

**Mange v Giunta**

2007 NY Slip Op 32899(U)

September 13, 2007

Supreme Court, Suffolk County

Docket Number: 0003443/2006

Judge: John J.J. Jones

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SHORT FORM ORDER

INDEX NO.: 003443/2006  
SUBMIT DATE: 6/13/2007  
MTN. SEQ.#: 001

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 10 SUFFOLK COUNTY

Present:

HON. JOHN J.J. JONES, JR.  
Justice

MOTION DATE: 5/15/2007  
MOTION NO.: MOT D

-----X  
SUSAN MANGE,  
  
Plaintiff,  
  
-against-  
  
ANITA GIUNTA, PhD,  
  
Defendant.  
-----X

CHERYL KITTON, ESQ.  
Atty. for Plaintiff  
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Bellmore, NY 11710

SIBEN & SIBEN, LLP  
By: Michael P. DeNoto, Esq.  
Attys. for Defendant  
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Bay Shore, NY 11706

Upon the following papers numbered 1 to 29 read on this motion for summary judgment; Notice of Motion/Order to Show Cause and supporting papers 1-16; Notice of Cross Motion and supporting papers \_\_\_\_\_; Answering Affidavits and supporting papers 17-27; Replying Affidavits and supporting papers 28-29; Other \_\_\_\_\_; it is

**ORDERED** that this motion by defendant, Anita Giunta, for an order granting summary judgment in her favor dismissing the complaint of plaintiff, Susan Mange, is determined as set forth herein.

Plaintiff commenced this action by the filing of a summons and complaint on February 14, 2006 to recover damages against defendant, a licensed psychologist, under the first cause of action for her allegedly negligent psychological treatment from 1989 to September 2003. Under the second cause of action, plaintiff seeks recovery for false arrest and malicious prosecution arising out of her alleged arrests in 2005. It is alleged

in the third cause of action that the defendant used her position of trust to induce plaintiff to transfer ownership of a one-half interest in her residential real property on February 15, 2000, and to transfer title in full on or about November 18, 2003 to defendant for no consideration. Defendant now moves for an order granting summary judgment in her favor dismissing the complaint against her; plaintiff has opposed the application.

In support of the motion, defendant submitted an affidavit in which she admits that, commencing in 1989, she treated plaintiff for depression. Defendant asserts, however, that counseling ended shortly thereafter, when the parties became friends and defendant moved into the house owned by plaintiff at 32 Camille Lane, East Patchogue, New York. The parties continued to cohabit the house until on or about September 2003. During that time, defendant paid “most of the household bills,” including the mortgage, real estate taxes and home improvements, while plaintiff paid some bills, including food expenses, and provided care for two girls who were born to defendant in 1995 and 1998. In addition, plaintiff performed billing and administrative work for defendant’s psychological practice. On February 15, 2000, plaintiff filed a deed which gave defendant a joint tenancy in the real property; it is indicated on the deed that the transfer was made for no consideration. On November 14, 2003, the parties entered into a written property agreement under which plaintiff agreed to convey title to the property and defendant agreed to satisfy the \$6,500 first mortgage and the \$36,000 second mortgage, and to pay plaintiff \$153,000.

Plaintiff testified at her deposition that she and defendant developed a sexual relationship when she sought psychological therapy treatment from defendant. According to the plaintiff’s deposition testimony, she continued to receive therapy from the defendant “to ‘96, ‘95, something like that, ‘97,” and that the cost of the therapy was covered through insurance provided by her estranged husband, William Paladini. Over the course of their approximate 15-year relationship, they raised two girls together and lived together as a family. It is noted that the middle name of each girl is Susan, and defendant explained in her deposition that they were named after the plaintiff, who is their godmother. Each of the birth certificates incorrectly identifies William Paladini as the father, even though both girls were fathered by anonymous sperm donors. The defendant admitted during her deposition, however, that health insurance for the children is provided under a family plan obtained by Mr. Paladini.

While plaintiff may have set forth facts sufficient to demonstrate that she possessed a cause of action against defendant for negligence or malpractice in the performance of psychological services, or for intentional infliction of emotional distress (see, e.g., *Karasek v LaJoie*, 92 NY2d 171, 699 NE2d 889, 677 NYS2d 265 [1998]; see also *Sanchez v Orozco*, 178 AD2d 391, 578 NYS2d 145 [1<sup>st</sup> Dept 1991]), the evidence

before this Court supports the second affirmative defense that the first cause of action is untimely. Plaintiff failed to submit any evidence whatsoever tending to demonstrate that she received psychological services from defendant or that a professional relationship between the parties was maintained at any time subsequent to 1997. Accordingly, the first cause of action in the complaint must be dismissed as untimely.

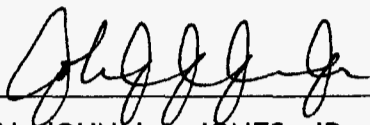
In order to recover for malicious prosecution, a plaintiff must establish four elements: that a criminal proceeding was commenced; that it was terminated in favor of the accused; that it lacked probable cause; and that the proceeding was brought out of actual malice (*Cantalino v Danner*, 96 NY2d 391, 394-395, 754 NE2d 164, 729 NYS2d 405 [2001]). Here, defendant has set forth evidence that she instituted a criminal complaint for petit larceny against plaintiff on or about April 3, 2005 when plaintiff stole the keys to locks for her home, her office and her car, and plaintiff has failed to demonstrate the existence of a triable issue of fact. In addition, defendant has averred that plaintiff was not arrested on such charge. Moreover, plaintiff admitted in her deposition to facts tending to show that she violated an order of protection in favor of defendant by initiating telephone contact. Accordingly, the second cause of action must be dismissed.

To the extent that plaintiff seeks to impose a constructive trust under the third cause of action in the complaint on the real property at 32 Camille Lane, East Patchogue, there are issues of fact that must be resolved at trial. The elements needed to impose a constructive trust on real property are: (1) a confidential or fiduciary relationship, (2) a promise, (3) a transfer in reliance thereon, and (4) unjust enrichment (*Losner v Cashline, L.P.*, 41 AD3d 789, 838 NYS2d 665 [2d Dept 2007]). The Courts of this state have recognized that the constructive trust doctrine is given broad scope to respond to all human implications of a transaction in order to give expression to the conscience of equity and to satisfy the demands of justice (*Iwanow v Iwanow*, 39 AD3d 476, 834 NYS2d 251 [2d Dept 2007]). Here, there is evidence that the relationship between the parties was one of trust and confidence, beginning when plaintiff entrusted herself to defendant's psychological care and counseling, and developing into a more intimate relationship in which both parties worked together to build their financial future, to raise two children and to maintain a common household. Plaintiff's deposition testimony indicates that defendant had control of her finances and that debts she incurred were common debts. Her testimony also suggests that defendant had control of all money that was exchanged when title to the property was transferred in full to her, including the mortgage payments and the additional \$153,000, and that defendant had promised plaintiff that she would be given continued access to her daughters. Viewing these allegations in the light most favorable to the plaintiff (*see Robinson v Strong Memorial Hospital*, 98 AD2d 976, 470 NYS2d 239 [4th Dept 1983]), there is

sufficient evidence before this Court to require a trial of material questions of fact on the third cause of action in the complaint (*see Sharp v Kosmalski*, 40 NY2d 119, 351 NE2d 721, 386 NYS2d 72 [1976]).

In view of the deposition testimony of the defendant, a licensed psychologist, that each of her daughters were conceived through sperm donation, that William Paladini is erroneously identified as the father of her daughters on their birth certificates, that he is neither their natural nor their adoptive father, and that health insurance coverage for her daughters has been provided through family coverage provided by William Paladini, this Court is constrained to refer this matter to the New York State Education Department, Office of Professions, Division of Professional Licensing, Psychology Unit, to take whatever action, if any, it deems appropriate under the circumstances.

DATED: 13 September 2007

  
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HON. JOHN J.J. JONES, JR.  
J.S.C.

CHECK ONE:  FINAL DISPOSITION

NON-FINAL DISPOSITION

TO:

NEW YORK STATE EDUCATION DEPARTMENT  
Office of Professions  
Division of Professional Licensing  
Psychology Unit  
89 Washington Avenue  
Albany, NY 12234-1000