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SHERIFF'S SALE

AUG 5TH SALE CONTINUED TO:

IN PURSUANCE of a Writ of Execution, Judgment No. 11-S-0308 issuing out of Court of Common Pleas Adams County, and to me directed, will be exposed to Public Sale on Friday, the 7th day of October 2011, at 10:00 o'clock in the forenoon at the Sheriff's Office located in the Courthouse, Borough of Gettysburg, Adams County, PA, the following Real Estate, viz.:

SHORT DESCRIPTION

By virtue of Writ of Execution
No. 11-S-0308

U.S. BANK NATIONAL ASSOCIATION

vs.

CLAUDE E. CARMAN

211 SCHOOL HOUSE HILL ROAD

FAYETTEVILLE, PA 17222

FRANKLIN TOWNSHIP

Parcel No.: 12-110-7A

IMPROVEMENTS THEREON:

RESIDENTIAL DWELLING

JUDGMENT AMOUNT: \$66,637.24

Attorneys for Plaintiff

PURCELL, KRUG & HALLER

717-234-4178

SEIZED and taken into execution as the property of **Claude E. Carman** and to be sold by me.

James W. Muller-Sheriff
Sheriff's Office, Gettysburg, PA

TO ALL PARTIES IN INTEREST AND CLAIMANTS: You are notified that a schedule of distribution will be filed by the Sheriff in his office on October 28, 2011, and distribution will be made in accordance with said schedule, unless exceptions are filed thereto within 20 days after the filing thereof. Purchaser must settle for property on or before filing date.

ALL claims to property must be filed with Sheriff before sale date.

As soon as the property is declared sold to the highest bidder, 20% of the purchase price or all of the cost, whichever may be the higher, shall be paid forthwith to the Sheriff.

8/5, 12 & 19

FICTITIOUS NAME NOTICE

NOTICE IS HEREBY GIVEN that an Application for Registration of Fictitious Name was filed in the Commonwealth of Pennsylvania on March 14, 2011 for ECONOMIC DEVELOPMENT VENTURES, located at 312 Cove Hollow Road, Fairfield, PA 17320. The name and address of each individual interested in the business is James R. Hedges, 312 Cove Hollow Road, Fairfield, PA 17320. This was filed in accordance with 54 Pa.C.S. 311.

8/12

EMIG VS. LUPO

1. The overall objective of compulsory arbitration is the expeditious disposition of pending litigation. The adoption of a system of compulsory arbitration, however, does not deprive a common pleas court of jurisdiction to hear civil matters otherwise subject to arbitration.

2. There is not always a remedy under the law for every wrong as some wrongs are simply not legally cognizable wrongs. As noted by the Superior Court, the “arrows of outrageous fortune” sometimes come from Cupid’s bow, but the law does not provide a shield from them and their consequences.

3. A claim for unjust enrichment arises from a quasi-contract. Such a contract imposes a duty, not as a result of any agreement, whether express or implied but in spite of the absence of an agreement, where one party receives unjust enrichment at the expense of another.

4. It has long been recognized by our appellate courts that preliminary objections in the nature of a demurrer are an inappropriate means by which to challenge the legality of damages sought in a complaint.

In the Court of Common Pleas of Adams County, Pennsylvania,
Civil, No. 10-S-1717, CAROL E. EMIG VS. RICHARD R. LUPO

Archie V. Diveglia, Esq., for Plaintiff

Linda S. Siegle, Esq., for Defendant

George, J., March 16, 2011

OPINION

Plaintiff, Carol E. Emig (“Emig”), filed a Complaint on October 5, 2010, alleging breach of promise and unjust enrichment against Defendant, Richard R. Lupo (“Lupo”). Emig alleges that she and Lupo were romantically involved in September of 2006 and that the parties decided to live together. She claims that in furtherance of their relationship, she accepted Lupo’s proposal to her. She claims further that the parties made “mutual promises to each other.” Included among those promises was Lupo’s commitment to provide housing and otherwise provide financially for her for the rest of her natural life. Emig claims that in contemplation of the marriage, she expended approximately \$40,686.00 of her assets in order to improve Lupo’s residence. Her Complaint seeks specific performance or, in the alternative, damages for unjust enrichment. Lupo has filed Preliminary Objections raising a number of issues. Initially, he claims that the damages claimed in this case do not exceed the statutory limits for compulsory arbitration, 42 Pa. C.S.A. § 7361, thus depriving the Court of jurisdiction. Lupo further demurs to the cause of action based upon specific performance arguing that

enforcement of a promise to marry is precluded by Pennsylvania's Heart Balm Act, 23 Pa. C.S.A. § 1901 et seq. Finally, Lupo objects to the unjust enrichment count alleging that it seeks the incorrect measure of damages. For the reasons set forth below, the Preliminary Objections are granted in part and denied in part.

Initially, I note that Lupo's challenge to the jurisdiction of this Court lacks merit. Whether a cause of action is ultimately referred to compulsory arbitration does not change the rules of pleading. To the contrary, the Pennsylvania Rules of Civil Procedure are applicable to all civil actions. Pa. R.C.P. 1001. Lupo's preliminary objection challenging the subject matter jurisdiction of the Court of Common Pleas based upon compulsory arbitration is premature. There is nothing improper about the way this litigation was commenced. Moreover, the pleadings have not yet been closed. Pursuant to Adams C. Civ. R. 1302(b), after the pleadings are closed, either party may move to appoint arbitrators.

Incidentally, even if Lupo's challenge was procedurally appropriate, it lacks any indicia of substantive support. The overall objective of compulsory arbitration is the expeditious disposition of pending litigation. *McGonigle v. Currence*, 564 A.2d 508, 510 (Pa. Super. 1989). The adoption of a system of compulsory arbitration, however, does not deprive a common pleas court of jurisdiction to hear civil matters otherwise subject to arbitration. *Monahan v. McGrath*, 636 A.2d 1197, 1199 (Pa. Super. 1994).

Although this objection will be overruled, in an effort to assist the parties in navigating the remaining course of this litigation, I also note that actions which require equitable or declaratory relief are not to be referred to arbitration. Pa. R.C.P. 1301, 1981 explanatory note. As Emig currently requests equitable relief in the nature of specific performance and unjust enrichment, jurisdiction of this matter will remain with this Court rather than a board of arbitration.

Next, Lupo demurs to the cause of action based upon a claim for specific performance/breach of promise to marry. "The standard of review for preliminary objections in the nature of a demurrer is limited; the question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible." *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, 866 A.2d 270, 274 (Pa. 2005) (quoting *MacElree v. Philadelphia Newspapers, Inc.*,

674 A.2d 1050, 1056 (Pa. 1996)). “Where a doubt exists as to whether a demurrer should be sustained, the doubt must be resolved in favor of overruling it.” *Id.*

In the preliminary objection, Lupo argues that even if a promise to marry had been made, it is unenforceable under the Heart Balm Act, 23 Pa. C.S.A. § 1901 et seq. That act unequivocally provides that “[a]ll causes of action for breach of contract to marry are abolished.” 23 Pa. C.S.A. § 1902. In clear and unambiguous language, the act prohibits any cause of action arising out of the breach of the promise to marry another. *Ferraro v. Singh*, 495 A.2d 946, 948 (Pa. Super. 1985).

A review of Emig’s Complaint reveals that her request for specific performance is precisely the type of cause of action precluded by the Heart Balm Act. For instance, Emig claims that upon acceptance of Lupo’s proposal, the parties made mutual promises to care for and provide a comfortable home for each other. The promises included an understanding that she was to provide housekeeping services, clothing care, laundry services, and other caretaking services to Lupo in exchange for his promise to provide housing and other financial support for the rest of her life. In furtherance of their promises, Emig further alleges to have expended assets for the improvement of Lupo’s real property which both were living in prior to this litigation. Her Complaint seeks to specifically enforce Lupo’s alleged promises, to order Lupo to desist any efforts to evict her from his residence, and to reimburse her the monetary sums she claims to have advanced.

Clearly, the act precludes this Court from specifically enforcing the alleged promise to marry. Similarly, future promises which amount to the sharing of duties commonly associated with the bliss of a married life together are so interweaved with the marriage promise that these claims are also barred by the act. Emig cannot evade the force and effect of the statute by characterizing the subtle qualities of a marriage relationship as a future promise to perform ministerial duties. Emig’s Complaint recognizes as much in noting that Lupo’s alienation of her affections in his alleged current actions make the prospect of future marriage unbearable and untenable. As the promises which Emig attempts to specifically enforce are so intertwined with the promise to marry, Lupo’s demurrer will be granted.

In reaching this conclusion, the Court is not unsympathetic to Emig's plight. However, there is not always a remedy under the law for every wrong as some wrongs are simply not legally cognizable wrongs. As noted by the Superior Court in *Ferraro*: "[t]he 'arrows of outrageous fortune' sometimes come from Cupid's bow but the law does not provide a shield from them and their consequences." *Ferraro v. Singh*, 495 A.2d 946, 950 (Pa. Super. 1985).

Lupo's final preliminary objection seeks to strike the claim for unjust enrichment alleging that the Complaint requests the incorrect measure of damages. Lupo notes that the Complaint seeks damages for funds which Emig claims to have actually expended rather than the correct measure of damages which Lupo claims to be the value of the benefit allegedly conferred to him.

A claim for unjust enrichment arises from a quasi-contract. Such a contract imposes a duty, not as a result of any agreement, whether express or implied, but in spite of the absence of an agreement, where one party receives unjust enrichment at the expense of another. *Stoeckinger v. Presidential Fin. Corp. of Delaware Valley*, 948 A.2d 828, 833 (Pa. Super. 2008) (citing *AmeriPro Search, Inc. v. Fleming Steel Co., Inc.*, 787 A.2d 988, 991 (Pa. Super. 2001)).¹ Although Lupo properly summarizes the law in regard to the measure of damages, see *Mitchell v. Moore*, 729 A.2d 1200 (Pa. 1999), the demurrer lacks merit. Mindful that a demurrer may only be granted where a case is clear and free from doubt, *Rambo v. Green*, 906 A.2d 1232, 1235 (Pa. Super. 2006), this Court must accept as true all material facts set forth in the pleadings as well as all inferences reasonably deducible therefrom. *Cooper v. Church of St. Benedict*, 954 A.2d 1216, 1218 (Pa. Super. 2008). In doing so, I note that Emig's Complaint alleges that she conferred benefits on Lupo which were appreciated by him and which the acceptance and retention of

¹ Although the Heart Balm Act precludes causes of action for the breach of a contract to marry, it does not preclude all actions resulting from breach of such contract. *Pavlicic v. Vogtsberger*, 136 A.2d 127 (Pa. 1957). For instance, the law of conditional gifts creates a cause of action distinct from breach of promise to marry suits. *Nicholson v. Johnson*, 855 A.2d 97 (Pa. Super. 2004), appeal denied 868 A.2d 453. Under such a theory, Emig may certainly recover for gifts conditionally provided to Lupo. It follows that Emig may pursue a cause of unjust enrichment for benefits appreciated by Lupo arising from conditional gifts. See *Fonzi v. Fonzi*, 633 A.2d 634, 636 (Pa. Super. 1993) (trial courts have broad equitable powers to effectuate justice).

occurred under circumstances that it would be inequitable for him to retain the benefit without payment of value. See *Stoeckinger*, 948 A.2d 828. Although the value of those benefits is a matter of dispute, for purposes of a demurrer, I cannot conclude that Emig's expense for the benefits is not equivalent to the value of those benefits. Moreover, it has long been recognized by our appellate courts that preliminary objections in the nature of a demurrer are an inappropriate means by which to challenge the legality of damages sought in a complaint. *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668, 671 n.2 (Pa. 1970).

For the foregoing reasons, the attached Order is entered.

ORDER

AND NOW, this 16th day of March 2011, the Defendant's Preliminary Objections are granted in part and denied in part. The Defendant's preliminary objection seeking dismissal based upon lack of jurisdiction is denied. The Defendant's demurrer to Count I is granted. The Defendant's demurrer to Count II is denied. As additional pleadings cannot cure the deficiency in Count I, permission to amend will not be granted.

The Defendant is directed to file an Answer to the remaining count in the Complaint within twenty (20) days of the date of this Order.

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 PATRICIA A. JOYNER, DEC'D**

Late of the Borough of Littlestown, Adams County, Pennsylvania

Executor: Earl W. Joyner, 287 S. Columbus Ave., Littlestown, PA 17340

SECOND PUBLICATION**ESTATE OF THELMA W. BLOCHER, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Co-Executors: Jeanne A. Bunty, 796 Mt. Tabor Rd., Gardners, PA 17324; Timothy E. Willman, 3 Clear Spring Rd., Dillsburg, PA 17019

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF FRANCES M. BOLLINGER, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania

Executor: Charles W. Knox, 561 SW Whitetail Circle, Lake City, FL 32024

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

ESTATE OF E. GEORGE COLEMAN, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Larry D. Coleman, 3286 Carlisle Rd., Gardners, PA 17324

ESTATE OF JAMES THOMAS GIST a/k/a JAMES T. GIST, DEC'D

Late of Germany Township, Adams County, Pennsylvania

Executor: Allen G. Harris, 2627 Charity Way, Hanover, PA 17331

ESTATE OF HELEN M. SMITH, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Executrices: Helen L. Lentz and Barbara A. Gotwalt, c/o D.J. Hart, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

Attorney: D.J. Hart, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

ESTATE OF RUTHANNA I. WALLACE, DEC'D

Late of the Borough of East Berlin, Adams County, Pennsylvania

Co-Executors: Charles B. Wallace II and Suzanne I. Myers, c/o Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

Attorney: Sharon E. Myers, Esq., CGA Law Firm, PC, 135 North George Street, York, PA 17401

ESTATE OF JOAN E. WOLF a/k/a JOAN ELIZABETH WOLF, DEC'D

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Executor: Guy Bream, 225 Conewago Road, New Oxford, PA 17350

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

THIRD PUBLICATION**ESTATE OF DONALD T. deCAMP, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Scott T. deCamp, 1118 Amherst Ave., Modesto, CA 95350

Attorney: Puhl, Eastman & Thrasher, 220 Baltimore St., Gettysburg, PA 17325

ESTATE OF BARBARA LEE SMITH GREENBERG, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania

Executor: Lisa Siedlecki, 490 Barlow Two Taverns Road, Gettysburg, PA 17325

Attorney: Teeter, Teeter & Teeter, 108 W. Middle St., Gettysburg, PA 17325

ESTATE OF MARY ELIZABETH STUDY, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Roy E. Study, Jr., 4002 Tara Dr., Colleyville, TX 76034; Anna Catherine Hostetler, 395 Bowers Rd., Littlestown, PA 17340

ESTATE OF LYNN W. WIEGAND, DEC'D

Late of Hamiltonban Township, Adams County, Pennsylvania

Executor: ACNB Bank, P.O. Box 4566, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
No. 04-S-1251

BRANDY M. BOLGER, Plaintiff
v.

MICHAEL T. BOLGER, Defendant

ORDER

AND NOW, this 3rd day of August 2011, upon consideration of the foregoing Motion for Order for Forfeiture, a hearing is hereby scheduled on August 24, 2011, at 8:30 a.m. in Courtroom #2. MICHAEL T. BOLGER, the owner/defendant of the property at issue, is advised that if he fails to appear the relief requested may be granted in his absence.

Upon further consideration of the Petitioner's Motion for Special Order Directing Service of Process upon MICHAEL T. BOLGER, pursuant to Pa.R.C.P. 430, and it appearing to the Court that Petitioner has made a good faith effort to locate and serve Defendant in the regular course, it is hereby ORDERED and DECREED that said Petition is granted and Service of the Motion for Order for Forfeiture and this Order upon Defendant shall be authorized as follows: service of process by publication.

BY THE COURT:
Thomas R. Campbell
J.

IN THE COURT OF COMMON PLEAS
OF ADAMS COUNTY, PENNSYLVANIA

CIVIL ACTION—LAW
No. 04-S-1251

BRANDY M. BOLGER, Plaintiff
v.

MICHAEL T. BOLGER, Defendant

MOTION FOR ORDER FOR
FORFEITURE OF PROPERTY AND
MOTION FOR SPECIAL ORDER
DIRECTING SERVICE OF PROCESS

AND NOW, this 1st day of August 2011 comes Bernard A. Yannetti, Jr., Esquire, Solicitor for the Sheriff's Office of Adams County, Pennsylvania, who files on behalf of the Sheriff's Office of Adams County this Motion for Order for Forfeiture of Property and Motion for Special Order Directing Service of Process in the above-captioned case. In support of this motion, the following is averred:

1. On December 10, 2004, the following weapon(s) were confiscated from the Defendant by the Adams County Sheriff's Department:

- Baretta 9mm with 15 round magazine

2. Pursuant to an Order of Court dated April 28, 2005, a copy of which is marked Exhibit "A," attached hereto and made part hereof, the case was dismissed.

3. On May 26, 2005 and June 17, 2005 correspondence was sent to the Defendant by the Sheriff's Office of Adams County, notifying the Defendant he may petition the Court to have the above-referenced weapons returned to him. Copies of the correspondence are attached hereto, made part hereof and marked Exhibit "B."

4. On July 29, 2005, the Sheriff's Office sent a Request for Change of Address or Boxholder Information Needed for Service of Legal Process form to the Littlestown Post Office, regarding the Defendant's last known address of 2130 Mount Hope Road, Fairfield, PA, which was returned "Not known at address given" and an address of 636 Mickey Inn Rd., Chambersburg, PA was provided. A copy of said request form is attached hereto, made part hereof and marked Exhibit "C."

5. August 4, 2005 correspondence was sent to the Defendant at 636 Mickey Inn Rd., Chambersburg, PA by the Sheriff's Office of Adams County, notifying the Defendant he may petition the Court to have the above-referenced weapons returned to him. It was returned to sender "Moved Left No Address." Copies of the correspondence and returned envelope are attached hereto, made part hereof and marked Exhibit "D."

6. On August 17, 2010, the Sheriff's Office sent a Request for Change of Address or Boxholder Information Needed for Service of Legal Process form to the Littlestown Post Office, regarding the Defendant's previously known address of 2130 Mount Hope Road, Fairfield, PA, which was returned "No change of address order on file." A copy of said request form is attached hereto, made part hereof and marked Exhibit "E."

7. August 30, 2010 correspondence was again sent to the Defendant at 2130 Mount Hope Road, Fairfield, PA by the Sheriff's Office of Adams County, notifying the Defendant he may petition the Court to have the above-referenced weapons returned to him, which was returned stating he no longer lived at given address and no forward address was provided. A copy of the correspondence is attached hereto, made part hereof and marked Exhibit "F."

8. Petitioner believes and therefore avers that Defendant currently resides at an undisclosed and unknown address and it is impossible to accomplish service of process of this Motion for Order for Forfeiture and any forthcoming Orders of

Court notifying Defendant of upcoming hearing dates.

WHEREFORE, based upon all the foregoing reasons, the undersigned requests this Honorable Court schedule a hearing on the Motion for Order for Forfeiture of the property mentioned hereinabove and grant Petitioner leave to obtain service of process upon Defendant by publication.

Respectfully submitted:
Bernard A. Yannetti, Jr., Esq.
I.D.# 58137
126 Baltimore Street
Gettysburg, PA 17325
Telephone: 717-334-3105
Facsimile: 717-334-5866

NOTICE

If you wish to defend, you must enter a written appearance personally or by attorney and file your defenses or objections in writing with the court. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you without further notice for the relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR
Adams County Courthouse
Gettysburg, PA 17325
717-337-9846

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