

Grifel v Madsen

2020 NY Slip Op 33118(U)

September 23, 2020

Supreme Court, Kings County

Docket Number: 500114/2020

Judge: Pamela L. Fisher

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 94 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof at 360 Adams St., Brooklyn, New York on the 23rd day of September 2020.

P R E S E N T:

HON. PAMELA L. FISHER,
J.S.C.

-----X

CAROLYN GRIFEL,

Plaintiff,

DECISION/ORDER

- against -

Index No: 500114/2020

EARL ANDREW MADSEN,
JP MORGAN CHASE BANK, NA,
and, US ALLIANCE FEDERAL CREDIT UNION,

Defendants.

-----X

Recitation, as required by CPLR §2219(a), of the papers considered in the review of this motion:

	<u>Papers Numbered</u>
Notice of Motion/Cross Motion/Order to Show Cause and Affidavits (Affirmations) Annexed _____	1, 2
Opposing Affidavits (Affirmations) _____	3, 4
Reply Affidavits (Affirmations) _____	5

Upon the foregoing papers, defendant Earl Andrew Madsen moves, for an order, pursuant to CPLR 3211(a)(7), to dismiss the complaint for failure to state a cause of action.

Background

Plaintiff commenced this action against defendants Earl Andrew Madsen, JP Morgan Chase Bank, and US Alliance Federal Credit Union on January 3, 2020. In her complaint, plaintiff alleges five causes of action: imposition of a constructive trust, unjust enrichment, breach of an express oral contract, quantum meruit recovery of the reasonable value of domestic services, and partition and/or sale of the premises. Plaintiff contends that she and defendant Madsen were in a romantic relationship for many years, cohabitated together since 2007, and agreed to purchase a house together (Complaint ¶¶ 11, 14, annexed as exhibit A to defendant’s motion papers). According to the complaint, plaintiff

asked her mother to borrow money for the down payment for the house, and in July 2013, plaintiff's mother transferred \$50,000 to defendant Madsen's bank account for this purpose (*Id.* at ¶¶ 19, 20, 22). Defendant used the money from plaintiff's mother to purchase the house in December 2013 for \$710,000.00, and plaintiff states that she and defendant had an agreement that they were both co-owners of the premises, even though she was left off the deed due to her prior bankruptcy filing (*Id.* at ¶¶ 24-27). Plaintiff and defendant resided in the property from December 2013 until November 2019, when defendant moved out (*Id.* at ¶ 36). Defendant allegedly promised to add plaintiff to the deed at the "first possible opportunity" (*Id.* at ¶ 28). Plaintiff indicates that over the years, she contributed funds for renovating the property, paying the mortgage, prompting her mother to contribute additional funds in the form of a loan for these purposes (*Id.* at ¶¶ 31, 32). Plaintiff also dedicated time and effort to finding tenants for the apartment on the premises (*Id.* at ¶ 32). Plaintiff maintains that defendant never added her name to the deed despite the removal of her bankruptcy filing from her credit history in 2017 (*Id.* at ¶¶ 56-58). Plaintiff also claims that she and the defendant entered into an oral contract in the Fall of 2017, requiring defendant to pay her at least \$4000 a month for domestic services, including cooking, cleaning the house, doing laundry, arranging family events, and entertaining defendant's family and work colleagues (*Id.* at ¶¶ 82-84). Plaintiff further maintains that defendant requested that she no longer work outside the home, and in addition to the \$4000 a month, he would also pay the carrying costs of the premises and other household expenses (*Id.* at ¶ 83). Defendant allegedly breached this agreement by not paying plaintiff her \$4000 a month stipend (*Id.* at ¶ 86).

Parties' Contentions

In support of his motion to dismiss, defendant contends that plaintiff has not pleaded a valid cause of action to impose a constructive trust, because she has merely stated an unenforceable oral contract for the transfer of property, which violates the Statute of Frauds (Chatterton Affirmation ¶ 26). Defendant argues that the constructive trust claim is deficient, because plaintiff has not adequately

pleaded the transfer and unjust enrichment elements, and the claim is barred by the statute of limitations (*Id.* at ¶¶ 42, 45, 53-57). Defendant claims that plaintiff's unjust enrichment cause of action is duplicative of her unenforceable oral contract claim (constructive trust cause of action), and that it is an implied contract claim that New York State does not recognize between unmarried cohabitating adults (*Id.* at ¶¶ 59, 61, 58). Defendant indicates that the breach of contract claim must be dismissed since there was no consideration, and the quantum meruit cause of action is an implied contract claim that is not recognized by the State of New York (*Id.* at ¶¶ 62-66, 67). Defendant maintains that the fifth cause of action for partition must be dismissed since all the other claims are deficient (*Id.* at ¶ 68).

In opposition to defendant's motion, plaintiff alleges that she has pleaded all of the elements to impose a constructive trust, that the Statute of Frauds is not a defense to a constructive trust cause of action, and the claim is not barred since it accrued in 2017, when her bankruptcy filing was removed from her credit history (Ferreira Affirmation ¶¶ 16, 19, 21). Plaintiff indicates that her cause of action for unjust enrichment should not be dismissed, as *Morone v. Morone*, 50 NY2d 481 [1980], did not preclude causes of action for unjust enrichment, and courts have permitted plaintiffs to simultaneously pursue causes of action for breach of express oral contract and unjust enrichment (Ferreira Affirmation ¶¶ 43, 44). Plaintiff argues that her third cause of action for breach of express oral contract must stand, since defendant's statement that the contract lacked consideration is false (*Id.* at ¶¶ 48, 50). Plaintiff maintains that the quantum meruit cause of action has been adequately pleaded, the holding in *Morone v. Morone* was limited to recovery for personal services, and that she provided more than personal services to the defendant (*Id.* at ¶¶ 53, 54). In conclusion, plaintiff states that her fifth cause of action for partition should not be dismissed since the other causes of action are valid (*Id.* at ¶ 56).

In reply, defendant reiterates that plaintiff has stated an unenforceable oral agreement to transfer property rather than a cause of action to impose a constructive trust (Chatterton Reply Affirmation ¶ 3). Defendant maintains that an unjust enrichment cause of action cannot salvage an

unenforceable contract claim, the breach of express oral contract claim is without consideration, and the quantum meruit cause of action is not recognized under New York State law (*Id.* at ¶¶ 16, 19-20, 22).

Law

Motion to Dismiss

On a motion to dismiss, pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must “liberally construe the complaint, accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Minovici, v. Belkin BV*, 109 A.D.3d 520, 521 [2d. Dept. 2013]).

Statute of Frauds

New York General Obligations Law Section 5-703(1) indicates that an estate or interest in real property cannot be “created, granted, assigned, surrendered, or declared” without a “deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same” (NY Gen. Oblig. §5-703(1)).

Constructive Trust

A constructive trust is an equitable remedy that “may be imposed when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest” (*Watson v. Pascal*, 65 AD3d 1333, 1334 [2d. Dept. 2009]). A constructive trust cause of action includes four elements: “(1) a confidential or fiduciary relationship; (2) a promise; (3) a transfer in reliance on that promise; and (4) unjust enrichment” (*Id.*). Since constructive trust is an equitable remedy, “courts do not rigidly apply the elements but use them as flexible guidelines” (*Beason v. Kleine*, 96 AD3d 1611, 1613 [4th Dept. 2012]; *see also Hernandez v. Florian*, 173 AD3d 1144, 1145 [2d. Dept. 2019] (stating that since “the elements serve only as a guideline, a constructive

trust may still be imposed even if all of the elements are not established”). Courts have held that the transfer in reliance element “is not limited to instances in which the plaintiff has actually transferred title to the property to the defendant, but may also include instances where the plaintiff has provided substantial funds for the maintenance and improvement of it” (*Hairman v. Jhawarer*, 122 AD3d 570, 572 [2d. Dept. 2014]; see also *Washington v. Defense*, 149 AD2d 697, 698-99 [2d. Dept. 1989]; *Lester v. Zimmer*, 147 AD2d 340, 342 [3d. Dept. 1989]). Cases have indicated that unjust enrichment may be established where the plaintiff contributed money for the down payment, mortgage payments, and for maintenance of the property (*Diaz v. Diaz*, 130 AD3d 560, 562 [2d. Dept. 2015]).

A constructive trust claim is governed by a six-year statute of limitations (*See* CPLR 213(1); *Zane v. Minion*, 63 AD3d 1151, 1153 [2d. Dept. 2009]). If the plaintiff alleges that the defendant acquired the property wrongfully, then the constructive trust claim accrued on the date it was acquired (*Id.*). If the plaintiff contends that the defendant wrongfully withheld property, then the claim accrued on the “date the trustee breache[d] or repudiate[d] the agreement to transfer the property” (*Id.* at 1153-54, indicating that “the plaintiff’s claim accrued when the defendant allegedly failed to honor her promises, which according to the complaint, occurred in late 2005 or early 2006”).

Unjust Enrichment

A cause of action for unjust enrichment may be maintained where the parties do not have a contract, but “an obligation [should be] imposed by equity to prevent injustice” (*Georgia Malone & Co. v. Rieder*, 19 NY3d 511, 516 [2012]). Plaintiff must allege three elements to plead a claim for unjust enrichment: “(1) the other party was enriched, (2) at that party’s expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered” (*Id.*) Courts have dismissed unjust enrichment claims where they were duplicative of unenforceable contract claims, and “constituted an impermissible attempt to circumvent the Statute of Frauds” (*Komolov v. Segal*, 144 AD3d 487, 488 [1st Dept. 2016]; *Komolov v. Segal*, 2013 N.Y. Slip Op.

51339(U), at *3 [Sup Ct, NY County 2013), *aff'd*, 117 AD3d 557 [2014]). Where the plaintiff merely seeks to “recover the value of [his/her] financial contributions made in reliance upon defendant’s alleged promise,” a cause of action for unjust enrichment is not barred by the Statute of Frauds (*Hernandez*, 173 AD3d at 1146).

Breach of Express Oral Contract

To prevail on a cause of action for breach of contract, plaintiff must plead four elements: (1) the existence of a contract, (2) the plaintiff’s performance pursuant to the contract, (3) the defendant’s breach of his or her contractual obligations, and (4) damages resulting from the breach (*Dee v. Rakower*, 112 AD3d 204, 208-09 [2d. Dept. 2013]). While New York courts have declined to recognize implied contracts for personal services between unmarried couples who live together, “New York courts have long accepted the concept that an express agreement between unmarried persons living together is as enforceable as though they were not living together” (*Morone v. Morone*, 50 NY2d 481, 486 [1980] (recognizing an express oral agreement between unmarried couple, in which defendant agreed to compensate plaintiff for domestic services)).

Quantum Meruit

To prevail on a quantum meruit cause of action, the plaintiff must allege: “(1) the performance of services in good faith, (2) the acceptance of services by the person to whom they are rendered, (3) the expectation of compensation therefor, and (4) the reasonable value of the services rendered” (*Johnson v. Robertson*, 131 AD3d 670, 672 [2d. Dept. 2015]). New York State does not allow for quantum meruit recovery for domestic services performed between unmarried cohabitating adults (*Morone*, 50 NY2d at 484-85).

Partition

Partition is an equitable remedy, and “one who holds an interest in real property as a tenant in common may seek physical partition of the property, or, a partition and sale thereof if it

appears that physical partition alone would greatly prejudice the owners of the premises” (*Amato v. Amato*, 2009 NY Slip Op. 51465(U), at *10 [Sup Ct, Kings County 2009]). To determine whether partition is appropriate in a particular case, “the court must consider the respective interests of the parties involved and whether partition may be had without great prejudice” (*Id.*). Partition is an appropriate remedy to correct unjust enrichment after a constructive trust has been imposed (*See Watson*, 65 AD3d at 1334, holding that “[p]artition was properly directed as an equitable remedy for [defendant’s] unjust enrichment” after court had imposed constructive trust on real property).

Analysis

Constructive Trust

Plaintiff’s cause of action for constructive trust should not be dismissed, since plaintiff has stated a valid claim to impose a constructive trust. Plaintiff has adequately pleaded the first element, a confidential or fiduciary relationship, as the complaint alleges that defendant and plaintiff were in a romantic relationship since 2006, had cohabitated since 2007, and were registered as domestic partners in the State of New York as of 2014 (Complaint ¶ 11). Plaintiff has also adequately pleaded the second element, a promise, since the complaint states that when the property was purchased in December 2013, “Defendant Madsen promised plaintiff that the Premises belonged to both of them, that defendant Madsen would hold title to the Premises for the benefit of plaintiff, and that defendant Madsen would add plaintiff’s name to the deed to the Premises at the first possible opportunity” (*Id.* at ¶ 28). Defendant does not contest that plaintiff has adequately pleaded the first two elements of a constructive trust claim.

Defendant maintains that the plaintiff has failed to adequately plead the third and fourth elements of a constructive trust claim: a transfer in reliance on the promise and unjust enrichment, because the down payment was not directly transferred from plaintiff to defendant, and defendant was not unjustly enriched, since plaintiff benefited by living in the home, and from the improvements she

made to the property (Chatterton Affirmation ¶¶ 45, 55). Although plaintiff's mother transferred the money for the down payment directly to defendant's bank account, the complaint alleges that plaintiff asked her mother to loan the funds, and that the mother loaned the funds to the defendant "on behalf of plaintiff" (*Id.* at ¶¶ 19, 25). Since constructive trust is an equitable remedy, and not all elements need to be present to impose a constructive trust, the court declines to dismiss the cause of action merely because the down payment was not directly transferred from the plaintiff to the defendant. In any event, the transfer in reliance element has been adequately pleaded, since the plaintiff contends that she "contributed her personal funds to the costs of renovations" and "gave [money] to defendant Madsen on a nearly monthly basis for payment of the costs of the premises, including the mortgage and other carrying costs" (*See Lester*, 147 AD2d at 342 (stating that "a constrictive trust may be imposed...where the proponent has extended funds or effort in reliance on a promise"))).

Defendant's claim that plaintiff has not adequately pleaded unjust enrichment is incorrect. The cases defendant cites in support of this contention are distinguishable. *Henning v. Henning*, 103 AD3d 778 (2d. Dept. 2013) involved a constructive trust cause of action by a wife against her husband's parents, contending that defendants were unjustly enriched by her improvements to the property. This case can be differentiated, since defendants moved pursuant to CPLR 4401 for judgment as a matter of law "dismissing the complaint," "at the close of plaintiff's case at a nonjury trial" (*Id.* at 778). Similarly, *Wilson v. La Van*, 22 NY2d 131 (1968) is distinguished, since it involves an oral agreement for the transfer of real property, not a constructive trust claim. In *Onorato v. Lupoli*, 135 AD2d 693 (2d. Dept. 1987), the judge merely states in reference to a cause of action for specific performance, that "the fact that plaintiff made mortgage, taxes and other payments on the property during the period in which he resided in his brother-in-law's house, could be considered as rent for the use of the property" (*Id.* at 694). The judge denied plaintiff's motion to amend the pleadings to add a cause of action for the imposition of a constructive trust based on the fact that plaintiff "failed to establish that he had a

prior interest in the subject property, nor [did] he [establish] the existence of an oral promise to convey title to the property” (*Id.* at 695). The judge never addressed unjust enrichment in his opinion. *Marini v. Lombardo*, 79 AD3d 932 [2d. Dept. 2010] is inapplicable since the judge made the decision to dismiss the constructive trust cause of action after a nonjury trial.

Plaintiff has adequately pleaded all three elements for unjust enrichment in her complaint. The first two elements, that the other party was enriched at her expense, are supported by plaintiff’s allegations that she asked her mother to loan money to defendant for the down payment, and she also spent money, and dedicated her time and effort to maintaining and renovating the premises, and acquiring tenants (Complaint ¶¶ 30, 32). Plaintiff’s complaint sufficiently alleges the third element, “that it is against equity and good conscience” to permit the defendant “to retain what is sought to be recovered.” Plaintiff maintains that without her mother’s contributions, defendant would not have acquired any interest in the premises, and that if the court does not grant her an equitable interest in the premises, defendant would be unjustly enriched by her monetary contributions and the time and labor she devoted to finding and managing tenants for the premises (*Id.* at ¶¶ 62-64).

Defendant’s contention that plaintiff has merely stated an unenforceable oral agreement for the transfer of property that is barred by the Statute of Frauds is without merit. As stated above, plaintiff has adequately pleaded a cause of action for imposition of a constructive trust. The Statute of Frauds is not a defense to a cause of action to impose a constructive trust (*Vanasco v. Angiolelli*, 97 AD2d 462, 462 [2d. Dept. 1983]).

The cause of action to impose a constructive trust is not barred by the statute of limitations. Although defendant contends that plaintiff’s claim accrued in 2013 when the property was purchased, since there was no legal impediment to adding plaintiff’s name to the deed, the parties had an agreement that plaintiff’s name was left off the deed due to her prior bankruptcy filing (Chatterton Affirmation ¶ 40-42; Complaint ¶ 27). In light of the fact that a court is required to give the plaintiff

the “benefit of every favorable inference” on a motion to dismiss, the court declines to interpret the statement in the complaint that defendant promised to add plaintiff to the deed “at the first possible opportunity” literally. The language, “the first possible opportunity” can be interpreted to mean when plaintiff’s prior bankruptcy filing was no longer included in her credit history, which according to the complaint was in mid-2017 (*Id.* at ¶ 57). Since defendant did not wrongfully acquire the property, plaintiff’s claim accrued on the date defendant wrongfully withheld it, which was in mid-2017. Therefore, since a cause of action to impose a constructive trust is governed by a six-year statute of limitations, plaintiff’s first cause of action is not time-barred.

Unjust Enrichment

Defendant has sufficiently pleaded a cause of action for unjust enrichment, as discussed above in the Constructive Trust sub-section of this decision. Defendant’s contention that the unjust enrichment claim is duplicative of a cause of action for breach of an unenforceable contract is without merit, since the first cause of action sufficiently pleads the elements to impose a constructive trust. The first cause of action does not state a claim to enforce an oral agreement. The second cause of action for unjust enrichment is not duplicative of the first cause of action, since it merely seeks damages, not an interest in real property (*Id.* at 12, 18). The unjust enrichment cause of action is not precluded under New York State Law, since *Morone v. Morone*, 50 NY2d 81 (1980), merely declined to recognize implied contracts for compensation for domestic services between an unmarried couple living together. The unjust enrichment cause of action is not based on an implied contract to compensate plaintiff for domestic services; it arises from an alleged agreement to add plaintiff to the deed, and expenditures, and time and effort she spent in reliance on the agreement. The unjust enrichment cause of action is not barred by the Statute of Frauds, since it is not duplicative of an unenforceable contract claim, and plaintiff is merely seeking damages, not to enforce defendant’s promise (*Komolov*, 144 AD3d at 488; *Hernandez*, 173 AD3d at 1146).

Breach of Express Oral Contract

Plaintiff's claim for breach of express oral contract should not be dismissed, as plaintiff has adequately pleaded all of the necessary elements. Plaintiff has adequately pleaded the existence of a contract, as the complaint includes an offer, acceptance, and consideration. The complaint alleges that in the Fall of 2017, defendant offered to "pay the carrying costs and other household expenses and provide plaintiff with a monthly stipend of at least \$4000 in exchange for plaintiff furnishing domestic services to defendant Madsen" (Complaint ¶ 83). Defendant also asked plaintiff not to "continue employment outside the household" (*Id.*). The complaint indicates that plaintiff accepted this offer by reducing her employment obligations outside the home, and performing domestic services for defendant, including "maintaining the household, shopping, cooking, cleaning, doing laundry, caring for plaintiff and defendant Madsen's dog, arranging family vacations, planning family events, and entertaining defendant Madsen's extended family, children and work colleagues" (*Id.* at ¶ 84). Defendant's contention that the contract lacks consideration is false, as plaintiff agreed to work less outside the home, which detrimentally impacted her, and she provided domestic services to plaintiff, which benefited him (*Dee*, 112 AD3d at 210, stating that "[c]onsideration consists of either a benefit to the promisor or a detriment to the promisee"). Plaintiff has also sufficiently pleaded the second element of her breach of contract claim, since the complaint alleges that plaintiff performed her contractual obligations by reducing her employment outside the home, and by performing domestic services for the defendant and his family. Plaintiff contends that defendant breached the agreement by not paying her the monthly stipend of at least \$4000 (Complaint ¶¶ 86, 90), and she sustained damages in this amount from October 2017 to November 2019 (*Id.* at ¶ 91).

Plaintiff's claim for breach of express oral contract should not be dismissed on public policy grounds, since *Morone v. Morone* recognized the validity of oral contracts between unmarried couples for domestic services. The oral contract is also not barred by the Statute of Frauds, since the terms of

the contract did not provide that it could not be performed within one year, and no other section of the Statute of Frauds is applicable (NY Gen. Oblig. Law § 5-701(a)(1)).

Quantum Meruit

Plaintiff's cause of action for quantum meruit recovery for the reasonable value of domestic services must be dismissed, since this type of implied contract is not recognized under New York State law (*See Morone*, 50 NY2d at 484 (declining to recognize a cause of action for compensation for domestic services between an unmarried couple, where plaintiff alleged that she expected to be compensated for domestic duties, and defendant "accepted her services knowing that she expected compensation for them")). Although plaintiff claims that this cause of action should not be dismissed since she performed more than personal services for defendant, her claims in this portion of the complaint do not allege anything more than domestic services that a housewife would perform for her husband. Courts in New York State have declined to imply an agreement that a person be compensated for services of this kind (*Id.* at 488, stating that "it is not reasonable to infer an agreement to pay for the services rendered when the relationship of the parties makes it natural that the services were rendered gratuitously"). Therefore, this cause of action must be dismissed.

Partition

Since partition is an appropriate remedy after a constructive trust has been imposed, the court declines to dismiss the partition action at this time.

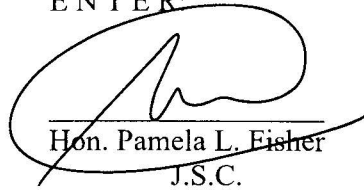
Conclusion

The plaintiff has adequately pleaded causes of action for imposition of a constructive trust, unjust enrichment, breach of an express oral contract, and partition. Therefore, defendant's motion to dismiss is denied on the first three causes of action (constructive trust, unjust enrichment, breach of express oral contract), and the fifth cause of action (partition), and defendant's motion to dismiss is

granted solely as to the fourth cause of action for quantum meruit recovery of the reasonable value of domestic services.

This constitutes the decision and order of the Court.

ENTER:



Hon. Pamela L. Fisher
J.S.C.

HON. PAMELA L. FISHER