A tacit agreement to end the universal partnership suffices in our law. In the present matter, the tacit agreement was evident from the conduct of both parties. On the facts it is clear that the universal partnership terminated when the romantic relationship between the parties ended and Goodman vacated the property. This termination is self-evident, as the parties are currently living apart and are no longer involved in a relationship. As a result, Crawford and Goodman stopped pooling their resources and are not contributing capital, labour or skill to a venture, which was during the subsistence of the partnership being conducted both for a profit as well as for their joint benefit.

Free co-ownership and bound co-ownership

- The common law states that the *actio* is always available in the case of free co-ownership and never available in bound co-ownership.
- In a free co-ownership any co-owner may demand, at any time, that the co-ownership be terminated and that the co-owned property be divided. In a bound co-ownership, the co-ownership can only be dissolved when the primary relationship is terminated. (**Bound co-ownership** is where some underlying relationship – like a marriage in community of property or a partnership - binds the co-owners separately from their relationship as co-owners.) The distinction between free and bound co-ownership is that in the former the co-ownership is the sole legal relationship between the co-owners, while in the latter there is a separate and distinct legal relationship between them of which the co-ownership is but one consequence.
- There is no closed list of instances of bound co-ownership.
- A party is relying on the *actio communi dividundo* in respect of assets belonging to a partnership, unless the

partnership itself has been terminated.

- In the present matter, taking into consideration the fact that the romantic relationship was the 'tie' between the parties which came to an end, and that the parties were no longer living together, the bound co-ownership became free co-ownership. The primary extrinsic relationship and 'tie' between the parties had terminated.

CONCLUSION

The relief afforded by the *actio communi dividundo* was therefore available to Crawford.