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NOTICE

NOTICE IS HEREBY GIVEN that JASON G. PUDLEINER, ESQ., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 3rd day of August 2012, and that he intends to practice law as an Assistant Public Defender in the Office of the Public Defender, County of Adams, 23 Baltimore Street, Gettysburg, Pennsylvania.

5/11, 18 & 25

**NOTICE BY THE ADAMS COUNTY
CLERK OF COURTS**

NOTICE IS HEREBY GIVEN to all heirs, legatees and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts and will be presented to the Court of Common Pleas of Adams County—Orphan's Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, June 1, 2012 at 8:30 a.m.

MULLINS—Orphan's Court Action Number OC-31-2012. The First and Final Account of George F. Mullins and Tina M. Linthicum, Co-Executors of the Estate of Rosalie Mullins a/k/a Rosalie F. Mullins deceased, late of Oxford Township, Adams County, Pennsylvania.

Kelly A. Lawver
Clerk of Courts

5/18 & 25

NOTICE

NOTICE IS HEREBY GIVEN that SEAN A. MOTT, ESQ., intends to apply in open court for admission to the Bar of the Court of Common Pleas of Adams County, Pennsylvania, on the 3rd day of August 2012, and that he intends to practice law as an Assistant Public Defender in the Office of the Public Defender, County of Adams, 23 Baltimore Street, Gettysburg, Pennsylvania.

5/11, 18 & 25

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN, in compliance with the requirements of Section 311, of Act 1982 – 295 (54 Pa. C.S. 311), the undersigned entity(ies) announce their intention to file in the Office of the Secretary of the Commonwealth of Pennsylvania, on approximately April 11, 2012, a certificate for the conduct of a business in Adams County, Pennsylvania, under the assumed or fictitious name, style or designation of REGISTERED REDNECK SOCIETY, with its principal place of business at 881 Yellow Hill Road, Biglerville, PA 17307. The character or nature of the business is the unity of rednecks and the sale of memberships and merchandise.

Kimberly K. Hess
P.O. Box 831
Biglerville, PA 17307
717-677-8872

5/25

INCORPORATION NOTICE

NOTICE IS HEREBY GIVEN that Articles of Incorporation – Domestic Non-Profit Corporation were filed with the Department of State, Commonwealth of Pennsylvania, at Harrisburg, Pennsylvania on September 14, 2010, for CHAPEL VIEW, PHASE 2 COMMUNITY OWNERS ASSOCIATION, INC., under the provisions of the Pennsylvania Non-Profit Corporation Law of 1988.

Barley Snyder
Solicitors

5/25

BEAMER VS. CRAMER

1. Whenever the legal title to property is obtained through means or under circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity imposes a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never, perhaps, have had any legal estate therein.

2. Specific instances in which equity impresses a constructive trust are numberless. However, each instance falls under one of two categories in which constructive trusts are found.

3. First, a constructive trust arises if property is conveyed to another as a result of fraud, duress, undue influence, or mistake or if the transferee, at the time of the transfer, is in a confidential relation to the transferor, and the fraud, duress, undue influence, or abuse of confidential relationship is accompanied by an actual promise by the transferee to hold the property in trust and a reliance on that promise by the transferor. Under this theory, a constructive trust will not be found where the transferee establishes the property was conveyed as a gift.

4. Under the second theory, a constructive trust arises where a person holding title to property is subject to an equitable duty to convey it to another on the grounds that he would be unjustly enriched if he were permitted to retain it. Thus, a meritorious unjust enrichment claim is essential to the establishment of a constructive trust under the second theory.

5. The elements of unjust enrichment are [1] benefits conferred on defendant by plaintiff, [2] appreciation of such benefits by defendant, and [3] acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value.

6. Where unjust enrichment is found, the law implies a quasi-contract which requires the defendant to pay to plaintiff the value of the benefit conferred. In other words, the defendant makes restitution to the plaintiff in quantum meruit.

7. A showing of knowledge or wrongful intent on the part of the benefitted party is not necessary to show unjust enrichment in actions seeking a constructive trust.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 10-S-1175, JAY A. BEAMER VS. SHEILA J. CRAMER.

George W. Swartz, Esq., for Plaintiff

Robert L. Buzzendore, Esq., for Defendant

George, J., December 2, 2011

OPINION

This litigation arises from a relationship formed between the parties when they met during the summer of 2007. Plaintiff's father passed away in August of 2007. Coincidentally, at this same time, Plaintiff and Defendant were discussing purchasing a home together. These distinct circumstances converged when Plaintiff and Defendant decided to purchase Plaintiff's father's former residence from the estate. On February 1, 2008, Plaintiff and Defendant, as buyers,

entered into an agreement of sale with the estate of Claire Beamer at a purchase price of \$163,000. The sales agreement contemplated a \$5,000 down payment and a credit against the purchase price in the amount of \$81,500, which evidenced Plaintiff's share in his father's estate. It was further contemplated that Defendant would use proceeds from a previous divorce settlement toward the purchase price, including the tendering of a down payment. The remaining deficiency in the purchase price would be funded through a mortgage. Due to Plaintiff's compromised credit history, Defendant pursued obtaining a mortgage in her own name. Although Defendant was successful in obtaining a mortgage, it was conditioned upon Plaintiff's name being removed from both the sales agreement and subsequent deed to the property. Plaintiff complied with the condition by assigning his interest in the sales agreement to Defendant. At the time of settlement, the estate executed a deed to Defendant in her name alone. As contemplated, the purchase price consisted of a credit from Plaintiff's share of his father's estate in the amount of \$81,500, cash payment by Defendant in the amount of \$23,146.69, and a mortgage note executed by Defendant alone in the amount of \$65,200. The settlement sheet, which was not signed by Plaintiff, referenced Plaintiff's contribution of his inheritance as a "gift of equity."

The parties moved into the residence together and shared the property's expenses, including the payment of Defendant's mortgage. There is some disagreement as to the exact timing¹; however, it is undisputed that at some point, Defendant presented a "cohabitation agreement" to Plaintiff that defined certain parameters of the parties' relationship by imposing house duties and responsibilities on each. The cohabitation agreement, prepared by Defendant's counsel, also provided that breach of the agreement by Plaintiff would result in Plaintiff's loss of any interest in the real estate. It is equally undisputed that Plaintiff refused to execute the agreement.

The parties' relationship began to deteriorate in February 2010, which ultimately led to Defendant asking Plaintiff to move out of the residence. Plaintiff sought his share of the residence's value and Defendant refused, asserting the residence was her property alone as

¹ Plaintiff contends that this agreement was presented for the first time subsequent to settlement. Defendant recalls the agreement being discussed on two occasions: prior to settlement and some time, several days later, post-settlement.

Plaintiff's contribution of his \$81,500 inheritance was a gift to her. Plaintiff claims he is entitled to his share of the estate as a constructive trust was created under the theory of unjust enrichment. He claims that although the property is titled in Defendant's name alone, denying him any interest in the property under the circumstances is unconscionable. Currently, Plaintiff moves this Court for summary judgment.

Under the Pennsylvania Rules of Civil Procedure, a court may enter summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. **Pa. R. Civ. P. 1035.2**; *Strine v. Commonwealth*, 894 A.2d 733, 737 (Pa. 2006). Summary judgment is only appropriate where the pleadings, depositions, answers to interrogatories, omissions and affidavits, and other materials demonstrate that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Roche v. Ugly Duckling Car Sales, Inc.*, 879 A.2d 785, 789 (Pa. Super. 2005) (quotations and citations omitted). The burden of demonstrating the lack of any genuine issue of material fact falls upon the moving party and, in ruling on the motion, the court must consider the record in the light most favorable to the non-moving party. *Id.* However, where a motion for summary judgment has been supported with depositions, answers to interrogatories, or affidavits, the non-moving party may not rest on the mere allegations or denials in its pleadings. *Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, 644 A.2d 1251, 1254 (Pa. Super. 1994). Rather, the non-moving party must by affidavit or in some other way provided for within the Rules of Civil Procedure, set forth specific facts showing that a genuine issue of material fact exists. *Id.* Summary judgment is only appropriate in those cases which are free and clear from doubt. *McCannaughey v. Bldg. Components, Inc.*, 637 A.2d 1331, 1333 (Pa. 1994).

"Whenever the legal title to property is obtained through means or under circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest, equity imposes a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same, although he may never, perhaps, have had any legal estate therein..." *Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 US 238, 250 (2000) (citations and internal quotations omitted). The constructive trust remedy is intended to restore particular funds or property to the

true owner. *In Re Kamand Constr., Inc.*, 298 B.R. 251 (Bankr. M.D. Pa. 2003). Specific instances in which equity impresses a constructive trust are numberless. *Pierro v. Pierro*, 263 A.2d 692, 696 (Pa. 1970) (citation omitted). However, each instance falls under one of two categories in which constructive trusts are found. *Kohr v. Kohr*, 413 A.2d 687, 690 (Pa. Super. 1979).

First, a constructive trust arises if property is conveyed to another as a result of fraud, duress, undue influence, or mistake or if the transferee, at the time of the transfer, is in a confidential relation to the transferor, and the fraud, duress, undue influence, or abuse of confidential relationship is accompanied by an actual promise by the transferee to hold the property in trust and a reliance on that promise by the transferor. *Id.* (citations omitted). Under this theory, a constructive trust will not be found where the transferee establishes the property was conveyed as a gift. *Burns v. Kabboul*, 595 A.2d 1153 (Pa. 1991); *Fiumara v. Fiumara*, 427 A.2d 667 (Pa. 1981). Where the plaintiff has not alleged and the evidence does not establish the defendant made an express promise to retain the plaintiff's property in trust, the plaintiff must proceed under the second theory. *Kohr*, 413 A.2d at 691. Instantly, there is no evidence that Defendant made an express promise to retain Plaintiff's property in trust. Thus, the success of Plaintiff's litigation is dependent upon the second theory enunciated by *Kohr*.

Under the second theory, a constructive trust arises "where a person holding title to property is subject to an equitable duty to convey it to another on the grounds that he would be unjustly enriched if he were permitted to retain it." *Id.* Thus, a meritorious unjust enrichment claim is essential to the establishment of a constructive trust under the second theory. *Commerce Bank/Pennsylvania v. First Nat'l Bank*, 911 A.2d 133, 144 (Pa. Super. 2006). Unjust enrichment is a quasi-contractual theory. *Id.* at 143. The Superior Court provided the following detailed explanation of unjust enrichment in *Commerce Bank*:

"A quasi-contract imposes a duty, not as the result of any agreement, whether express or implied, but in spite of the absence of an agreement, when one party receives unjust enrichment at the expense of another. In determining if the doctrine applies, we focus not on the intention of the

parties, but rather on whether the defendant has been unjustly enriched. The elements of unjust enrichment are [1] benefits conferred on defendant by plaintiff, [2] appreciation of such benefits by defendant, and [3] acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. The most significant element of the doctrine is whether the enrichment of the defendant is unjust; the doctrine does not apply simply because the defendant may have benefitted as a result of the actions of the plaintiff. Where unjust enrichment is found, the law implies a quasi-contract which requires the defendant to pay to plaintiff the value of the benefit conferred. In other words, the defendant makes restitution to the plaintiff in quantum meruit.”

Id. at 143-44 (citations and internal quotations omitted). A showing of unjust enrichment may amount to a general assertion that the ends of public policy and substantial justice demand that a constructive trust be impressed. *Buchanan v. Brentwood Federal Sav. And Loan Ass’n*, 320 A.2d 117, 128 (Pa. 1974). A showing of knowledge or wrongful intent on the part of the benefitted party is not necessary to show unjust enrichment in actions seeking a constructive trust. *Crossgates Realty, Inc. v. Moore*, 420 A.2d 1125 (Pa. Super. 1980).

Instantly, there is no dispute that Plaintiff conferred a substantial benefit on Defendant by utilizing his entire inheritance to cover one-half of the purchase price for real estate titled in Defendant’s name alone. That Defendant appreciated a benefit by Plaintiff’s action is beyond reproach as the real estate was deeded in her name alone. Defendant argues that although there is no factual issue as to the first two elements of unjust enrichment, there remains a factual dispute as to whether it is inequitable for the Defendant to retain the benefit without the payment of value as she argues the property was gifted to her. I disagree.

Although Defendant’s pleadings and brief liberally and generically reference claims of gift, there is no support in the factual record for this claim. The primary support for Defendant’s claim is referenced in a settlement statement that \$81,500 was a “gift of equity.” Defendant, however, concedes that there is a paucity of any

evidence attributing the statement to Plaintiff as he did not execute the settlement statement. In fact, Defendant cannot refute Plaintiff's statement that he never saw the document prior to the commencement of litigation. Contrary to Defendant's argument, Defendant concedes Plaintiff never directly told her that he was gifting the money to her, but rather said "he was going to put it into the house."² Defendant's recognition of Plaintiff's financial interest in the home is evidenced by two additional undisputed facts: (1) subsequent to settlement, Defendant requested Plaintiff to execute a document which, if breached, would result in forfeiture of his interest in the property; and (2) Defendant believed Plaintiff was entitled to a share in the property until she perceived their relationship to have been based on broken promises.³ Thus, despite Defendant's boilerplate claim of gift, there are no direct facts in the record supporting this claim.

Moreover, reading the circumstances in the light most favorable to Defendant does little to prolong this litigation. The parties entered into a relationship with each other that led to a decision to cohabitate. Coincidentally, an acceptable home they could afford became available through the death of Plaintiff's father. Plaintiff was conveniently able to avoid issues related to his credit worthiness by using his estate proceeds to finance his half of the property. Defendant, on the other hand, was able to obtain a mortgage within her financial means by only having to finance less than 50 percent of the true value of the property purchased. This arrangement of convenience could only be accomplished if the property was insulated from Plaintiff's poor credit rating by placing it in Defendant's name alone. Although all was well while the parties were able to get along, unfortunately, the parties realized within approximately two short years that their relationship would not be permanent.

To suggest Plaintiff gifted his entire inheritance in the amount of \$81,500 to another who, at the time, he knew less than a year, borders upon absurdity. Similarly, it is unconscionable to suggest Plaintiff's \$81,500 inheritance is forfeited by a two-year relationship with Defendant. Rather, the undisputed facts, and surrounding circumstances, lead only to one conclusion: it would be inequitable for

² Deposition of Sheila Cramer, July 29, 2011, p. 54.

³ Deposition of Sheila Cramer, July 29, 2011, pp. 52-53.

Defendant to retain the benefit of Plaintiff's contribution to the purchase of the property without some correspondent payment to him.⁴

Although the imposition of a constructive trust against the property in favor of Plaintiff and against Defendant is appropriate, an evidentiary hearing will be necessary to establish the extent of that trust. An award equal to the amount of Plaintiff's contribution may not be equitable as the value of the real estate at issue may have increased or decreased in value since the contribution. Similarly, it is not possible to assign a percentage of the value of the property based upon the factual record before the Court, as the record indicates some dispute as to the respective contributions of the parties.

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 2nd day of December 2011, partial summary judgment is granted in favor of the Plaintiff and against the Defendant. Specifically, a constructive trust in the real property located at 87 Prince Street, Littlestown, Adams County, Pennsylvania, is granted in favor of the Plaintiff and against the Defendant. Summary judgment as to the amount of the constructive trust is denied.

A hearing on the issue of damages shall be scheduled by the Court following a prehearing conference which will be held on January 4, 2012 at 10 a.m. in Jury Deliberation Room No. 1 of the Adams County Courthouse at which time counsel are directed to appear.

⁴ Although the Court reaches this conclusion on the theory of constructive trust, in *Fenderson v. Fenderson*, 685 A.2d 600 (Pa. Super. 1996), the Superior Court applied a theory of resulting trust to remarkably similar circumstances. The court instructed that the elements of a purchase-money resulting trust are: "(1) the transfer is made to one person and the purchase price is paid by another; (2) the payer does not have the intention that no resulting trust shall arise; (3) the transferee is not the natural object of the transferor's bounty." *Id.* at 605. The Defendant challenges the applicability of *Fenderson* by arguing, in part, that Plaintiff has not properly raised the theory of resulting trust. Although in light of the foregoing disposition it is not necessary to decide that issue, I note generally that "[a] court of equity in decreeing a constructive trust is bound by no unyielding formula. The equity of the transaction must shape the measure of relief." *Kohr*, 413 A.2d at 690, quoting *Chambers v. Chambers*, 176 A.2d 673, 675 (Pa. 1962).

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

FIRST PUBLICATION**ESTATE OF ALLEN F. KASTEN, DEC'D**

Late of the Borough of Carroll Valley,
Adams County, Pennsylvania

Executrix: Patricia Kasten, 5 Janet
Trail, Fairfield, PA 17320

Attorney: John A. Wolfe, Esq., Wolfe &
Rice, LLC, 47 West High Street,
Gettysburg, PA 17325

**ESTATE OF LEONARD P. SHIPLEY,
DEC'D**

Late of the Borough of Littlestown,
Adams County, Pennsylvania

Leonard W. Shipley, 205 Deep Woods
Court, Nashville, TN 37214; Faye E.
Haker, 63 Myrtle Point Circle SW,
Supply, NC 28462

Attorney: David K. James III, Esq., 234
Baltimore St., Gettysburg, PA 17325

SECOND PUBLICATION

(No Estate Notices Submitted)

THIRD PUBLICATION**ESTATE OF WILLIAM J. BROWNE,
DEC'D**

Late of Berwick Township, Adams
County, Pennsylvania

Executrix: Patricia E. Gabaree, 1021
Jackson Square Road, Spring
Grove, PA 17362

Attorney: John J. Mooney III, Esq.,
Mooney & Associates, 230 York
Street, Hanover, PA 17331

**ESTATE OF ROBERT EUGENE PRICE
a/k/a ROBERT E. PRICE, DEC'D**

Late of Straban Township, Adams
County, Pennsylvania

Executor: Jody K. Price, 342 Heritage
Drive, Gettysburg, PA 17325

Attorney: Wendy Weikal-Beauchat,
Esq., 63 West High St., Gettysburg,
PA 17325

**ESTATE OF BERNADETTE M. WEAVER,
DEC'D**

Late of the Borough of McSherrystown,
Adams County, Pennsylvania

Administratrix c.t.a.: Joyce A. Jarosick,
109 Elk Drive, Hanover, PA 17331

Attorney: Elinor Albright Rebert, Esq.,
515 Carlisle Street, Hanover, PA
17331

ESTATE OF DONALD F. WOOD, DEC'D

Late of the Borough of Carroll Valley,
Adams County, Pennsylvania

Executor: ACNB Bank, Attn: Christine
Settle, 16 Lincoln Square, P.O. Box
4566, Gettysburg, PA 17325

Attorney: Robert E. Campbell, Esq.,
Campbell & White, P.C., 112
Baltimore Street, Suite 1,
Gettysburg, PA 17325-2311

