STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: NOVEMBER 29, 2012)

ROY A. LACROIX, d/b/a LACROIX PROPERTIES,	:	
Plaintiff	:	
V.	:	**C.A. NO. WC 05-0712**
FOCUS PHYSICAL THERAPY, LLC and JAN CHAMBERLAIN,	:	
Defendants	:	

DECISION

SAVAGE, J. Following a non-jury trial, this Court is asked to decide the competing claims and counterclaims between the parties arising out of their unfortunate decision to enter into a lease to allow Defendant Jan Chamberlain ("Chamberlain") to open a physical therapy business, Defendant Focus Physical Therapy, on business premises owned by Plaintiff Roy A. LaCroix, d/b/a LaCroix Properties ("LaCroix"), in blind ignorance of the fact that Plaintiff already had entered into a lease with another party that allowed a competing physical therapy business that employed Defendant Chamberlain to be the exclusive provider of physical therapy services on the premises. For the reasons set forth in this Decision, this Court denies Plaintiff's claim for additional rent on the grounds of mutual mistake and further denies Defendant's counterclaims for constructive eviction, breach of the covenant of quiet enjoyment, negligent misrepresentation, unjust enrichment, breach of the implied covenant of good faith and fair dealing and statutory attorney's fees.

I

Factual Background and Procedural History

On July 15, 2002, Plaintiff Roy LaCroix, doing business as LaCroix Properties, entered into a one year lease with Orthopedic Health Services, Inc., to commence on November 1, 2002, that contained an option to renew for a three year period of time. Exhibit A to the lease provided that Orthopedic Health Services was to be the exclusive provider of physical therapy services at the Property.

After becoming a tenant, Orthopedic Health Services entered into a Facility Use Agreement with Napatree Physical Therapy d/b/a Choice Physical Therapy ("Napatree") dated January 29, 2003. Napatree is a Rhode Island corporation, created in 2002, that provides physical therapy services. Napatree's Articles of Incorporation identify Defendant Jan Chamberlain as its Vice President and Secretary. The Facility Use Agreement specifically notes that Orthopedic Health Services entered into a lease agreement with LaCroix dated July 15, 2002 to provide physical therapy services on an "exclusive basis" at LaCroix's building. According to the Facility Use Agreement, Napatree would provide the physical therapy services for Orthopedic Health Services. The lease agreement between LaCroix and Orthopedic Health Services and the exclusivity provision contained in Exhibit A to the lease purportedly were attached to the Facility Use Agreement at the time Chamberlain signed it. Chamberlain was one of two individuals who signed the Facility Use Agreement on behalf of Napatree.[1]

On the same date, Chamberlain executed a Promissory Note, agreeing not to directly or indirectly engage in a physical therapy venture that competed with Napatree in Westerly, Rhode Island. Subsequently, in August of 2003, Orthopedic Health Services informed LaCroix of its intention to exercise the option to renew its lease with him for three years.

[1] It should be noted that, at the time she signed the Facility Use Agreement, Chamberlain's surname was "Cottrell."

In March 2005, however, Chamberlain decided to start a physical therapy business that would compete with Orthopedic Health Services. Before ending her relationship with Napatree, Chamberlain contacted LaCroix about leasing space in the same building as Napatree. During the course of potential lease negotiations, Chamberlain asked LaCroix whether he had an exclusivity provision in any of his leases. According to LaCroix, because he had never previously allowed a lessee to include an exclusive lease provision within its lease, he advised Chamberlain that to his knowledge he did not. He said that he was unaware of the exclusivity provision in the lease at that time because Orthopedic Health Services had drawn up the lease. Chamberlain denied having any knowledge to the contrary.

On April 17, 2005, Chamberlain signed the lease on behalf of her new entity, Focus Physical Therapy, LLC,[2] to operate a physical therapy business in Unit 9 in the same building as Orthopedic Health Services. The lease provided that "Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions or improvements in, to or about the premises." Approximately one month after entering into her lease with LaCroix, Chamberlain informed Napatree of her decision to leave Napatree's employ.

Before leaving Napatree, Chamberlain alleges that she made a number of improvements to the space leased to her by LaCroix. Robert Mahl, an individual who was not licensed or registered with the State of Rhode Island Building Contractor's Registration Board at the time of construction, made these improvements. During his testimony, Mahl discussed the alterations and improvements that he made to the rented unit to make the space suitable for a physical therapy practice, including taking down a wall.

After Chamberlain left Napatree to operate Focus Physical Therapy, Orthopedic Health Services and Napatree initiated suit against LaCroix and Chamberlain to enforce the exclusivity

[2] Focus Physical Therapy, Inc. was incorporated in August 2005.

provision of the lease between Orthopedic Health Services and LaCroix. (WC 2005-0412.) Ultimately, on August 18, 2005, that case was settled by a consent order wherein the parties agreed that Chamberlain d/b/a Focus Physical Therapy would vacate the property by September 21, 2005. The consent order also indicated that Chamberlain would not accept any new patients as of August 17, 2005. Further, the agreement provided that Chamberlain would not open or operate a physical therapy practice in Westerly until November 1, 2005. The final paragraph of the consent order provides that "[a]ll claims between Plaintiffs and Defendants are dismissed with prejudice. In addition, Plaintiffs and Defendant Janice Chamberlain shall exchange releases of all claims against each other, actual or potential, which releases shall include hold harmless clauses."

On October 24, 2005, Plaintiff LaCroix filed an action against Defendants Chamberlain and Focus Physical Therapy, LLC in Fourth Division District Court seeking damages for breach of the lease. After the consent order in the related case entered, the office that Focus Physical Therapy, LLC had rented from LaCroix remained vacant for six months before LaCroix found a new tenant at a slightly higher monthly rate. LaCroix's complaint sought judgment for "possession of the premises (eviction of the tenant) and for back rent in the amount set forth in the lease." LaCroix seeks to recover damages from the Defendants equal to the rent for the six months the office space remained vacant from September 2005 until April 2006.

Defendants answered the complaint by denying liability and asserting a defense of rescission on grounds of mutual mistake. Defendant Focus Physical Therapy also filed a counterclaim against LaCroix for constructive eviction (Count I); breach of the implied warranty of quiet enjoyment (Count II); negligent misrepresentation (Count III); breach of the covenant of good faith and fair dealing (Count IV); unjust enrichment (Count V); and statutory attorney's

fees (Count VI).[3] It seeks damages for the improvements Chamberlain made to the leased property, which she values at $72,000, and $14,000 in out-of-pocket expenses for moving to a new location, and $50,000 in lost profits. After Defendants filed their answer and counterclaim, which raised claims subject to the original jurisdiction of the Superior Court, the District Court transferred the case, inclusive of LaCroix's complaint and Focus Physical Therapy's counterclaim, to this Court. This Court has jurisdiction of this action pursuant to R.I. Gen. Laws § 8-2-14.

This Court tried this case without a jury, after which the parties filed post-trial memoranda. After a thorough review of the testimony and evidence at trial and the parties' memoranda, this Decision follows.

II

Analysis

A.

Plaintiff's Complaint for Additional Rent and the Doctrine of Mutual Mistake

In his complaint, Plaintiff LaCroix seeks to recover additional rent from Defendants Focus Physical Therapy and Chamberlain under his lease with Focus Physical Therapy to compensate him for the lease payments that he did not receive between the time Defendant vacated the premises and the date he secured a new tenant. Defendants contend that they are not liable to Plaintiff for any additional rent because parties who enter into a contract on the basis of mutual mistake are entitled to rescission of their agreement. According to Defendants, both LaCroix and Chamberlain testified at trial that, prior to executing the lease, they believed that it was possible to operate a physical therapy office in Unit 9. As noted previously, "[t]his was a

[3] The sixth count of Focus Physical Therapy's counterclaim is misidentified as "Count V". For clarity, and to avoid confusing this count of the counterclaim with the count for unjust enrichment that is also labeled Count V, this Court will refer to the count for statutory attorney's fees as Count VI.

basic assumption for [Chamberlain], who was seeking space to open her business, and for [LaCroix], who testified that he would not have offered the space to [Chamberlain] had he known of the restriction." As such, Defendants argue that this Court should "declare the lease to be void."

Conversely, LaCroix argues the lease is not subject to the doctrine of mutual mistake. According to LaCroix, "shared ignorance … does not unequivocally equate with a mutual mistake of the parties." McEntee v. Davis, 861 A.2d 459, 463 (R.I. 2004). LaCroix argues that Defendants are precluded from claiming mutual mistake because Chamberlain is presumed to know the content of the documents that she signed while employed by Orthopedic Health Services—namely the Facility Use Agreement. Finally, LaCroix contends that the testimony of Spratt and Fortunato, principals of Orthopedic Health Services, should be believed and Chamberlain's testimony discredited on the issue of mutual mistake. Specifically, LaCroix relies on testimony by Spratt and Fortunato about a conversation that they claim they had with Chamberlain, which she denies, in which they allegedly reminded her of Orthopedic Health Services' exclusive lease.

"By definition, a mutual mistake is one that is 'common to both parties wherein each labors under a misconception respecting the same terms of the written agreement sought to be canceled.'" McEntee, 861 A.2d at 463 (quoting Rivera v. Gagnon, 847 A.2d 280, 284 (R.I. 2004)). "An agreement containing a mutual mistake fails in a material respect to correctly reflect the understanding of both parties." Rivera, 847 A.2d at 284. Before this Court will intervene and correct a written instrument, there "must be, as it is usually expressed, the mistake of both parties to it; that is, such a mistake in the drafting of the writing, as makes it convey the intent or meaning of neither party to the contract." Vanderford v. Kettelle, 75 R.I. 130, 142, 64 A.2d 483,

489 (1949) (quoting Diman v. Providence, Warren, and Bristol R.R. Co., 5 R.I. 130, 134-35 (1858)). "It is not merely the existence of common error that creates mutual mistake." McEntee, 861 A.2d at 463 (quoting Nunes v. Meadowbrook Development Co., 824 A.2d 421, 425 (R.I. 2003)). As such, a "defendant's mistake, coupled with [the other party's] unawareness, results not in a mutual mistake warranting rescission of the agreement, but rather in [the other party] receiving just what [he or she] bargained for, despite defendant's apparent loss." Id. at 465. "The parties' intent is a determinative factor." Id. at 463. A party must prove mutual mistake by clear and convincing evidence before the Court can reform, vacate, or dismiss a contractual agreement. See Rivera, 847 A.2d at 284.

In this case, the credible testimony of both parties indicates that both Chamberlain and LaCroix believed that it was permissible for Focus Physical Therapy to operate a physical therapy practice in Unit 9. Although they left blank the space on the lease where they could have indicated the intended use for Unit 9, this Court is satisfied, based on the testimony adduced at trial, that both parties intended for Focus Physical Therapy to be able to operate a physical therapy practice in that location. Indeed, LaCroix specifically testified that he would not have leased the space to Focus Physical Therapy if he had been aware of the "exclusive" nature of Orthopedic Health Services' lease. Clearly, this statement by LaCroix reflects his understanding that the intended purpose of the lease was to allow Defendant Focus Physical Therapy to operate a physical therapy practice in the leased premises. Similarly, during her testimony, Chamberlain testified unequivocally that she would not have executed the lease with LaCroix if she had been aware of the "exclusive" provision in the Orthopedic Health Services lease.

Against this factual backdrop, LaCroix's reliance on McEntee is misplaced. Unlike the parties in McEntee, who disagreed as to whether there was a mistake with respect to placement

of a boundary line, both Chamberlain and LaCroix freely admitted at trial that they were mistaken as to the existence of an exclusive provision in the Orthopedic Health Services lease. McEntee, 861 A.2d at 464-65. As discussed previously, both parties readily admitted that the existence of this exclusivity provision—which barred a competing therapy practice from entering into a lease with LaCroix in the business complex at issue—was material to their lease agreement such that neither of them would have entered into the lease had they been aware of their error in assuming that no such provision existed. Moreover, this case does not present a scenario where only one party was mistaken and the other party was simply unaware of the mistake such that the party who was unaware received just what it bargained for, despite [the other party's] apparent loss. See id. at 465. Rather, in this instance, both parties were mistaken as to the existence of the exclusivity provision in the Orthopedic Health Services lease.

Further, LaCroix's attempt to defeat Defendants' claim of mutual mistake by relying on Chamberlain's signing of the Facility Use Agreement is similarly misplaced. LaCroix relies on the proposition that "a party who signs an instrument manifests his [or her] assent to it and cannot later complain that he [or she] did not read the instrument or that he [or she] did not understand its contents." F.D. McKendall Lumber Co. v. Kalian, 425 A.2d 515, 518 (R.I. 1981). He argues that Defendants should not be able to avoid their obligation to pay rent under the lease because Chamberlain should have known, at the time she signed the lease, that a physical therapy business was barred in the lease premises by the exclusivity provision of the Facility Use Agreement between Orthopedic Health Services and Napatree. According to La Croix, at the time Chamberlain signed the Facility Use Agreement on behalf of Napatree, it had attached to it the lease between Orthopedic Health Services and LaCroix and the attachment to that lease that contained an exclusivity provision.

As noted by Defendants, however, "this is not a case where one party to a contract is seeking to use ignorance as an excuse from complying with the contract," but rather an attempt by a third party (LaCroix) to leverage Napatree's contractual obligations to Orthopedic Health Services to deny the existence of a mutual mistake. Yet, in determining mutual mistake, "'the parties' intent is a determinative factor.'" McEntee, 861 A.2d at 463 (quoting Nunes, 824 A.2d at 425). As such, the relevant inquiry is the parties' understanding at the time they executed the lease at issue and not the contents of other agreements. In this regard, this Court found Chamberlain's testimony credible regarding her lack of knowledge of the exclusive nature of Orthopedic Health Services' lease with LaCroix. Specifically, this Court found credible Chamberlain's testimony that she did not remember the contents of the Facility Use Agreement or any lease attached to it and did not have a copy of those documents.[4] This Court did not find credible the contrary testimony of Spratt and Fortunato that they had discussed the exclusivity provision with Chamberlain.[5]

From this Court's perspective, there is no logical reason that Chamberlain would have knowingly executed a lease, on behalf of Focus Physical Therapy, with LaCroix that jeopardized her fledgling physical therapy endeavor. Her mistake in this regard was no more ignorant of previously signed documents than that of LaCroix; while perhaps she should have known of the alleged exclusivity provision in the lease between LaCroix and Orthopedic Health Services based on the Facility Use Agreement that she signed on behalf of Napatree, he should have known of it based on his signing the lease with Orthopedic Health Services.

[4] While the Facility Use Agreement signed by Chamberlain makes reference to an exclusive lease, this Court is not sure that the lease between LaCroix and Orthopedic Health Services itself or, more importantly, the exclusivity provision of the lease contained in Exhibit A to their lease was even attached to the Facility Use Agreement at the time Chamberlain signed that document on behalf of Napatree.

[5] In particular, the Court found Fortunato to be an especially vindictive and biased witness. The Court was particularly troubled by Fortunato's statement that he did not consider Chamberlain to be one of his "competitors," but that he nevertheless deprived Chamberlain of the opportunity to use the name "Focus Physical Therapy" in an effort to be "funny."

As such, this Court finds, based on clear and convincing evidence, that the intent of LaCroix and Chamberlain when executing the lease between LaCroix and Focus Physical Therapy was to allow Defendants to operate a physical therapy practice in Unit 9 and that both Plaintiff and Defendants were mistaken as to Defendants' ability to do so. This Court thus holds that the lease between the parties was the result of mutual mistake.

The doctrine of mutual mistake provides that "where a mistake of both parties at the time of the contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party." Restatement (Second) of Contracts, § 152(a) (1981) (quoted in Warwick School Committee v. Warwick Independent School Employees' Union, KM-2009-1487 (R.I. Super. 2010)). "Where the court finds the contract void because of the mutual mistake, then the court may rescind the contract." Restatement (Third) of Restitution, § 34 (2011). "Rescission is something more than termination of a contractual obligation; it seeks to create a situation as if no contract existed." Jakober v. E.M. Loew's Capitol Theatre, Inc., 107 R.I. 104, 112 (R.I. 1970). Rescission voids the contract *ab initio*, "meaning that it is null from the beginning and treated as if it does not exist for any purpose." Mooney v. Nationwide Mut. Ins. Co., 822 A.2d 567 (N.H. 2003).

Guided by these precepts, this Court is of the view that the lease between these parties is voidable by Defendants on grounds of mutual mistake. It thus will grant their request to rescind the lease *ab initio* as a defense to LaCroix's complaint for additional rent. The lease, being void, "creates a situation as if no contract existed." Jakober, 107 R.I. at 112. Accordingly, LaCroix's claim for additional rent due to him under a lease that is no longer legally operative is denied.[6]

[6] As a result of this Court's decision as to mutual mistake, it need not reach Defendant's other arguments that the lease between LaCroix and Focus Physical Therapy is void as a result of impractability or frustration of purpose.

B.

Defendant Focus Physical Therapy's Counterclaims

1.

Constructive Eviction

The first counterclaim filed by Defendant Focus Physical Therapy against LaCroix is based on the theory of constructive eviction. In its post-trial memorandum, however, Defendant concedes that it was unable, during trial, to establish the requisite intent necessary to sustain a claim for constructive eviction. As a result, Count I of Defendant's counterclaim for constructive eviction is denied.

2.

Breach of Implied Covenant of Quiet Enjoyment

Defendant next argues that it is entitled to recover damages under a theory of breach of the implied covenant of quiet enjoyment.[7] According to Defendant, under the common law, all leases of real property contain an implied covenant of quiet enjoyment. It alleges that this covenant extends to those uses of the property that the parties contemplated at the time they created their lease. It thus asserts that LaCroix breached the implied covenant of quiet enjoyment in the lease by depriving Focus Physical Therapy of the ability to use the leased premises for its intended physical therapy business.

The problem with Defendant's claim of breach of the implied covenant of quiet enjoyment, however, is that it presumes that a valid lease existed between the parties at the time of the alleged breach. Yet, it is Defendants who sought, and have been granted, rescission of the

[7] Defendant Focus Physical Therapy is required to assert this claim as breach of an implied warranty, as opposed to breach of an express warranty, because the parties left blank the portion of their lease that provides that Unit 9 was suitable for an intended purpose.

lease in defense to LaCroix's claim for additional rent under the lease. Again, this Court notes that rescission of a contract "create[s] a situation in which no contract existed." Jakober, 107 R.I. at 112 (citing Dooley v. Stillson, 46 R.I. 332, 128 A. 217 (R.I. 1925). "Once a contract is rescinded, a party cannot be seen to go back and cherry pick this or that remedy it wished were still available." 27 Samuel Williston & Richard A. Lord, A Treatise on the Law of Contracts § 70:34 (4th ed. 2012). As such, Defendant, in claiming breach of contract, may not rely on an alleged implied covenant in a lease that this Court has found void *ab initio*.[8] Accordingly, Count II of its counterclaim for breach of an implied covenant of quiet enjoyment in that lease is denied.

3.

Negligent Misrepresentation

Defendant Focus Physical Therapy next asserts that it is entitled to relief under the theory of negligent misrepresentation. Specifically, Defendant contends that it is entitled to damages for the renovations and business start-up costs that it incurred after signing the lease with LaCroix because Chamberlain, acting on its behalf, relied on LaCroix's misrepresentation that the Orthopedic Health Services lease was not exclusive. According to Defendant, she was entitled to rely on this representation made by LaCroix because he is a landlord and regularly deals in real estate. Conversely, LaCroix argues that Defendant cannot satisfy the elements of its claim of negligent misrepresentation because he did not intend for his statement to induce Chamberlain to sign the contract and Chamberlain is not justified is relying on his statement.

To prove a claim of negligent misrepresentation, the Rhode Island Supreme Court

[8] It also should be noted that while Defendant Focus Physical Therapy originally filed a separate claim in Count IV of its counterclaim for breach of the implied covenant of good faith and fair dealing, that claim was dismissed with prejudice by agreement of the parties at trial. Even if this claim had not been dismissed, it also would fail for the same reasons; it depends on the existence of a valid lease between the parties that this Court, at Defendants' request, declared void *ab initio*.

requires a plaintiff to establish the following elements:

> (1) a misrepresentation of a material fact; (2) the representor must either know of the misrepresentation, must make the misrepresentation without knowledge as to its truth or falsity or must make the representation under circumstances in which he [or she] ought to have known of its falsity; (3) the representor must intend the representation to induce another to act on it; and (4) injury must result to the party acting in justifiable reliance on the misrepresentation.

Manchester v. Pereira, 926 A.2d 1005, 1012 (R.I. 2007) (quoting Mallette v. Children's Friend and Serv., 661 A.2d 67, 69 (R.I. 1995)). "It is well established that, in order to prevail on a misrepresentation claim, one must prove justifiable reliance on the misrepresentation." Manchester, 926 A.2d at 1012.

In this case, LaCroix concedes that Defendant has satisfied the first two elements of its claim of negligent misrepresentation—namely, that he made a misrepresentation as to the non-existence of an exclusivity provision in the lease under circumstances in which he ought to have known of the falsity of the misrepresentation. In addition, despite LaCroix's protestations to the contrary, this Court is satisfied that Defendant also has proven that LaCroix, in making his misrepresentation, intended to induce Chamberlain to sign the lease on behalf of Focus Physical Therapy. As such, the only remaining issue before this Court is whether Defendant has proven that Chamberlain was justified in relying on LaCroix's misrepresentation.

According to Defendant, in Braswell v. People's Credit Union, the Supreme Court limited the duty of investigation in negligent misrepresentation actions. 602 A.2d 510 (R.I. 1992). In reliance on that decision, Defendant asserts here that "justifiable reliance" does not require evidence that the reliance was reasonable; rather, the reliance must only avoid being "patently false."

In Braswell, the Rhode Island Supreme Court denied a defense of comparative

negligence in a negligent misrepresentation action brought against a bank stemming from the issuance of a loan. In deciding the case, the Supreme Court recognized "the need to protect consumers, to remedy disparate bargaining power, and to prevent unfair business practices." Id. at 515. As a result, the Court held that the case fell squarely within the parameters § 552 of the Restatement (Second) Torts and that the bank should "bear the risk of falsity created by the misrepresentation created by its agent." Id. Section 552 of the Restatement (Second) of Torts provides in pertinent part:

> (1) One who, in the course of his business, profession or employment, or in any other transaction in which he [or she] has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he [or she] fails to exercise reasonable care or competence in obtaining or communicating the information.

In a subsequent decision of our Supreme Court in Manchester v. Pereira, the plaintiff brought a claim for negligent misrepresentation after he was induced to sign a deed that extinguished his life estate in a piece of real estate. 926 A.2d 1005 (R.I 2007). Plaintiff argued that the defendant had represented to him, before he signed the deed, that the deed would not extinguish his life estate in the property. Id. The deed signed by the plaintiff stated, in capital letters, the following: "The purpose of this quit-claim deed is to dissolve that certain life estate granted to grantors as recorded on June 21, 1991." Id. In analyzing the Plaintiff's claim of negligent misrepresentation, the Supreme Court held that the plaintiff's reliance on the defendant's representation was not justified because it was clear that "no reasonable person would have signed this document based merely upon another person's secondhand assurance that the document would not dissolve the life estate." Id. Thus, the Court found that because the plaintiff signed the deed, "he must be deemed to have read it and to have assented to its

contents." Id. In reaching its conclusion, the Court noted that "it has long been a settled principle that 'a party who signs an instrument manifests his [or her] assent to it and cannot later complain that he [or she] did not read the instrument or that he [or she] did not understand its contents.'" Id. (citing F.D. McKendall Lumber Co. v. Kalian, 425 A.2d at 515, 518 (R.I. 1981)); see also Murray v. Cunard S.S. Co., 235 N.Y. 162, 166, 139 N.E. 226, 228 (1923) (stating that one "who omits to read takes the risk of the omission"). It thus found that plaintiff failed to establish justifiable reliance on the alleged misrepresentation.

In reading these two cases together, this Court sees nothing in Braswell that indicates that the Supreme Court altered the standard of "justifiable reliance" to equate to a "patently false" standard. Moreover, in its more recent decision in Manchester, the Supreme Court equated justifiable reliance with reasonable reliance. 926 A.2d at 1012.

In addressing the issue of justifiable reliance here, this Court is satisfied that in signing the Facility Use Agreement, Chamberlain is presumed "to have read it and to have assented to its contents" on behalf of Focus Physical Therapy. Id. Similar to the conspicuous language of the deed in Manchester that specifically indicated that the plaintiff's life estate would be terminated, the Facility Use Agreement clearly states:

> [Orthopedic Health Services] has entered into a lease agreement (lease agreement) with LaCroix Properties dated 15 day of July, 2002, see attachment A (Commercial lease, Lease Exhibit A) to provide physical and occupational therapy services on an exclusive basis at [the Property].

Pet'r's Ex. 5, Facility Use Agreement (emphasis added). Although the Court is mindful that Chamberlain testified to not understanding the meaning or import of the documents she signed while an employee of Napatree, "it has long been a settled principle that 'a party who signs an instrument manifests his [or her] assent to it and cannot later complain that he [or she] did not

read the instrument or that he [or she] did not understand its contents.'" Manchester, 926 A.2d at 1012 (citing Kalian, 425 A.2d at 518).

Yet, LaCroix's contention that Chamberlain's reliance on his representation is unjustifiable simply because she signed the Facility Use Agreement goes too far. It is not at all clear to this Court that the lease referred to in the Facility Use Agreement as being attached as Exhibit A or the exclusivity agreement described as Exhibit A to the lease were actually attached to that agreement at the time Chamberlain signed it. Moreover, Chamberlain was unaware of whether the purported lease between Orthopedic Health Services and LaCroix that is referenced in the Facility Use Agreement and its exclusivity provision were in full force and effect at the time of her lease negotiations with LaCroix. Indeed, Orthopedic Health Services exercised its option to renew the lease after she signed that agreement. In addition, despite executing the Facility Use Agreement, Chamberlain testified that she did not receive a copy of it or of Orthopedic Health Services' alleged lease to review. Under these circumstances, this Court is satisfied that it was reasonable for Chamberlain to inquire of LaCroix as to the status and content of Orthopedic Health Services' lease with him and that she should not be barred from relying on his response merely because she signed the Facility Use Agreement.

In fact, Chamberlain asked LaCroix, as her prospective landlord, whether Orthopedic Health Services had an exclusive lease with him. Under normal circumstances, this Court agrees that Chamberlain could have relied justifiably on LaCroix's response. See Restatement (Second) of Torts § 552 (1977). After reviewing the testimony and exhibits provided in this case, however, this Court is compelled to find that Defendant has failed to prove, by a preponderance of the evidence, that her reliance was justified.

Although claiming ignorance of the contents of the documents she executed,

Chamberlain testified that she was suspicious that the documents she executed previously referenced an exclusivity provision. As a result, Chamberlain asked LaCroix whether Orthopedic Health Services had an exclusive lease, to which LaCroix responded that, "to his knowledge," it did not. By her own testimony, Chamberlain indicated she did not believe LaCroix's initial representation and in fact did not even think that he had looked at the lease. As a result, she then asked him to review the Orthopedic Health Services lease to confirm his tentative statement that it contained no exclusivity provision. According to Chamberlain, LaCroix then checked, called her back, and provided the same answer. At that point, Chamberlain admitted that she "had a small question" at the back of her mind. Yet, she concluded that she had to rely on what LaCroix had said. As such, Chamberlain's own testimony reveals that she did not trust the representations made by LaCroix. Significantly, even after receiving assurance that LaCroix had reviewed Orthopedic Health Services' lease, Chamberlain did not consider LaCroix's statement reliable, stating that she didn't even know "if he did or didn't look at the lease," as she had asked. It is axiomatic that she cannot place justifiable reliance in a statement that she herself considers to be unreliable.

Moreover, despite these misgivings, Chamberlain did not elect to further probe the veracity or reliability of LaCroix's statement. Significantly, Chamberlain never insisted that LaCroix provide her with a copy of the Orthopedic Health Services lease before signing her lease with him. Chamberlain testified that she asked to see the Orthopedic Health Services lease, but was not allowed to do so because LaCroix indicated that she was not privy to the contract. LaCroix disputes that Chamberlain ever asked to see a copy of the lease. Regardless, Chamberlain could have refused the sign the lease on behalf of Focus Physical Therapy until LaCroix furnished her with a copy of his lease with Orthopedic Health Services.

In addition, she never asked Fortunato or Spratt to provide her with a copy of the Orthopedic Health Services lease before executing the lease with LaCroix. According to her trial testimony, Chamberlain did not ask either of these men for a copy of the lease because she intended to leave her employment at Napatree and start a competing business in the same business location. Due to the nature of the relationship between Orthopedic Health Services and Chamberlain, her asking to view a copy of its lease undoubtedly would have alerted Spratt and Fortunato to Chamberlain's intentions. Notwithstanding these concerns, Chamberlain's testimony reveals that she did not avail herself of the opportunity to obtain a copy of the lease agreement from them. When asked during trial why she did not ask to see the lease, she replied, "I wish I would've now, of course I could have, but I didn't want to."

Moreover, Defendant could have protected itself with the assistance of counsel. Indeed, Chamberlain retained counsel to review the proposed lease between Focus Physical Therapy and LaCroix. Yet, there is no evidence that she asked her attorney to ensure that there was no exclusivity provision in the lease between LaCroix and Orthopedic Health Services or to make the lease with LaCroix contingent on its absence. She thus operated at her peril.

Based on all of these facts and circumstances, as shown by the evidence at trial, this Court holds that Chamberlain's reliance on LaCroix's statement was not reasonable or justified. Several times during her testimony, Chamberlain stated that she had to rely on the answers of LaCroix, even though she did not trust him or the answers that he provided. She had means at her disposal to determine whether the lease between LaCroix and Orthopedic Health Services contained an exclusivity provision and failed to take reasonable measures to secure that information. Importantly, this case is not one in which LaCroix was the only source of that information; indeed, both Chamberlain and LaCroix were equally capable of accessing the

information sought. See Home Loan & Inv. Assoc. v. Paterra, 105 R.I. 763, 768, 255 A.2d 165, 168 (1969) ("The gist of the action is fraudulently producing a false impression upon the mind of the other party; and if this result is accomplished, it is unimportant whether the means of accomplishing it are words or acts of the defendant, or his concealment or suppression of material facts *not equally within the knowledge or reach of the plaintiff*") (emphasis added) (quoting Stewart v. Wyoming Cattle Ranche Co., 128 U.S. 383, 388 (1888). Defendant is thus hard-pressed to claim justifiable reliance when Chamberlain knew she did not know whether an exclusivity provision existed in the lease between LaCroix and Orthopedic Health Services and yet entered into a lease, on behalf of Focus Physical Therapy, without resolving that question or making its lease continent on the absence of such provision. Accordingly, Count III of Defendant's counterclaim for negligent misrepresentation cannot stand.

4.

Unjust Enrichment

Defendant Focus Physical Therapy also contends that it is entitled to recover its alleged damages under the theory of unjust enrichment. "Recovery for unjust enrichment is predicated upon the equitable principle that one shall not be permitted to enrich himself [or herself] at the expense of another by receiving property or benefits without making compensation for them." Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 99 (R.I. 2006). To recover for unjust enrichment, the Rhode Island Supreme Court requires a plaintiff to prove the following three elements:

> (1) a benefit must be conferred upon the defendant by the plaintiff, (2) there must be appreciation by the defendant of such benefit, and (3) there must be an acceptance of such benefit in such circumstances that it would be inequitable for a defendant to retain the benefit without paying the value thereof.

Bouchard v. Price, 694 A.2d 670, 673 (R.I. 1997) (quoting Anthony Corrado, Inc. v. Menard & Co. Building Contractors, 589 A.2d 1201, 1201-02 (R.I. 1991)).

With regard to a claim of unjust enrichment premised on improvement to the property of another person, the Supreme Court has held that a party does not need to own the property at issue to recover. See Dellagrotta v. Dellagrotta, 873 A.2d 101, 113-15 (R.I. 2005) (allowing recovery for the appreciation in value attributable to a party's improvements to a house, and the cost of those improvements, even though the party did not own the residence). It has determined that a benefit "is conferred when improvements are made to property, materials are furnished, or services are rendered without payment." Carbone, 898 A.2d at 99 (stolen utilities); see also Dellagrotta, 873 A.2d at 113-14 (home improvements); Landmark Med. Ctr. v. Gauthier, 635 A.2d 1145, 1148-49 (R.I. 1994) (medical services); Newport Oil Corp. v. Viti Bros., Inc., 454 A.2d 706, 706-08 (R.I. 1983) (gasoline); Providence Steel & Iron Co. v. Flammand, 413 A.2d 487, 487-88 (R.I. 1980) (steel building components); Best v. McAuslan, 27 R.I. 107, 108-10, 60 A. 774, 774-75 (1905) (medical services).

Defendant points out that unjust enrichment damages may be measured by either the enhanced value of the property or the cost of the improvements; yet, that calculation may only occur once the court has found that a benefit has been conferred. See Carbone, 898 A.2d at 99 ("a benefit must be conferred upon the defendant by the plaintiff"); Restatement (Second) of Contracts, § 370 (1981) ("a party is entitled to restitution … only to the extent that he [or she] has conferred a benefit on the other party"). At trial, the only witness Defendant presented to discuss the "improvements" made to Unit 9 was Mahl. Mahl testified about the work he performed and the cost of his services, but he did not discuss whether his alterations or improvements to the property enhanced the value of Unit 9. More specifically, Defendant did

not present any testimony or evidence to indicate how LaCroix was unjustly enriched by the renovations undertaken.

Conversely, LaCroix opined, in his capacity as an experienced real estate developer, that Defendant's renovations actually decreased the value of Unit 9. Specifically, LaCroix testified that, prior to it taking down a wall as part of the renovations to Unit 9, that space was composed of three separately metered units. According to LaCroix, by removing one of the walls in Unit 9, Defendant actually decreased the value of the unit because its actions eliminated additional space available for rent.

Defendant failed to rebut this testimony. It likewise failed to introduce any evidence to show that the improvements resulted in a financial benefit to LaCroix or spared him expense. As such, Defendant did not prove, by a fair preponderance of the evidence, that it conferred a benefit on LaCroix in renovating his property. Accordingly, this Court finds that Defendant has failed to prove Count V of its counterclaim of unjust enrichment.[9]

III

CONCLUSION

For the reasons set forth in this Decision, this Court holds that LaCroix's claim for monetary damages for back rent is barred by the doctrine of mutual mistake. Judgment thus shall enter against LaCroix on his Complaint. Additionally, this Court holds that Defendant Focus Physical Therapy has failed to prove its Counterclaim for constructive eviction (Count I), breach of the implied covenant of quiet enjoyment (Count II), negligent misrepresentation

[9] To the extent Defendant now, under the guise of unjust enrichment, attempts to assert an affirmative claim for rescission and a broader equitable remedy, inclusive of restitution, for the monies it allegedly expended to improve the property, this Court declines to consider such claim, as it was neither pled by Defendant nor tried by implication. Defendants asserted rescission only as a defense to LaCroix's complaint for additional rent. Moreover, Defendant has not convinced this Court that such a remedy exists independent of the claims that it has asserted for unjust enrichment and negligent misrepresentation.

In addition, having determined that Defendant is not entitled to recovery under any of its asserted counterclaims, this Court need not consider LaCroix's affirmative defenses of unclean hands and res judicata.

(Count III), and unjust enrichment (Count IV). By agreement of the parties at trial, its Counterclaim for breach of the implied covenant of good faith and fair dealing may be dismissed with prejudice (Count V). As a result, it likewise has failed to prove its Counterclaim for statutory attorney's fees (Count VI). Judgment thus shall enter against Defendant on its Counterclaim in its entirety.

Counsel shall confer and submit to this Court forthwith for entry an agreed upon form of Order and Judgment that are consistent with this Decision.