

**McHugh v Belmonte**

2007 NY Slip Op 33210(U)

October 4, 2007

Supreme Court, Richmond County

Docket Number: 0100660/2007

Judge: Joseph J. Maltese

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND PART DCM 3**

---

**Index No.: 100660/07  
Motion No.: 1**

**PATRICIA McHUGH a/k/a PATRICIA PERGUE,**

*Plaintiff*

*against*

**ROSEANN M. BELMONTE a/k/a  
ROSEANN M. PALERMO,**

*Defendant*

---

**DECISION & ORDER**

**AFTER BENCH TRIAL**

**HON. JOSEPH J. MALTESE**

This court finds that the plaintiff has established a constructive trust in a house which she understood would be transferred to her by her mother and that in reliance of that understanding she paid for all of the expenses for that house, which she maintained and resided with her children. The court also finds that the defendant, the plaintiff's sister, used undue influence upon their mother to convey title to that house to the defendant, with the understanding that the defendant would preserve that house for the benefit of the plaintiff, her children and her brother. The defendant is permanently enjoined from evicting the plaintiff and her children and shall re-convey title to the subject premises to the plaintiff, subject to a further apportionment of expenses paid.

**FINDINGS OF FACT**

Frank and Ann Smeringlinolo had four children: Patricia Pergue a/k/a Patricia McHugh (Patricia), Roseann Belmonte a/k/a Roseann Palermo (Roseann), Robert Smeringlinolo (Robert), and Frank Smeringlinolo, Jr., who died when he was approximately 15 years of age.

In 1987, Frank and Ann Smeringlinolo executed identical wills prepared by Michael Ficchi, Esq. The wills provided that all of their assets would go to each other and then to their children. Upon the death of the last surviving spouse, their daughter, Roseann, would receive their house at 360 Guyon Avenue, Staten Island, New York and their daughter, Patricia and their son, Robert, would receive the house at 325 Guyon Avenue, Staten Island, New York along with the residue and remainder of the estate.

Roseann has been married twice and has no children. Patricia has also been married, and has two children, Edward and Ann, who reside with her at 325 Guyon Avenue, Staten Island, New York. Robert was married to Linda Martinez for approximately one year, and did not have any children through that marriage.

In the early 1970's, Robert was convicted of a crime and was sentenced to a long term of incarceration. He was released from prison in the early 1990's. Shortly thereafter, Robert and Theresa Randolph had a son Joseph (Joey) Randolph. Robert did not marry Theresa, nor did he live with her or his son. Over the course of several years, Bobby resided at both 360 Guyon Avenue with his parents, and at 325 Guyon Avenue with his sister, Patricia. His son, Joseph, is now 15 years old and continues to live with his mother in Pennsylvania. Joseph Randolph was adopted by Theresa's current husband. Robert died on November 6, 2006.

In 1992, Frank and Ann Smeringlinolo moved into their house at 360 Guyon Avenue. Also at that time the plaintiff, Patricia McHugh, moved into 325 Guyon Avenue. Patricia testified "From '94 until 2001 or 2002 I paid all – I paid the taxes, the mortgage, the points. I maintained the house for them."<sup>1</sup> Patricia also stated that the house was to be conveyed to her, but she told her mother to delay the conveyance because she was having marital difficulties with her husband and she did not want the house to be an issue in an ensuing divorce. Frank Smeringlinolo died on December 30, 2002.

On October 8, 2003, after her husband Frank Smeringlinolo died, Ann Smeringlinolo, accompanied by her daughter Roseann, met with Michael Ficchi, Esq. to discuss the preparation of deeds for both the 360 Guyon Avenue and the 325 Guyon Avenue houses to be transferred to Roseann. On October 15, 2003, Ann and her daughter Roseann returned to Mr. Ficchi's office where she executed two deeds conveying title to both of the residence to Roseann Palermo as the grantee while reserving life estates in each house for herself. Also at that time, Ann granted Roseann a Durable General Power of Attorney. Mr. Ficchi testified that it was his understanding

---

<sup>1</sup> TR, p. 72 l. 12-14.

that “Roseann’s other sister had a problem and that Roseann was to accommodate her and her child.”<sup>2</sup> Mr. Ficchi’s recollection was that Ann decided to utilize a deed transfer instead of a new will because it would be easier for Roseann to accomplish her mother’s wishes, eliminating the need for a will to be probated. Roseann testified, “She [her mother, Ann] said, I’m signing it over to you. She said, I’m not telling you to kick them out, I’m basically telling you to make sure that my grandchildren are safe.”<sup>3</sup>

In December 2003, within two months of signing over the deeds to Roseann, Ann Smeringlinolo was hospitalized for breathing problems. During the following months Ann, a lifelong smoker, was hospitalized several times for chronic breathing problems, which she apparently had for quite some time. During that period of time, the plaintiff and defendant both testified that the plaintiff had a relapse of drug use, and entered into a month long rehabilitation program in January 2004. In March of 2004, Roseann moved her mother out of 360 Guyon Avenue and into her residence at 8 Pierpont Place, Staten Island, New York, because she claimed her house was better for her mother’s breathing because of the central air conditioning. Patricia testified credibly that once her mother was moved to Pierpont Place, she no longer saw her because Roseann prohibited her and her brother Robert from visiting with their mother. Roseann denied those allegations. Ann died from her long term illness on July 26, 2004.

The deeds to both houses were recorded at the Richmond County Clerk’s Office on June 3, 2004, eight months after they were signed. Thereafter, Patricia and Robert confirmed that their mother had signed the deeds to both houses to Roseann. Within one year after her mother’s death, Roseann commenced a summary proceeding in the Civil Court to dispossess her sister

---

<sup>2</sup> TR, p. 142, l. 20-22.

<sup>3</sup> TR, p. 238, l. 3-6.

from 325 Guyon Avenue. The plaintiff presented the testimony of four witnesses in addition to herself at the trial. The defendant only presented herself.

Mario Carnese testified that many times over the course of his twenty-year friendship with the Smeringlinolo family, that Frank and Ann Smeringlinolo had discussed giving the 325 Guyon Avenue house solely to Patricia and the 360 Guyon Avenue house to Roseann. Moreover, Mr. Carnese further testified that, “Roseann told me that she was getting the house that she lived in from her parents, and that Pat was going to get the other house.”<sup>4</sup>

Linda Martinez, who was once married to Robert Smeringlinolo, the now deceased brother of the plaintiff and defendant, remained in contact with the Smeringlinolo family. She corroborated Mario Carnese’s testimony by stating, “Ann was very upset over Frank dying and she just kept saying that she was happy that she had everything, you know, for the kids; that the kids were going to be taken care of; that Frank and that my ex-husband, Robert, was going to be living in the basement.”<sup>5</sup>

Martin Belmonte, the former husband of Roseann, further strengthens the intent of Frank and Ann Smeringlinolo to provide for Patricia after their death. He testified regarding approximately two dozen conversations that had taken place between himself and Frank Smeringlinolo over the course of their friendship, stating, “He [Frank] said that 325 Guyon Avenue would always be Pat’s and the grandchildren among other things.”<sup>6</sup>

---

<sup>4</sup> TR, p. 110, l. 10-13.

<sup>5</sup> TR, p.126, l. 6-10.

<sup>6</sup> TR, p.162, l. 18-20.

Finally, Katherine Trifiletti, a family friend, also indicated the desire of the Smeringlinolos that the plaintiff would be given 325 Guyon Avenue. Ms. Trifiletti stated that she had many conversations with the Smeringlinolos over the years about the children and their living arrangements. She was able to recall the substance of that conversation, and testified, “Well, they said that Pat was to get the duplex and live there with the kids and they bought Roseann’s house and she bought a townhouse and that’s where everybody was to live.”<sup>7</sup>

### DISCUSSION

Generally, a constructive trust may be imposed “(w)hen property has been acquired in such circumstances that the holder of legal title may not in good conscience retain the beneficial interest.”<sup>8</sup> A constructive trust is an equitable remedy, necessarily flexible to accomplish its purpose.<sup>9</sup> Its purpose is to prevent unjust enrichment and in deciding whether a party is unjustly enriched is a legal conclusion “reached through the application of principles of equity.”<sup>10</sup>

In *Sharp v. Kosmalski*,<sup>11</sup> the New York Court of Appeals set forth four elements to establish a constructive trust: “(1) a confidential or fiduciary relation, (2) a promise, (3) a transfer in reliance thereon and (4) unjust enrichment.” However, no rigid requirements exist for imposing a constructive trust, and any factors considered relevant to the establishment of a

---

<sup>7</sup> TR, p.184, l. 15-18.

<sup>8</sup> *Beatty v. Guggenheim Exploration Co.*, 225 NY 380, 386 [1919].

<sup>9</sup> *Counihan v. Allstate Insurance Co.*, 194 F3d 357, 361 [2d Cir. 1999], citing *Simonds v. Simonds*, 45 NY2d 233, 241 [1978].

<sup>10</sup> *Sharp v. Kosmalski*, 40 NY2d 119, 123 [1976].

<sup>11</sup> *Id.* at 121.

constructive trust are simply guidelines, their rigid application not being required.<sup>12</sup> Rather, because the fundamental purpose is to prevent unjust enrichment, a constructive trust may be imposed whenever necessary to satisfy the demands of justice.<sup>13</sup>

In applying the first of the four *Sharp* factors to this case, a fiduciary relation certainly exists in this case. Patricia and Roseann were the daughters of Ann Smeringlinolo and the record in this case clearly indicates that a relationship of trust and confidence did exist between the parties. It is also undisputed that a formal transfer of the deeds took place.

As to the “promise” factor, even without an express promise, courts of equity have imposed a constructive trust upon property transferred in reliance upon a confidential relationship. Chief Judge Breitel stated in *Farano v. Stephanelli*,<sup>14</sup> that the decision to invoke the remedy of constructive trust “need not be determined exclusively by whether or not the defendant daughters expressed in so many words a promise to reconvey the properties to the father if he should ask.”

CPLR §4519 states in pertinent part:

Upon the trial of an action...a party or a person interested in the event...shall not be examined as a witness in his own behalf or interest...concerning a personal transaction or communication between the witness and the deceased person...

---

<sup>12</sup> *Matter of Estate of Knappen*, 655 NYS2d 110 [3d Dept 1997].

<sup>13</sup> *Id.*

<sup>14</sup> 183 NYS2d 707 [1<sup>st</sup> Dept 1959], following *Sinclair v. Purdy*, 235 NY 245, 254 [1923] [J. Cardozo].

In this case, the self serving statements of the parties' conversations with their deceased parents is not necessary to prove or disprove the claim. There is sufficient independent testimony to manifest the creation of a constructive trust for the benefit of Patricia in the house at 325 Guyon Avenue. All four disinterested witnesses who know the family well, testified that on several occasions Ann and Frank expressed their relief to be able to provide their children with a home by giving Patricia 325 Guyon Avenue and Roseann 360 Guyon Avenue.<sup>15</sup>

While it may be argued that the testimony of Roseann's ex-husband, Martin Belmonte, should be discredited, the strength of all four testimonies is their consistency in conveying the Smeringlinolo's intention to provide a home for each of their daughters. Moreover, Roseann testified to her awareness of this plan. At the very least, she understood that Ann transferred both deeds to her with the condition that she would take care of her sister, Patricia and her children.

In this case it was undisputed by the respondent that the petitioner was paying the mortgage, taxes and other expenses of 325 Guyon Avenue. It is inconceivable that Patricia would pay the mortgage, taxes, and all other expenses of the house for eight years without at least an understanding that her parents were leaving her the house.

The last, and most significant of the *Sharp* factors is unjust enrichment. A conclusion that one has been unjustly enriched "is essentially a legal inference drawn from the circumstances surrounding the transfer of property and the relationship of the parties. It is a conclusion reached through the application of principles of equity."<sup>16</sup>

---

<sup>15</sup> See TR p. 112, l. 12-24; p. 126, l. 6-16; p. 146, l. 14-16; p. 163, l. 10-16.

<sup>16</sup> *Sharp*, supra, 40 NY2d at 123.

Within one year after her mother's death, Roseann commenced a summary proceeding in the Civil Court to dispossess her sister from 325 Guyon Avenue. Roseann testified that she could no longer put up with her sister and her children and consequently, she wanted them out so that she could sell the property and keep the proceeds. Clearly, dispossessing Patricia and her children was not Ann's intent when she transferred the deeds to Roseann. Roseann acknowledged this in her testimony when she stated, "She [her mother, Ann] said, I'm signing it over to you. She said, I'm not telling you to kick them out, I'm basically telling you to make sure that my grandchildren are safe." Hence, allowing Roseann to evict her sister and her children, and sell the house and keep the proceeds, would constitute unjust enrichment in violation of the principles of equity. Moreover, Roseann has never presented either of her parents' wills for probate and testified that she and her husband kept all of the assets after paying for the funerals. Roseann also facilitated the sale of her mother's classic Corvette automobile to Mr. Ficchi, the attorney, for less than market value after he wrote the new deeds.

The credible testimony disclosed that Roseann has a gambling problem. Even she acknowledged that she would pawn her jewelry to cover her expenses. Roseann deceived her mother, who was ill for the last nine months of her life. Her mother conveyed both of the houses to Roseann with the understanding that she would allow her sister Patricia, and her children, along with her brother Robert, to reside in the 325 Guyon Avenue house. However, Roseann testified that after a brief period of time, she could no longer do it and had to sell the house. Roseann, who has no children, had her own home at 8 Pierpont Place when she took title to 360 Guyon Avenue. Subsequently, she sold 360 Guyon Avenue and kept the proceeds. Now she is attempting to evict her sister and children from 325 Guyon Avenue so that she could sell and keep those proceeds also. At the very least, this violated her dying mother's trust and understanding that she would take care of Patricia and her children. Ann intended that the 325 Guyon Avenue house would belong to Patricia, her children and her brother; and not that Roseann would get everything and they would get nothing.

For all of the foregoing reasons, this court finds that the plaintiff, Patricia McHugh a/k/a Patricia Pergue, has established a constructive trust in the house and real property commonly known as 325 Guyon Avenue, Staten Island, New York.

Plaintiff never offered any expert testimony to prove that there was a forgery on the deed. The allegations that the deed was forged was part of the multiple assertions made in the complaint. It was based solely on uncorroborated testimony which is insufficient to rebut the presumption of due execution of the recorded deeds.<sup>17</sup> However, this case was never really about whether the mother signed the deed, but under what understanding she had in conveying her assets for the benefit of her children.

Defendant raised a statute of limitations defense as to the fraud claim. CPLR §213(8) states that for “an action based on fraud. . . the time within which the action must be commenced shall be the greater of six years from the date the cause of action accrued or two years from the time the plaintiff or the person under whom the plaintiff claims discovered the fraud, or could with reasonable diligence have discovered it.” Defendant argues that plaintiff was aware that the deed was transferred by deed on February 28, 2004. The plaintiff claims that she became fully aware of the deed transfer after they were recorded on June 3, 2004 and after her mother died on July 20, 2004. Defendant asserts that since this action did not commence until April 5, 2007, the fraud claim is time-barred. The court rejects this argument because the statute allows the *greater* of six years from the date the cause of action accrued or two years from discovery of the fraud.<sup>18</sup>

The mere showing of opportunity and motive to exercise undue influence is usually insufficient to present a triable issue of fact, without evidence that undue influence was actually

---

<sup>17</sup> *Demblewski v. Demblewski*, 701 NYS2d 567 [App. Div. 4<sup>th</sup> Dept. 1999].

<sup>18</sup> CPLR §213(8).

wielded.<sup>19</sup> Here, however, Roseann took advantage of her mother's ailing condition to influence her to transfer the deed, with the understanding that she would preserve the house for the benefit of her sister, her children and her brother. Admittedly, Patricia has had a problem with drugs, which could have been the motivation for her mother to change her mind. But we have no testimony as to that intent, other than Roseann's self serving statements that are not to be considered at trial in accordance with CPLR §4519. Patricia appears to be free of drugs for the past few years. Roseann deceived her mother into believing that she would take care of the house for Patricia and her children, but that did not last very long. Now she wants to evict her sister and her children and keep everything for herself. This court, in equity, will not permit such an injustice and unjust enrichment and finds that the plaintiff has established the premises at 325 Guyon Avenue, Staten Island, New York.

Accordingly, it is hereby:

ORDERED, that the eviction proceeding by Roseann Palermo against her sister, Patricia McHugh, pending in the Civil Court of Richmond County is hereby permanently stayed; and it is further

ORDERED, that the defendant shall transfer to the plaintiff by deed title to the premises located at 325 Guyon Avenue, Staten Island, New York, 10306 and that the costs of said transfer and any New York City Real Property Transfer tax and New York State Real Estate Transfer taxes and any recording fees shall be paid by the defendant; and it is further

ORDERED, that the plaintiff shall pay the defendant for any taxes, insurance and other expenses incurred by the defendant from June 3, 2004 until the present and that a list of said expenses and receipts, if reasonably available, shall be presented to plaintiff and this court by October 19, 2007; and it is further

---

<sup>19</sup> *Matter of Walther*, 6 NY2d 49, 55 [1959].

ORDERED, that the plaintiff shall submit a list of expenses and receipts that she has paid or had paid on her behalf to the defendant or to any other party in connection with the house at 325 Guyon Avenue, Staten Island, New York 10306, and shall submit that list to the defendant and this court by October 19, 2007; and it is further

ORDERED, that this court, after receipt of both lists of expenses, shall apportion them in equity by a further Order and Judgment of this court.

ENTER,

Dated: October 4, 2007

---

Joseph J. Maltese  
Justice of the Supreme Court