

Gibson v Absolam
2023 NY Slip Op 35325(U)
July 24, 2023
Supreme Court, Nassau County
Docket Number: Index No. 615919/18
Judge: Francis Ricigliano
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.

SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. FRANCIS RICIGLIANO**
Supreme Court Justice

X

PAUL GIBSON,

Plaintiff,

-against-

DEBBIE ANN ABSOLAM,

Defendant.

X

DECISION AND ORDER

PART 27

INDEX NO. 615919/18

Motion Seq. 6

The following papers were read on this motion

NYSCEF DOCS

Affidavits, Affirmations, Exhibits, Memos.....104 - 132

Defendant moves for an order pursuant to CPLR § 3212 granting her summary judgment and dismissing all causes of action as against her. Plaintiff opposes. The motion is decided as hereinafter provided.

The parties are former romantic partners who resided together at the subject property known as 672 Jaffa Avenue, Uniondale, New York (hereinafter the "Property") from 2007 through 2020. The Property, previously owned by Defendant's parents, was sold to Defendant and title was conveyed to Defendant by Deed duly executed on May 23, 2007 and recorded June 26, 2007. Defendant simultaneously executed a mortgage, as sole borrower thereunder, dated May 23, 2007 and recorded June 26, 2007 (hereinafter the "Mortgage").

Plaintiff claims that when the Property was purchased the parties were involved in a romantic relationship and that there was an understanding between them that the Property would be owned by both of them in equal shares. Plaintiff claims that, in reliance upon that representation, he made certain financial and other contributions to the household and to the Property.

Plaintiff commenced the instant action by the filing of a summons and complaint on or about November 28, 2018 which consists of two causes of action sounding in constructive trust and unjust enrichment. Defendant now moves for summary judgment and dismissal of both causes of action.

It is well established that the proponent of a motion for summary judgment must demonstrate entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact. Alvarez v. Prospect Hosp., 68 NY2d 320 (1986); see also, Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851 (1985) The evidence will be construed in a light most favorable to the one moved against. Weiss v. Garfield, 21 AD2d 156 (3d Dept 1964). The burden then shifts to the party opposing the motion for summary judgment to come forth with evidence, in admissible form, showing the existence of a triable issue of fact. Bercy Invs. v Sun, 239 AD2d 161 (1st Dept. 1997); Federal Home Loan Mtge. Corp. v Karastathis, 237 AD2d 558 (2nd Dept 1997). Conclusory allegations unsupported by competent evidence are insufficient to defeat a motion for summary judgment. Alvarez v Prospect Hosp., *supra* at 324-25.

A constructive trust is imposed to prevent unjust enrichment and 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.”” Harounian v. Harounian, 198 A.D.3d 734 (2d

Dept 2021), quoting, Cruz v. McAneney, 31 A.D.3d 54 (2d Dept 2006). The necessary elements for the imposition of a constructive trust are (1) a confidential or fiduciary relationship; (2) a promise either express or implied; (3) a transfer in reliance thereon; and (4) unjust enrichment. Diaz v. Diaz, 130 A.D.3d 560 (2d Dept 2015). A constructive trust may be imposed in the absence of an express promise where, “given reliance upon the confidential relationship of the parties, ‘a promise may be implied or inferred from the very transaction itself.’” Watson v. Pascal, 65 A.D.3d 1333, 1334 (2d Dept 2009), quoting, Sharp v. Kosmalski, 40 N.Y.2d 119, 122 (1976) Where a party has no actual interest in a subject property, they can demonstrate that an equitable interest developed through the expenditure of money, labor, and time in the property. Marini v. Lombardo, 79 A.D.3d 932 (2d Dept 2010).

The necessary elements for a constructive trust are to be flexibly applied and same may be imposed as necessary to satisfy the demands of justice. Keane v. Keane, 193 A.D.3d 838 (2d Dept 2021); Cruz v. McAneney, 31 A.D.3d 54 (2d Dept 2006).

A marriage has been treated as a confidential relationship for the purposes of a constructive trust analysis, and that analysis has been extended to parties who, though never actually married, have engaged in a romantic relationship and cohabited for a period of years in a manner akin to a marriage. Lester v. Zimmer, 147 A.D.2d 340 (3d Dept 1989)

The elements of a cause of action to recover for unjust enrichment are: “(1) the defendant was enriched, (2) at the plaintiff’s expense, and (3) that it is against equity and good conscience to permit the defendant to retain what is sought to be recovered.” Travelsavers Enterprises, Inc. v. Analog Analytics, Inc., 149 A.D.3d 1003 (2d Dept 2017), quoting, GFRE, Inc. v. U.S. Bank, N.A., 130 A.D.3d 569, 570 (2d Dept 2015).

In support of her motion, Defendant has submitted, inter alia, copies of the Deed and Mortgage, and certified copies of transcripts from the depositions of each of the parties. Plaintiff, in opposition, submits his own affidavit, copies of various cancelled checks and copies of receipts from Home Depot.

The Deed lists as party in the second part "Debbie Ann Absolam and Paul Gibson," however "and Paul Gibson" is stricken and two sets of initials appear in the margin. Plaintiff denies that the initials are his own. Defendant did not submit an affidavit in support of her motion, however in her deposition testimony she was unable to identify any of the initials in the margin of the Deed. (Deft. Deposition transcript November 2, 2022, at 34, lines 20-24, NYSCEF Doc. 125).

Plaintiff submits copies of various cancelled checks including several which he asserts were payments made toward the Mortgage. Defendant, in her deposition testimony, concedes that "In the first couple of years I made all of the payments. Then he made the payments after." (Deft. Deposition transcript November 2, 2022, at 36, lines 19-21, NYSCEF Doc. 125).

Plaintiff submits various receipts from Home Depot as well as cancelled checks which he contends reflect his payments toward various home renovations and expenses. Defendant, in her deposition testimony, conceded that various renovations were undertaken and that both parties paid portions of those costs.

In the instant matter, Defendant has failed to demonstrate entitlement to judgment as a matter of law as she has failed to tender sufficient evidence to eliminate any material issues of fact. It is not disputed that the parties were involved in a romantic relationship and cohabited at the Property for over a decade, and that Plaintiff contributed money, labor, and time toward the Property over a period of some ten years. Additionally, the inclusion of Plaintiff's name on the

drafted Deed, albeit stricken thereafter, demonstrates that questions of fact remain pertaining to the parties' respective intents with respect to the Property. Triable issues of fact remain with regard to both causes of action.

In light of the foregoing, it is hereby:

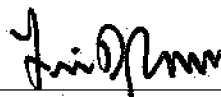
ORDERED, that the motion is hereby **DENIED** in its entirety.

Any relief requested not specifically addressed herein is denied.

This constitutes the Decision and Order of this Court.

ENTER:

Dated: July 24, 2023



Hon. Francis Ricigliano
Supreme Court Justice

ENTERED

Jul 26 2023

NASSAU COUNTY
COUNTY CLERK'S OFFICE