

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D36482
C/ct

_____AD3d_____

Submitted - October 2, 2012

REINALDO E. RIVERA, J.P.
RUTH C. BALKIN
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2010-08162

DECISION & ORDER

Thomas Wolff, appellant, v Julie E. Glick, etc.,
et al., respondents.

(Index No. 3705/09)

Carl F. Lodes, Carmel, N.Y., for appellant.

Julie E. Glick and Janine Prete, Patterson, N.Y., respondents pro se (one brief filed).

In an action, inter alia, to impose a constructive trust upon a business, the plaintiff appeals, as limited by his brief, from so much of a judgment of the Supreme Court, Putnam County (Nicolai, J.), dated September 15, 2010, as, upon a decision of the same court dated July 26, 2010, made after a nonjury trial, is in favor of the defendants and against him dismissing the complaint.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

“In reviewing a determination made after a nonjury trial, the power of this Court is as broad as that of the trial court, and we may render a judgment we find warranted by the facts, bearing in mind that in a close case, the trial judge had the advantage of seeing the witnesses” (*Rowe v Kingston*, 94 AD3d 852, 853; *see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499). “In order to obtain the remedy of a constructive trust, a plaintiff generally is required to demonstrate four factors: (1) a fiduciary or confidential relationship between the parties, (2) a promise, (3) a transfer of some asset in reliance upon the promise, and (4) unjust enrichment flowing from the breach of the promise” (*Mei Yun Chen v Mei Wan Kao*, 97 AD3d 730, 730; *see Sharp v Kosmalski*, 40 NY2d 119, 121). Applying these principles, we discern no basis to disturb the Supreme Court’s determination. Accordingly, the Supreme Court properly dismissed the plaintiff’s cause of action to impose a constructive trust.

November 21, 2012

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The plaintiff's remaining contentions, made in connection with the remaining causes of action, are without merit.

RIVERA, J.P., BALKIN, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court