

**Saita v Ulrich**

2008 NY Slip Op 31852(U)

July 2, 2008

Supreme Court, Albany County

Docket Number: 0065872/0051

Judge: Joseph C. Teresi

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STATE OF NEW YORK  
SUPREME COURT  
SINDI M. SAITA,

COUNTY OF ALBANY

Plaintiff,

-against-

**DECISION and ORDER**  
**INDEX NO. 6587-05**  
**RJI NO. 01-07-088581**

JOHN J. ULRICH,

Defendant.

Supreme Court Albany County All Purpose Term, April 30, 2008  
Assigned to Justice Joseph C. Teresi

**APPEARANCES:**

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**TERESI, J.:**

It is undisputed that the Plaintiff and Defendant were engaged to be married in 1996 or 1997. Upon their engagement Defendant gave to Plaintiff a diamond engagement ring. The parties engagement broke off in or about December 2002, and Defendant took back the engagement ring. The parties, however, continued to reside together until sometime in 2004. While the parties were engaged, the Defendant purchased two pieces of real estate in his name alone. The first parcel is located in Voorheesville, New York (purchased in 1997) and the second one is in Palm Beach, Florida (purchased in 2000). Plaintiff contributed significant

amounts of money for the purchase of both parcels of real estate at the closing of title and also paid portions of the mortgages and up-keep expenses for both parcels during the course of the engagement. Additionally, Plaintiff paid the monthly car payments for a Jeep Wrangler owned by Defendant and at least part of the Defendant's Albany County Club membership, all while the parties were engaged to be married.

Plaintiff commenced this action to recover the monies she expended. She currently claims that her complaint is grounded in a theory under Civil Rights Law §80-b and unjust enrichment. Defendant served his Answer, asserting numerous affirmative defenses. Both parties now bring motions for summary judgment.

On a motion on for summary judgment, the movant must establish by admissible proof, the right to judgment as a matter of law. Alvarez v. Prospect Hospital, 68 NY2d 320 (1986), Gilbert Frank Corp. v. Federal Insurance Co., 70 NY2d 966 (1988). The burden shifts to the opponent of the motion to establish by admissible proof, the existence of genuine issues of fact. Zuckerman v. City of New York, 49 NY2d 557 (1980). It is well established that on a motion for summary judgment, the court's function is issue finding, not issue determination. Sillman v. Twentieth Century-Fox Film Corp., 3 NY2d 395 (1957). All evidence must be viewed in the light most favorable to the opponent to the motion. Crosland v. New York City Transit Auth., 68 NY2d 165 (1986).

In opposing a motion for summary judgment, one must produce "evidentiary proof in admissible form. . . mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." Zuckerman, 49 NY2d at 562. It is incumbent upon the non-moving party to lay bare his proof in order to defeat summary judgment. O'Hara v Tonner, 288 AD2d

513 (2001). Mere conclusory assertions, devoid of evidentiary fact, are insufficient to raise a genuine triable issue of fact on motion for summary judgment as is reliance upon surmise, conjecture or speculation. Banco Popular North America v. Victory Taxi Management, Inc., 1 NY3d 381 (2004).

Defendant claims that Plaintiff's causes of action, and the facts that support her claims, are not actionable under any recognized legal theory. Whereas, Plaintiff claims that the undisputed facts herein establish her entitlement to summary judgment, on Defendant's liability only, under both her Civil Rights Law §80-b claim and her unjust enrichment claim. Plaintiff moves for an inquest to determine damages.

Civil Rights Law §80-b, in part, states: "Nothing in this article contained shall be construed to bar a right of action for... the return of money... or the value thereof at the time of such transfer... when the sole consideration for the transfer of the... money... was a contemplated marriage which has not occurred..." (emphasis added). Clearly, Civil Rights Law §80-b does not itself create a cause of action. Rather, it's language merely prevents any other portion of the Civil Rights Law to bar an otherwise valid cause of action.

The Court of Appeals, however, in examining the legislative purpose of Civil Rights Law §80-b stated that it was designed "to return the parties to the position they were in prior to their becoming engaged". Gaden v. Gaden, 29 NY2d 80, 88 (1971). The Court of Appeals examined the intent of the legislature to determine that the "sole consideration" language contained in the statute does not mean sole "legal consideration" but rather means "motive or reason" for the gift. Id.

The Third Department succinctly set forth the standard for a Civil Rights Law §80-b

claim by stating: “an individual may recover property or other gifts where the sole motivation for the transfer was a contemplated marriage which never occurred.” Von Bing v. Mangione, 309 AD2d 1038, 1041 (3d Dept. 2003).

Neither party has established, by admissible proof, the right to judgment as a matter of law on Plaintiff’s Civil Rights Law §80-b claim or the “sole motive or reason” element above. Here, it is undisputed that Plaintiff transferred money, during the engagement period, either to the Defendant or on his behalf for property owned by him. An issue of fact exists, as to each of the transfers, i.e. whether the “sole motive or reason” for such transfer was due to the contemplated marriage. Both Plaintiff’s and Defendant’s motions for summary judgment, on Plaintiff’s Civil Rights Law §80-b claim, are denied.

Turning to Plaintiff’s second theory of recovery, unjust enrichment, the Third Department held: “[t]o prevail on a claim of unjust enrichment, [a] plaintiff must show that (1) defendant was enriched (2) at plaintiff’s expense, and (3) that ‘it is against equity and good conscience to permit... defendant to retain what is sought to be recovered’”. Clark v. Daby, 300 AD2d 732 (3d Dept. 2002) (quoting Lake Minnewaska Mtn. Houses v Rekis, 259 AD2d 797, 798 (3d Dept. 1999)). Moreover, the Court of Appeals stated: “Courts will look to see if a benefit has been conferred on the defendant under mistake of fact or law, if the benefit still remains with the defendant, if there has been otherwise a change of position by the defendant, and whether the defendant’s conduct was tortious or fraudulent.” Paramount Film Distrib. Corp. v State of New York, 30 NY2d 415, 421(1971), cert denied 414 US 829).

Plaintiff’s unjust enrichment claims are limited in her Complaint to the two parcels of real estate at issue herein. It is undisputed on this record that the Defendant was enriched at

Plaintiff's expense, when Plaintiff contributed to the down payments made on the two parcels of real estate purchased by Defendant and by the payments Plaintiff made toward the mortgages and up keep on the real property. The inquiry focuses on whether there are any triable issues of fact relative to the third element of "equity and good conscience".

Here, Plaintiff has not made the requisite showing that she is entitled to judgment as a matter of law on her unjust enrichment claim for either parcel. Her moving papers do not allege a "mistake of fact or law" when she conferred a benefit upon the Defendant, nor does she allege that the "defendant's conduct was tortious or fraudulent". Clark, supra at 733. She fails to set forth any equitable considerations but merely relies upon her payment of money on behalf of Defendant to support her claim, which is insufficient and she did not sustain her burden of showing that "it is against equity and good conscience to permit... defendant to retain" what she is seeking to recover. Clark, 300 AD2d 732.

Turning to Defendant's motion for summary judgment on Plaintiff's unjust enrichment claim, his papers properly allege the necessary facts to show his entitlement to judgment as a matter of law in relation to the parcel of property in Voorheesville, New York. He has demonstrated that she received a benefit for her expenditures on the Vooreheesville, New York residence (i.e. she resided at the home) and Defendant paid substantial sums of money for such real estate. This shifts the burden to Plaintiff. She did not rebut Defendant's factual allegations relative to the equitable considerations surrounding her payments for the Voorheesville, New York property, and failed to raise a triable issue of fact relative to the "equitable" element of her unjust enrichment claim for the Voorheesville property. Defendant's motion for summary judgment to dismiss Plaintiff's unjust enrichment claim based on her payments for the

Voorheesville, New York property, is granted.

Defendant's motion for summary judgment on Plaintiff's unjust enrichment claim for the Palm Beach, Florida property is denied. Defendant's papers fail to allege the facts necessary to show his entitlement to judgment as a matter of law. Issues of fact exists relative to whether Defendant was unjustly enriched by Plaintiff's monetary contributions toward his purchase of the parcel of property located in Palm Beach, Florida.


Plaintiff also seeks summary judgment on her claim for return of the value of the improvement she made to the engagement ring. Plaintiff is correct that Civil Rights Law §80-b entitles her to a lien against the ring for the value of the improvement she made to it but she has failed to allege facts that support her entitlement to summary judgment as a matter of law. No credible evidence of a receipt or other documentary evidence, establishing the increase in value due to the claimed new setting, was submitted. Accordingly, Plaintiff's motion for summary judgment on this ground is denied.

This Court denies Defendant's request for attorney's fees.

All papers, including this Decision and Order are being returned to the attorneys for Plaintiff. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel are not relieved from the applicable provisions of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: July 2, 2008  
Albany, New York

  
Joseph C. Teresi, J.S.C.

**PAPERS CONSIDERED:**

1. Notice of Motion, dated April 15, 2008, with attached affidavit of Andrew Sommers, Esq., dated April 15, 2008, with attached Exhibits "A"- "C".
2. Notice of Cross-Motion, dated April 24, 2008, with attached affidavit of Sindi Saita, dated April 23, 2008, with attached Exhibits "1"- "11-6", and accompanying Memorandum of Law of Deborah Sheehan, Esq., dated April 23, 2008.
3. Reply affidavit of John Ulrich, dated April 28, 2008.