STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(Filed: November 21, 2012)

JAYNE DUBIN,	:	
Plaintiff	:	
	:	
v.	:	**C.A. No. WC 10-0825**
	:	
LORI ANN PELLETIER,	:	
Defendant	:	

DECISION

SAVAGE, J. At the heart of this action is a dispute between an owner and handler over which of them is entitled to ownership and possession of a champion show dog—a Norfolk Terrier officially named "Ch Final Lea Big Ticket Item" and fondly referred to as "Mr. Big"—now that his show career is over. It should serve as a warning to owners and handlers in the high-stakes show dog world of the importance of entering into written contracts to delineate the relationship between them during a dog's show career and upon the dog's retirement.

Plaintiff Dubin contends that she is the sole and rightful owner of Mr. Big, and she seeks a declaratory judgment to establish her right to ownership and possession of Mr. Big, who is in the care and custody of Pelletier, after Pelletier's refusal to return the dog to Dubin at the end of his show career. Dubin also seeks to recover the stud fees in the amount of $16,000 that Pelletier collected in 2009 and 2010 for breeding Mr. Big under a theory of unjust enrichment and further claims damages for conversion.

Pelletier counterclaims that she is the rightful owner of Mr. Big because Dubin gifted him to her or because the parties entered into an implied contract that Pelletier would keep the dog in exchange for providing handling services to Dubin. Pelletier claims further that she is entitled to

possession of Mr. Big as his guardian under R.I. Gen. Laws §§ 4-13-1.2 and 4-13-41, based on an implied contract with Dubin, or under a best interests of the dog analysis. She seeks a declaratory judgment to establish her right to ownership and possession of Mr. Big. In the alternative, Pelletier claims that she is entitled to the reasonable value of her services rendered to Dubin for the care and custody of Mr. Big under a theory of unjust enrichment in the amount of $74,887.80. She also seeks damages for fraudulent misrepresentation and fraudulent inducement claiming that Dubin falsely promised that she could keep Mr. Big to induce Pelletier to provide services for the dog. In addition to Mr. Big, Pelletier advances theories of implied contract, unjust enrichment and misrepresentation to attempt to recover monies allegedly due to her for services provided to Wilma and Iffy, two other dogs owned by Dubin, in the amount of $5374.06. In total, Pelletier claims damages in the amount of $80,261.86.

This case was tried before this Court, sitting without a jury. For the reasons set forth in this Decision, this Court declares that Dubin is the rightful owner of Mr. Big and is entitled to immediate possession of him. It also grants Dubin's claim for unjust enrichment and awards her monetary damages in the amount of $16,000 for stud fees for Mr. Big that are due and owing to her from Pelletier. It denies Dubin's claim for conversion. As to Pelletier, this Court denies her counterclaims for declaratory judgment, gift, implied contract, fraudulent misrepresentation, and fraudulent inducement as to Mr. Big. It awards Pelletier damages on her counterclaim for unjust enrichment for the reasonable value of her services rendered to Dubin as a professional dog handler for Mr. Big in the amount of $16,411.51. It also awards Pelletier damages for services that she provided Wilma and Iffy, based only on her counterclaim for implied contract, in the amount of $4024.50.

I

FACTS AND TRAVEL[1]

A

The Parties' Early Dealings with Mr. Big

Plaintiff Jayne Dubin lives in Chester, New Jersey. She has bred and shown purebred dogs for over fifty years. In 1995, she began specializing in breeding and showing Norfolk Terriers and is listed as the registered owner of Mr. Big with the AKC, a registry of purebred dogs.

In the late 1990's, Dubin first met Defendant Lori Ann Pelletier, who owns and maintains a kennel for show dogs as a hobby and charges for handling, showing, and boarding show dogs. Pelletier lived in Medfield, Massachusetts until the summer of 2010 when she moved to Exeter, Rhode Island. She has a number of dogs living with her, many of which belong to her clients and for which she provides room and board during the dogs' show careers.

After the parties initially met, the women continued to see each other at various dog shows and became good friends. Eventually, Dubin asked Pelletier to breed Vivian, one of her female Norfolk Terriers, with Zach, a male dog of the same breed belonging to Pelletier. (Joint Ex. 18, AKC My Dogs and Litters Breeder Records.) The parties continued a friendly and professional relationship, and in May of 2002, Pelletier supervised the breeding of Ticket, a female Norfolk Terrier belonging to Dubin, with Jasper, a male dog of the same breed belonging to one of Pelletier's clients. On July 29, 2002, Ticket had a litter of Norfolk Terrier puppies—one of which was Mr. Big.

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[1] The source of the facts include: the trial testimony, which is without citation to a transcript because no official transcript has yet been prepared; depositions admitted into evidence at trial, some of which have been transcribed and some of which were videotaped; and other full exhibits.

Eight weeks later, Dubin and Pelletier discussed Mr. Big's potential as a show dog. Pelletier concluded, however, that Mr. Big was too young at that time for her to give her professional opinion as to his prospect for becoming a champion. In October of 2002, at an American Norfolk Terrier Association event, Dubin and Pelletier once again speculated as to Mr. Big's show dog potential. Pelletier expressed to Dubin that she believed that Mr. Big had developed traits characteristic of successful show dogs. On December 4, 2002, Dubin registered Mr. Big with the AKC, and the parties began discussing Mr. Big's impending AKC show career.

In or about December 2002 or January 2003, Dubin hired Pelletier to handle and groom Mr. Big while pursuing his AKC championship. Dubin sent Mr. Big to stay with Pelletier around February 2003. Mr. Big competed in multiple events between March 21, 2003 and May 17, 2003. (Joint Ex. 19, Dog Record Lookup for: Ch Final Lea Big Ticket Item.) After achieving his AKC championship, Mr. Big returned home with Dubin and remained with her until December 2004. The parties did not have a written contract concerning Mr. Big's AKC championship, although Pelletier did provide Dubin with a business card that listed her handling fees. (Pl. Ex. 5, Pelletier Business Card.) Dubin testified, however, that the business card was simply to provide her with Pelletier's contact information and that they had reached a different agreement with regard to fees. Id. Indeed, Nichola Conroy, another one of Pelletier's clients, testified at trial that Pelletier's business card provided simply a general guide of Pelletier's handling fees.

B

The Agreement for Mr. Big's Specials Career

In December of 2004, the parties discussed sending Mr. Big out for a specials campaign, which is a series of shows designed to allow a dog an opportunity to be ranked. Dubin and

Pelletier agreed orally that Pelletier would show Mr. Big. They agreed further that, as a condition of Pelletier's handling of Mr. Big during his specials campaign, she would keep Dubin more informed about Mr. Big's health than she had during Mr. Big's AKC championship career. In addition, as Pelletier testified during trial, they agreed that Dubin could terminate the agreement at any time and that Pelletier would bill Dubin for Mr. Big's expenses.

Rebecca Carner, an expert who testified at trial on behalf of Pelletier, opined that until the late 2000's, individuals involved in the dog show world as owners and handlers typically employed oral, as opposed to written, agreements. (Def. Ex. CCC, Carner Curriculum Vitae.) Pelletier herself explained that she only recently started using written contracts with her clients. Pelletier had an oral agreement with her client, Marsha Penrose, for example, for Pelletier's handling and breeding services. (Joint Ex. 11, Depo. Penrose, Aug. 10, 2011, at 19.) Pelletier also had an oral agreement with another client concerning the ownership rights of an AKC-registered dog, which resulted in a lawsuit that lasted from 1998 to 2002. (Pl. Ex. 49, Depo. Joyce Coccia, Oct. 25, 2011, at 7.) Yet, the evidence adduced at trial revealed that Pelletier did occasionally make written contracts. One of Pelletier's clients testified at a deposition—which the parties agreed to make part of the trial record—that she had a written contract with Pelletier, dated August 12, 2008, regarding the transfer of the ownership rights of her dog to Pelletier at the end of the dog's show career. (Joint Ex. 10, Depo. Omansky, Aug. 9, 2011, at 11-13; Pl. Ex. 12, Co-ownership and Show Handling Agreement For A Show Dog.)

While the parties here concur that they had an oral agreement, they dispute many of its terms, including the core question of the ownership rights to Mr. Big, payments of Mr. Big's specials campaign expenses, and the rights to Mr. Big's stud fees. With regard to ownership rights, Dubin testified that there was no conversation with Pelletier about a change in ownership

or leaving Mr. Big with her after his show career. Rather, before she sent Mr. Big to stay with Pelletier, Dubin testified that she took steps to ensure that there would be no confusion regarding his ownership. Specifically, on October 19, 2004, Dubin had Mr. Big's DNA analyzed and registered with the AKC. (Pl. Ex. 8, The AKC Certificate of DNA Analysis.) Dubin obtained a certificate of DNA analysis from the AKC identifying her as Mr. Big's owner. (Pl. Ex. 10, AKC Registration Certificate.) Dubin also had a microchip implanted in Mr. Big, for security purposes, with the accompanying registration form identifying Dubin as Mr. Big's sole owner. (Pl. Ex. 9, Companion Animal Recovery Confirmation, Microchip Form.)

Conversely, Pelletier alleges that Dubin offered to let Pelletier keep Mr. Big at the end of his show career in exchange for Pelletier's services. Pelletier explained that they reached this compromise because Dubin said that she could not afford to finance Mr. Big's specials career and did not want to house a male dog with a number of female dogs that she had at home. Dubin clarified that while she may have said that she did not want to keep a male dog, she did want to keep Mr. Big because he was such a good dog. (Joint Ex. 12, Depo. Covey, Aug. 10, 2011, at 67.)

The parties also dispute who is obligated to cover the expenses of Mr. Big's specials campaign. Pelletier never sent an official bill for her services and only kept a casual record of Mr. Big's expenses. Pelletier testified, however, that she accepted compensation for her services by cash, check, or other arrangement. Despite the fact that Dubin never received a bill for Mr. Big's specials campaign, Dubin did provide payments to Pelletier periodically. Dubin testified that it was her understanding that her direct payments to Pelletier, in addition to credit that Pelletier extended her for monies that Pelletier collected for stud fees for Mr. Big, sufficiently compensated Pelletier for her services during Mr. Big's specials career.

In particular, Dubin explained that she usually made payments to Pelletier in cash at dog shows that she attended in amounts ranging from approximately $1500 to $2500. Dubin testified that she did not keep a record of all of her payments to Pelletier and, in fact, only started to record such payments in April of 2005. She estimates that the cash payments that she made to Pelletier totaled approximately $28,000. (Pl. Ex. 1, Handwritten Ledger Jayne Dubin.) Dubin testified further that she would make payment entries in a ledger usually when she made the payment or within a week of the payment, explaining that she was a "bad bookkeeper." On cross-examination, however, she testified that she made the ledger entries on the dates the payments occurred. Further, while Dubin testified that she usually made the payments to Pelletier at dog shows, Pelletier testified that the parties were not at dog shows on some of the dates Dubin provided in the ledger. (Def. Ex. WW, Pelletier's Calendar Highlighting Dates of Shows.) Pelletier did, however, admit that Dubin contributed at least $10,000 to Pelletier. (Pl. Ex. 30, p. 8.)

In addition to the cash payments, Dubin recorded two payments to Pelletier by check in the amount of $1000 in her check register. (Pl. Exs. 2, 3, 46, Checkbook Page Dubin.) Dubin also explained that it was her understanding that any stud fees collected by Pelletier for Mr. Big's services would be credited to Dubin by Pelletier to finance Mr. Big's specials campaign. (Joint Ex. 8, Chronological Order of Bitches Bred to Big.) Dubin estimates that those stud fees totaled approximately $16,000. According to Dubin, therefore, Pelletier received compensation from her for Mr. Big totaling approximately $44,000.

At trial, the evidence showed that Pelletier did not usually send bills to her clients. When Pelletier handled Mr. Big in pursuit of his AKC championship, for example, Pelletier sent Dubin a bill only at the conclusion of Mr. Big's AKC championship career, and Dubin paid this bill

without question. Pelletier also trained and handled Dubin's other Norfolk Terriers—Winnie in 2003 to 2004; Classie in 2006 to 2007; Iffy in 2010; and Wilma in 2010—and she did not bill Dubin for her services until she returned the dogs to Dubin. (Joint Ex. 3, July 5, 2010 Billing for Iffy; Joint Ex. 4, July 5, 2010 Billing for Wilma.)

Pelletier herself testified that she billed her clients at the end of a championship and monthly for a specials campaign. Testimony from some of Pelletier's clients corroborated the fact that she did not send bills. Marsha Penrose testified, for example, that she paid Pelletier in cash periodically at dog shows and that she would not receive any bills for Pelletier's services until after she showed the dog. (Joint Ex. 11, Depo. Penrose, Aug. 10, 2011, at 10, 56-58.) Nichola Conroy, another one of Pelletier's clients, also testified at trial that she received infrequent bills from Pelletier and that the invoices she received from Pelletier did not reflect any credits that she gave for Conroy providing grooming services. Susan Newell, Pelletier's partner and former client, testified at trial that she paid Pelletier in cash before Pelletier sent her bills. In addition, James Covey, a registered AKC judge, who bred his dogs with Mr. Big on two occasions through Pelletier and co-owned a dog for which Pelletier served as agent, testified about the industry practice regarding billing. (Pl. Ex. 48, Columbia Terrier Association of Maryland Results Page, Apr. 22, 2011.) He stated that flat rates for boarding were common in the dog show world, which included room, board, food, grooming, and training. (Joint Ex. 12, Depo. Covey, Aug. 10, 2011, at 65-66, 83-84, 86.)

Pelletier contends, however, that it was mutually understood that Dubin's payments to her were simply to defray some of Mr. Big's show expenses. Pelletier testified that Dubin promised her the ownership rights to Mr. Big in exchange for showing Mr. Big. Her understanding was that they would share the show expenses and entry fees because a specials

campaign is very expensive. Further, Pelletier acknowledged that Dubin furnished cash payments over the course of Mr. Big's three-year specials career with periodic payments totaling approximately $10,000. Pelletier maintained that she received only cash payments from Dubin. Pelletier also received and retained payments for bringing Mr. Big, along with other show dogs, to be modeled and photographed for a magazine. (Pl. Ex. 40, Potpourri Group, Inc. Invoices.)

Pelletier explained further that she did not keep track of billings for Mr. Big because she relied upon Dubin's repeated representations that Mr. Big was Pelletier's dog and that Mr. Big would stay with Pelletier for the remainder of his life at the end of his career. Although Pelletier sent no bills to Dubin, Pelletier explained that she discussed payments with Dubin when they met at dog shows. Pelletier also explained that Dubin knew of Pelletier's expenses, as she received an entry every weekend in the mail with the shows Mr. Big entered and the entry cost of each show. See Def. Ex. T, Show Attendance Records Mr. Big.

Finally, the parties disagree over the stud fees for Mr. Big. Both parties agree that, at least until their dispute arose, they would consult each other to determine the dogs to which Mr. Big would be bred and that Pelletier would supervise all of Mr. Big's breedings. As to the stud fees collected, Dubin explained that their agreement provided that Pelletier would keep the stud fees, which were to be applied to Mr. Big's show expenses and care. Pelletier's understanding of the agreement, however, was that Dubin let her keep the stud fees to help offset the expenses she incurred in connection with Mr. Big's specials campaign. Pelletier estimates that she received approximately $16,000 in stud fees, not including her breeding of Mr. Big with her own dogs on two occasions.

C

Mr. Big's Specials Campaign Career

The Westminster show of February 14, 2005 marked the beginning of Mr. Big's specials career. In or around January of 2005, Dubin sent Mr. Big to stay with Pelletier to prepare for his specials campaign. Throughout his career, Mr. Big competed in over 200 AKC shows. (Joint Ex. 7, Dog Show Awards Records "Mr. Big"; Joint Ex. 19, Dog Record Lookup for: Ch Final Lea Big Ticket Item.)

During Mr. Big's specials career, he was on the road almost every weekend. When he did not compete, Mr. Big stayed with Pelletier. Dubin testified that Mr. Big stayed continuously with Pelletier, at Pelletier's request and with Dubin's agreement, so Pelletier could maintain his grooming between shows. Dubin also testified that Pelletier told her that, pursuant to the rate sheet, she would not charge Dubin boarding fees, which were about $8 per day, during these breaks between shows. (Pl. Ex. 49, Depo. Joyce Coccia, Oct. 25, 2011, at 28-29; Pl. Exs. 4, 5, Pelletier Business Cards.) Pelletier acknowledged that Norfolk Terriers must be groomed constantly to keep their coats in mint show condition. She also agreed that it would have been disruptive for Mr. Big, and potentially detrimental to his show career, to be transported between her home in Massachusetts and Dubin's home in New Jersey.

Rebecca Carner testified at trial that, in her expert opinion, the arrangement for Mr. Big to stay with Pelletier between shows was common: show dogs live with their handlers for years to allow the dogs to develop a rapport with their handlers and to keep them ready for the show ring. James Covey, a registered AKC judge, and Marsha Penrose, Pelletier's client, agreed that it was commonplace for show dogs to live apart from their registered owners. (Joint Ex. 12, Depo. Covey, Aug. 10, 2011, at 47; Joint Ex. 11, Depo. Penrose, Aug. 10, 2011, at 31.) While Daniel

Smyth, an expert who testified at trial for Pelletier, explained that owners generally take their dogs home for periods of time during their show careers, Pelletier testified to the contrary, stating that she has had clients' dogs live with her for up to three years at a time. (Pl. Ex. 61, Smyth Curriculum Vitae.) Similarly, Karen Stefkovich testified in her deposition that her dog stayed with Pelletier until the dog finished its championship. (Pl. Ex. 56, Depo. Stefkovich, Oct. 28, 2011, at 56.)

In addition to grooming Mr. Big, Pelletier assumed responsibility for registering him for dog shows. When Pelletier registered Mr. Big for the AKC shows, she identified Dubin as the owner of Mr. Big and herself as Dubin's agent. (Pl. Ex. 57, The Westminster Kennel Club 133rd Annual Dog Show, Feb. 9 and 10, 2009.) Pursuant to the AKC regulations, "[e]very dog must be entered in the name of the person who actually owned the dog at the time entries closed." (Rules Applying to Dog Shows, AKC.org, http://www.akc.org/pdfs/rulebooks /RREGS3.pdf.) Pelletier testified, however, that she had served as co-owner as well as an agent for other dogs in the past. See Def. Ex. AAA, South County Kennel Club Inc. Catalogue, Apr. 30, 2006; Def. Ex. BBB, Westchester Kennel Club Catalogue, Sept. 9, 2011. She explained, for example, that the catalogues for the American Norfolk Terrier Association Fall Festival on October 11 and 12, 2008 and October 10 and 11, 2009 list Dubin and Pelletier as co-owners of Mr. Big. (Def. Ex. EEE, ANTA Fall Festival, Oct 11 and 12, 2008; Def. Ex. DDD, ANTA Fall Festival, Oct. 10 and 11, 2009.) Yet, Daniel Smyth, an expert testifying on behalf of Dubin, explained that Pelletier listed herself as agent and Dubin as owner for the February 2009 Westminster registration, which indicates that Dubin was Mr. Big's owner.

Further, in acting as Dubin's sponsor at the time she sought admission to the Norwich Norfolk Terrier Club in 2006 or 2007, Pelletier wrote that Dubin "currently has a Norfolk [Mr.

Big] that she bred and owns in the top five of our breed standings." (Pl. Ex. 6, Sponsor's Questionnaire at 2.) At trial, Pelletier clarified that Dubin filled out the questionnaire and e-mailed it to her and, after reviewing the questionnaire, she told Dubin that she approved it for submission. Pelletier admitted that she identified Dubin as Mr. Big's owner and herself as Dubin's agent, but she explained that she did so pursuant to an agreement between the parties.

D

Mr. Big's Retirement

Mr. Big's career wound down in 2008, although his last show was the Westminster dog show—a year later—in February of 2009. (Pl. Ex. 60, Photo Mr. Big Receiving Award of Merit at the Westminster Kennel Club, Feb. 9-10, 2009.) On the night before the Westminster dog show in early 2008, Dubin organized a retirement dinner for Mr. Big. Several people attended the dinner, including Joan Thompson, Dubin's friend; Nichola Conroy, one of Pelletier's assistants; Pelletier; and Dubin.

Dubin described the dinner as a somewhat emotional affair given Mr. Big's impending retirement. She claimed that Pelletier was in tears at the thought of returning Mr. Big to Dubin. As a result, Dubin said that she offered to let Mr. Big stay with Pelletier. Dubin explained that she intended Mr. Big's stay with Pelletier to be brief and temporary. She claims that the only reason she made this offer was that Pelletier was in tears, and she wanted Pelletier to show Mr. Big in Canada to achieve his Canadian championship. Dubin testified that Pelletier also promised not to charge Dubin a boarding fee if Mr. Big stayed with her.

To the contrary, Pelletier testified that Dubin announced to the group that Mr. Big would live with Pelletier for the rest of his life. Pelletier said that Dubin also promised to place

Pelletier's name on Mr. Big's AKC registration as co-owner. Pelletier denied that there was any discussion with Dubin at that dinner about Mr. Big's Canadian championship prospects.

Nichola Conroy, one of Pelletier's clients, testified that she attended the retirement dinner. (Pl. Ex. 26, Letter by Nichola Conroy, Nov. 27, 2010.) She explained that, during the dinner, Dubin told Pelletier that she could not take Mr. Big away from Pelletier because that was the only home he had ever known, and he and Pelletier had been together for so long. She also testified that Dubin told Pelletier that she could keep Mr. Big for the rest of his life.

Joan Thompson, who testified at trial, also attended the dinner. She agreed that Dubin said she could not take Mr. Big away from Pelletier; however, Ms. Thompson explained that Dubin made no promise about how long Mr. Big could stay with Pelletier and simply indicated that following the 2008 Westminster show, she would allow Mr. Big to continue staying with Pelletier for the time being. Further, according to Thompson, Dubin and Pelletier did not discuss when Mr. Big would return to Dubin or if Dubin would transfer to Pelletier an ownership interest in Mr. Big.

E

The Events Following Mr. Big's Retirement

After the dinner in 2008, Mr. Big returned home with Pelletier; however, the parties continued to maintain contact regarding Mr. Big's participation in future dog shows and Mr. Big's breedings. Pelletier testified, for example, that she consulted Dubin and that they jointly decided not to show Mr. Big in the Montgomery show in October of 2008. In addition, in both October of 2008 and again in October of 2009, Mr. Big returned home with Dubin for approximately ten days to have his semen collected and frozen for future breeding. (Joint Ex. 1, Straws to Paws Invoice and Supporting Documents, Oct, 10, 2008; Joint Ex. 2, Straws to Paws

Invoice and Supporting Documents, Oct. 9, 2009.) The records from the semen collection indicate that Dubin is the owner of Mr. Big. Id.

The parties also continued to make joint decisions concerning Mr. Big's breeding. (See Def. Ex. HHH, E-mail Between Parties Regarding Breeding, Dec. 28, 2010.) James Covey, a registered AKC judge, explained, for example, that on August 31, 2009, he called Dubin to ask about breeding one of his dogs to Mr. Big, and Dubin directed him to Pelletier to discuss the stud fee. (Joint Ex. 12, Depo. Covey, Aug. 10, 2011, at 25-27, 54.) Dubin kept the AKC papers in her name, which Pelletier never contested. Rather, Pelletier continued to confer with Dubin to obtain her advance approval of the female dogs to be bred with Mr. Big. (Joint Ex. 8, Chronological Order of Bitches Bred to Big.) Indeed, Dubin testified that she approved fourteen of the seventeen breedings of Mr. Big that Pelletier supervised between June 7, 2005 and October 14, 2009, although she did not know about or approve three of the breedings. Id. Further, Pelletier retained the stud fees for these breedings, but claimed that she continued to credit Dubin for the stud fees that she collected.

Although the parties continued to act in concert when making decisions about Mr. Big, Pelletier offered evidence that Dubin referred to Pelletier as Mr. Big's owner. Amanda Arruda, Pelletier's assistant, claimed, for example, that she heard Dubin refer to Mr. Big as Pelletier's dog during Dubin's visit to Pelletier's house in the summer of 2009 and again at an American Norfolk Terrier Association event shortly thereafter, although she conceded at trial that there is no record of these statements. Magna Omansky, another one of Pelletier's clients, testified that Dubin told her that Mr. Big was going to stay with Pelletier after his show career, and Celeste Gavin-Clarke, an AKC Judge who purchased one of Mr. Big's offspring, testified that Dubin said she gave Mr. Big to Pelletier. (Joint Ex. 15, Depo. Gavin-Clarke, Oct. 21, 2011, at 16, 19;

Joint Ex. 10, Depo. Omansky, Aug. 9, 2011, at 443-44.) Gavin-Clarke also testified, however, that Dubin called her and asked her to distract Pelletier at a dog show so that Dubin could take Mr. Big. (Joint Ex. 15, Depo. Gavin-Clarke, Oct. 21, 2011, at 16-19; Joint Ex. 12, Depo. Covey, Aug. 10, 2011, at 71-72.) Finally, James Covey, the registered AKC judge, testified that Dubin told him that Pelletier had the authority to choose which dogs would be bred to Mr. Big. (Joint Ex. 12, Depo. Covey, Aug. 10, 2011, at 27.)

To the contrary, many witnesses testified that Pelletier continued to refer to Dubin as Mr. Big's owner. On March 23, 2009, after the retirement dinner, for example, Mr. Big and a dog owned by Karen Stefkovich had puppies. When Ms. Stefkovich attempted to register her puppies, she identified Pelletier as Mr. Big's owner. (Pl. Ex. 56, Depo. Stefkovich, Oct. 28, 2011, at 28-29.) The AKC contacted Pelletier to confirm the registration, and Pelletier then sent an e-mail, dated June 30, 2009, to Karen Stefkovich that instructed that "[t]he litter registration is not right. I do not own [Mr. Big,] Jayne Dubin does." Id. at 28, 33, 79; Pl. Ex. 59, E-mail from Pelletier to Stefkovich, June 30, 2009. At trial, Pelletier explained that she did not intend the e-mail to be an admission that Dubin was Mr. Big's owner, but rather that it was Dubin's responsibility to register Mr. Big's litters. Later that summer, however, Pelletier introduced Karen Stefkovich to Dubin and again referred to Dubin as Mr. Big's owner. (Pl. Ex. 56, Depo. Stefkovich, Oct. 28, 2011, at 28, 34, 78-80.) Similarly, Marsha Penrose, Pelletier's client, testified that Dubin did, in fact, ask Pelletier to return Mr. Big. (Joint Ex. 11, Depo. Penrose, Aug. 10, 2011, at 33-35.)

Over time, the relationship between the parties began to deteriorate. In December of 2009, Dubin agreed to transfer ownership of her dog Winnie to Pelletier in exchange for a credit for Winnie's sale price. See Def. Ex. NN, E-mail from Dubin to Pelletier, Dec. 12, 2009; Def.

Ex. I, E-mail from Dubin to Pelletier, Dec. 15, 2009; Def. Ex. FFF, Text Message Dec. 17, 2009. Dubin testified that she expected to receive a credit of $1500. In addition, from September of 2009 to October of 2009, Dubin sent her dog, Wilma, to Pelletier to be shown in a series of dog shows. At the end of the series, Pelletier sent Dubin a bill for $1492, with a $1000 credit for Winnie and a total amount due of $492. (Joint Ex. 5, E-mail from Pelletier to Dubin, Invoice for Wilma, Jan. 3, 2010.) Pelletier explained that she credited Dubin only $1000 because Winnie was a seven-year-old dog, which decreased her value. Dubin contested the $1000 credit, but she begrudgingly agreed to pay the remaining $492 balance due on the bill because Pelletier told her that she would no longer handle Dubin's dogs if Dubin did not pay that amount.

Matters became further complicated when Dubin hired Pelletier to handle and show two more of her dogs, Iffy and Wilma, between March of 2010 and July of 2010. During this time, however, the parties still had friendly conversations. (Def. Ex. QQ, June 23, 2010 Text Message Regarding Iffy; Def. Ex. SS, July 5, 2010 Text Message Regarding Wilma; Def. Ex. O, Text Message Regarding Wilma, July 3, 2010.) After showing the dogs, Pelletier sent Dubin the bill for each dog, with a total amount due of $4190. (Joint Ex. 4, July 5, 2010 Billing for Wilma; Joint Ex. 5, E-mail from Pelletier to Dubin, Invoice for Wilma, Jan. 3, 2010; Def. Ex. J, E-mail From Dubin to Pelletier Regarding Wilma, Apr. 1, 2010.) Dubin again contested these charges and requested the $500 credit that she thought Pelletier still owed her for Winnie as well as a credit for Mr. Big's stud fees. Pelletier refused to credit Dubin these amounts. As a result, Dubin refused to pay the bill for Iffy and Wilma.

Throughout July and August of 2010, the parties attempted to resolve their financial disputes. On July 7, 2010, for example, Dubin sent a text message to Pelletier—"You [are] the one who wanted [Mr. Big] to stay with [you]. I would have been happy [f]or him to have come

home"—to which Pelletier responded, "I love that dog but if you want to push this I will send him to you." (Joint Ex. 6, Text Message Exchange, July 7, 2010, at 5-7.) On July 21, 2010, Pelletier contacted Dubin to let her know that she still had not received payment. (Def. Ex. CC, Text Message Regarding Request for Check Payment, July 21, 2010.) Pelletier sent Dubin additional requests for payment throughout August of 2010, to which Dubin declined to respond. (Def. Ex. L, E-mail Regarding Iffy and Wilma, Aug. 3 and 4, 2010; Def. Ex. P, Text Message Requesting Discussion by Phone, Aug. 2, 2010; Def. Ex. M, E-mail Requesting Payment, Aug. 3 and 8, 2010; Def. Ex. N, E-mail Requesting Payment, Aug. 13, 2010.)

In addition to Dubin's refusal to pay the bill for Iffy and Wilma, Dubin refused to register the last three litters sired by Mr. Big. See Def. Ex. PP, May 6, 2012 Text Message Regarding Litter. Dubin claimed that Pelletier did not inform her of the identity of the female dogs bred to Mr. Big and thus Dubin refused to verify the female dog owners' AKC litter registrations. See Def. Ex. GGG, E-mail Regarding Joanne Condron Litter Registration; Def. Ex. OO, Text Message Regarding Breeding and Payment, July 27, 2010; Def. Ex. RR, E-mail Regarding AKC Litter Registration, Aug. 4, 2010.

Eventually, Dubin demanded the return of Mr. Big. Pelletier refused to give up the dog. In response, Dubin sent an e-mail to the AKC, seeking advice regarding Pelletier's possession of Mr. Big and the use of Mr. Big to sire litters, to which the Director of Compliance Support, Jack Norton, responded that she could submit a complaint with the AKC or explore her legal options. (Def. Ex. TT, AKC E-mail to Dubin, Sept. 24, 2010.)

On November 17, 2010, Dubin filed a Complaint in the Rhode Island Superior Court. She claims that she is the rightful owner of Mr. Big and seeks a declaratory judgment to that

effect and a writ of replevin to recover possession of Mr. Big. In addition, she seeks to recover Mr. Big's stud fees under a theory of unjust enrichment and seeks damages for conversion.

Pelletier filed an Amended Counterclaim, by which she seeks to establish her right to ownership and possession of Mr. Big. She alleges theories of gift, breach of implied contract, guardianship under R.I. Gen. Laws §§ 4-13-1.2 and 3-14-41,[2] and best interest of the dog. She also alleges fraudulent inducement and fraudulent misrepresentation. Pelletier further claims that she should be compensated for the reasonable value of her services as a professional handler during Mr. Big's show dog career under a theory of unjust enrichment. She further claims that she should recoup the reasonable value of her services as a professional handler during Wilma and Iffy's show careers under theories of implied contract or unjust enrichment.

In November of 2011, the case proceeded to a non-jury trial. In addition to presenting testimony and voluminous exhibits, the parties expanded the trial record to include numerous depositions of witnesses who did not testify at trial. Both parties thereafter filed a copy of excerpts from the trial transcript and extensive post-trial memoranda. After a review of all of the evidence and memoranda filed in this matter, this Decision follows.[3]

II

STANDARD OF REVIEW

A non-jury trial is granted by Rule 52(a), which provides that "in all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusions of law thereon[.]" R.I. Super. R. Civ. P. 52(a). In a bench trial, therefore, "the trial

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[2] In her counterclaim for declaratory relief, Pelletier also relies on these statutory provisions to seek a declaratory judgment that she is the owner of Mr. Big. As this Court views the statutory scheme as inapplicable to a claim of ownership, it will address the statute only as it pertains to Pelletier's claim for declaratory relief as to possession.

[3] This Court has jurisdiction of this matter under R.I. Gen. Laws 1956 §§ 8-2-12 and 8-2-13.

justice sits as a trier of fact as well as of law." Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). In such a proceeding, "determining the credibility of [the] witnesses is peculiarly the function of the trial justice." McEntee v. Davis, 861 A.2d 459, 464 (R.I. 2004) (quoting Bogosian v. Bederman, 823 A.2d 1117, 1120 (R.I. 2003)). It is, after all, "the judicial officer who [actually observes] the human drama that is part and parcel of every trial and who has had the opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." In the Matter of the Dissolution of Anderson, Zangari & Bossian, 888 A.2d 973, 975 (R.I. 2006). "[A]s a front-row spectator[,] the trial justice has the chance to observe the witnesses as they testify and is therefore in a 'better position to weigh the evidence and to pass upon the credibility of the witnesses[.]'" Perry v. Garey, 799 A.2d 1018, 1022 (R.I. 2002) (quoting Nisenzon v. Sadowski, 689 A.2d 1037, 1042 (R.I. 1997)).

Although the trial justice is required to make specific findings of fact and conclusions of law, "brief findings will suffice as long as they address and resolve the controlling factual and legal issues." White v. Le Clerc, 468 A.2d 289, 290 (R.I. 1983); see R.I. Super. R. Civ. P. 52(a). The trial justice's findings, however, must be supported by competent evidence. See Nisenzon, 689 A.2d at 1042. As such, a trial justice sitting as a finder of fact need not categorically accept or reject each piece of evidence or resolve every disputed factual contention. Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008). Nonetheless, the trial justice should address the issues raised by the pleadings and testified to during the trial. Nardone v. Ritacco, 936 A.2d 200, 206 (R.I. 2007).

III

ANALYSIS

A

Mr. Big

When a non-jury trial proceeding involves requests for declaratory relief, the trial justice is guided by the Uniform Declaratory Judgments Act, R.I. Gen. Laws §§ 9-30-1—9-30-16. The Act grants this Court the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." § 9-30-1. This Court's "decision to grant or to deny declaratory relief under the Uniform Declaratory Judgments Act is purely discretionary." Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997); Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997); Lombardi v. Goodyear Loan Co., 549 A.2d 1025, 1027 (R.I. 1988). "When the Superior Court exercises its discretion to issue such a judgment, its decision should remain untouched on appeal unless the court improperly exercised its discretion or otherwise abused its authority." Woonsocket, 694 A.2d at 729.

1

Dubin's Claim for Declaratory Judgment of Ownership

In this case, Dubin seeks a declaratory judgment to establish her right of ownership of Mr. Big. In response, Pelletier advances two primary theories, embodied in her counterclaims, as to why Dubin should not be declared the owner of Mr. Big. She contends that Dubin gifted Mr. Big to her or, alternatively, that they entered into an implied-in-fact oral contract by which Dubin gave her Mr. Big in exchange for Pelletier's services as a handler. This Court will address these arguments in seriatim.

In an action for declaratory judgment as to ownership, the party seeking declaration of ownership has the burden of proof. Cardinal Chem. Co. v. Morton Int'l, Inc., 508 U.S. 83, 95 (1993); Aetna Life Ins. Co. v. Haworth, 300 U.S. 227, 240–41 (1937); see Slepkow v. Robinson, 113 R.I. 550, 555, 324 A.2d 321, 325 (1974); Buczkowicz v. Lubin, 399 N.E.2d 680, 682 (Ill. Ct. App. 1980). That burden may be met by any competent evidence. See Rea v. State of Missouri, 84 U.S. 532, 537 (1873). Once the party seeking declaratory judgment has produced evidence and established a prima facie case of ownership, it falls to the party opposing the declaratory judgment to establish the invalidity of that ownership by clear and convincing evidence. Dufresne v. Cooper, 64 R.I. 120, 11 A.2d 3, 4 (1940); see Soc'y of Holy Transfiguration Monastery, Inc. v. Gregory, 689 F.3d 29, 40 (1st Cir. 2012).

In the context of dog ownership, a dog's certification of registration creates a prima facie case of ownership. Buczkowicz, 399 N.E.2d at 682; see Spotts v. United States, 429 F.3d 248 (6th Cir. 2005); United States v. Nava, 404 F.3d 1119 (9th Cir. 2005). Accordingly, a certificate of registration under the name of a single owner supports a conclusion that the dog is the sole property of that listed owner. Wray v. Painter, 791 F. Supp. 2d 419, 429 (E.D. Pa. 2011); Weiskopf v. Am. Kennel Club, Inc., No. 00-CV-471(NG), 2002 WL 1303022, at *3 (E.D.N.Y. June 11, 2002). Nonetheless, that presumption of ownership may be overcome through clear and convincing evidence of a contradictory claim. See Dufresne, 64 R.I. at 120, 11 A.2d at 4; Soc'y of Holy Transfiguration Monastery, 689 F.3d at 40. Evidence pertinent to establishing ownership may include ownership of the mother, certification of registration, exclusive possession, or the exercise of control. See, e.g., Jones v. Office of Fin. of Baltimore County, 451 A.2d 926, 928 (Md. 1982) (noting that "offspring or increase of tame or domestic animals belongs to the owner of the dam or mother"); Buczkowicz, 399 N.E.2d at 682 (concluding that

certificate of registration created prima facie presumption of title, and considering the payment of stud fees as evidence of ownership); Beard v. Mossman, 19 A.2d 850, 851 (Pa. Super. Ct. 1941) (reasoning that one-year possession of a dog was presumptive evidence of ownership).

No single indicium of ownership is dispositive, however, and often courts determine ownership based on the intent of the parties. Servel v. Corbett, 290 P. 200, 203 (Idaho 1930). In Buczkowicz, for example, the Illinois Court of Appeals upheld the decision of the trial court that concluded that it was not against the manifest weight of evidence that the original owner of a show dog was its sole owner. 80 Ill. App. 3d at 202. In that case, the original owner of the dog sent a new certificate of registration to the AKC, listing herself as a co-owner with the dog's handler. Id. The Court reasoned that the owner had listed the handler as a co-owner to facilitate the showing of the dog and had never intended to part with sole ownership. Id.

Similarly, in Sandefur v. Jeansonne, the Louisiana Court of Appeals held that the plaintiffs were not the owners of three mules, despite their long possession of the animals. 9 So. 2d 80, 81 (La. Ct. App. 1942). The Court reasoned that the plaintiffs could not establish ownership because they could not put forth any evidence that the defendant had sold or gifted the mules to them. Id. Thus, in both cases, the courts relied heavily on the intent of the original owner, concluding in each case that the original owner retained sole ownership when that owner did not intend to divest ownership to another. Buczkowicz, 399 N.E.2d at 682; Sandefur, 9 So. 2d at 81; see Servel, 290 P. at 203.

In this case, Dubin is the sole owner of Mr. Big's mother. Dubin also is listed as the sole owner of Mr. Big on his AKC registration. See Pl. Ex. 8, The AKC Certificate of DNA Analysis; Pl. Ex. 10, AKC Registration Certificate. In addition, Mr. Big has a microchip implanted in him that identifies Dubin as his owner. See Pl. Ex. 9, Companion Animal Recovery

Confirmation, Microchip Form. His registration for AKC shows listed Dubin as his owner, as required by AKC regulations. See Pl. Ex. 57, The Westminster Kennel Club 133rd Annual Dog Show, Feb. 9 and 10, 2009; Rules Applying to Dog Shows, AKC.org, http://www.akc.org/pdfs/rulebooks/RREGS3.pdf. Dubin also supervises Mr. Big's breedings and collects stud fees from them. She collected and had frozen Mr. Big's semen and has exclusive ownership and control over the semen collection for future breedings. See Jt. Ex. 1, Straws to Paws Invoice and Supporting Documents, Oct. 10, 2008; Jt. Ex. 2, Straws to Paws Invoice and Supporting Documents, Oct. 9, 2009.

Through this evidence, Dubin has established a prima facie case of ownership of Mr. Big. See Wray, 791 F. Supp. 2d at 429 (certificate of registration under the name of a single owner is evidence of sole ownership); Weiskopf, 2002 WL 1303022, at *3 (same); Buczkowicz, 399 N.E.2d at 682 (payment of stud fees evidence of ownership); Jones, 451 A.2d 928 ("[I]n the absence of an agreement to the contrary[,] the offspring or increase of tame or domestic animals belongs to the owner of the dam or mother."); Arkansas Valley Land & Cattle Co. v. Mann, 130 U.S. 69, 9 S. Ct. 458 (1889) (recognizing the maxim partus sequitur ventrem to support the proposition that "the brood of all tame and domestic animals belongs to the owner of the dam or mother"). This evidence, however, creates only a presumption of ownership in Dubin that Pelletier can rebut with other competent evidence of actual ownership of the animal. See Buczkowicz, 399 N.E.2d 680 (concluding that certificate of registration was not dispositive in action to replevy show dog when contradictory evidence rebutted presumption that certificate established ownership of dog); see also Lautieri v. O'Gara, 60 R.I. 485, 199 A. 454 (1938) (concluding that plaintiff had right to possession in a replevin action when plaintiff demonstrated documentary and other evidence of title, which was undisputed or not successfully contradicted).

Thus, the burden is on Pelletier to successfully rebut Dubin's prima facie case of ownership through clear and convincing evidence that she is the owner of Mr. Big. See Brunswick, 389 A.2d at 1253; Kebabian v. Adams Express Co., 27 R.I. 564-65 A. 271 (1906).

a

Gift

Pelletier first attempts to rebut Dubin's claim of ownership of Mr. Big through a theory of gift. Pelletier claims that Dubin actually gave Mr. Big to her at the end of his show career. Pelletier relies primarily on Dubin's alleged statements at Mr. Big's retirement dinner that Dubin would permit Mr. Big to stay with Pelletier. To advance her gift theory, Pelletier alleges that Dubin's conduct and statements prove that she intended to gift Mr. Big to Pelletier—specifically, that Dubin referred to Pelletier as Mr. Big's owner. Dubin responds that she made no permanent gift of Mr. Big to Pelletier and that Pelletier cannot prove otherwise by clear and convincing evidence.

In Rhode Island, "[a] valid gift requires a present true donative intent on the part of the donor, and some manifestation such as an actual or symbolic delivery of the subject of the gift so as to completely divest the donor of dominion and control over it." Thompson v. Thompson, 973 A.2d 499, 507 (R.I. 2009) (internal quotations omitted). It is axiomatic "that a claimant has the burden of establishing a gift inter vivos by clear and satisfactory evidence" of donative intent. Wyatt v. Moran, 81 R.I. 399, 403, 103 A.2d 801, 803 (1954). Accordingly, the claimant "must establish by such degree of proof that the donor intended, in praesenti, to divest himself [or herself] of exclusive ownership and control over the subject matter of the alleged gift and to vest such ownership and control in the claimant." Id. (internal quotations omitted).

In addition to proving a present true donative intent on the part of the donor, the claimant also must prove delivery. See Silva v. Fitzpatrick, 913 A.2d 1060, 1063 (R.I. 2007); Ruffel v. Ruffel, 900 A.2d 1178, 1188 (R.I. 2006); Tabor v. Tabor, 73 R.I. 491, 493, 57 A.2d 735, 736 (1948); Weber v. Harkins, 65 R.I. 53, 59, 13 A.2d 380, 382 (1940). There must be "some manifestation such as an actual or symbolic delivery of the subject of the gift so as to completely divest the donor of dominion and control of it." Dellagrotta v. Dellagrotta, 873 A.2d 101, 110 (R.I. 2005) (quoting Black v. Weisner, 112 R.I. 261, 267, 308 A.2d 511, 515 (1973)). Where there is no evidence of actual delivery, "there must be such a delivery as the nature and situation of the subject sought to be given reasonably permits, and this delivery must clearly manifest the donor's intention to divest himself [or herself] of title and possession. It is usually considered sufficient if the donor has put it in the power of the donee to take possession, or if the donee can take possession without committing a trespass." Black, 112 R.I. at 268, 308 A.2d at 515 (citing 38 Am. Jur. 2d Gifts § 20 at 821-23 (1968)).

In this case, Pelletier failed to prove, by clear and convincing evidence, that Dubin, through her words or actions, "exhibited the requisite donative intent" to establish a gift. See Dellagrotta, 873 A.2d at 107. The delivery of Mr. Big to Pelletier in January of 2005 was not for "gift" purposes, but rather the result of Dubin hiring Pelletier to handle and train Mr. Big through his specials campaign. Dubin's payments to Pelletier during Mr. Big's specials campaign further support a finding there was no donative intent, especially because Dubin kept Mr. Big's AKC registration in her name. See Pl. Ex. 1, Handwritten Ledger Jayne Dubin; Pl. Exs. 2, 3, Checkbook Page Jayne Dubin; see also Notarantonio v. Notarantonio, 941 A.2d 138 (R.I. 2008) (finding no present donative intent or actual or symbolic delivery where the plaintiff did not sign the operative transfer document). While the evidence shows that Dubin assented at the

retirement dinner to Mr. Big continuing to reside with Pelletier for some period of time, it is insufficient to show an intent on the part of Dubin at that time to permanently divest herself of ownership of him and to vest exclusive ownership in Pelletier.

Indeed, Dubin maintained the right to possession of Mr. Big. Pelletier herself testified that Dubin could have taken Mr. Big back at any time. Additionally, there was credible evidence that Pelletier continued to refer to Dubin as Mr. Big's owner. See Pl. Ex. 56, Depo. Stefkovich, Oct. 28, 2011, at 28-29, 33-34, 77-80; Joint Ex. 11, Depo. Penrose, Aug. 10, 2011, at 33-35; Pl. Ex. 59, E-mail from Pelletier to Stefkovich, June 30, 2009. Dubin also continued to exercise a right of control over the dog. Pelletier conferred with Dubin, even after the retirement dinner, about which dogs should be bred to Mr. Big and which dog shows Mr. Big should enter. See, e.g., Def. Ex. HHH, E-mail Between Parties Regarding Breeding, Dec. 28, 2010; see also Bank of Manhattan Trust Co. v. Gray, 53 R.I. 377, 380, 166 A. 817, 818 (1933) (holding that burden of proving a gift was not met because the testatrix exercised joint control with the respondent, conferring only a use right over the property in issue, not possession).

Accordingly, Pelletier's counterclaim that Mr. Big was a gift to her from Dubin must fail as she failed to present clear and convincing evidence of present donative intent on the part of Dubin or delivery. This Court cannot find, clearly and convincingly, that Dubin intended to gift Mr. Big to Pelletier and divest herself permanently of ownership or control over her dog. As such, Pelletier has failed to rebut Dubin's prima facie case of ownership through evidence of gift.

b

Implied Contract

Pelletier next seeks to rebut Dubin's claim of ownership of Mr. Big through a theory of implied contract. She argues that, based on the actions of the parties, this Court should find an

implied-in-fact oral agreement between Dubin and Pelletier that ownership of Mr. Big would vest in Pelletier. Specifically, Pelletier argues that Dubin offered Mr. Big to Pelletier as a pet in exchange for Pelletier's services as a distinguished handler and trainer of Norfolk Terriers. Pelletier contends that the length of time that she kept Mr. Big and her performance of the agreement are sufficient indicia to prove that Dubin agreed to give her ownership of the dog. Dubin counters that there was no contract by which she agreed to vest ownership of Mr. Big in Pelletier and that the Statute of Frauds would bar any such alleged ownership agreement because there is no writing to support its existence. In response, Pelletier argues that their agreement cannot be barred by the Statute of Frauds because she engaged in part performance of the agreement by providing services to Dubin in reliance on her alleged promise.

Under Rhode Island law, an implied contract arises when the "intention of the parties is not expressed, but an agreement in fact, creating an obligation, is implied or presumed from their acts, or . . . where there are circumstances which, according to the ordinary course of dealing and the common understanding of [persons], show a mutual intent to contract." Bailey v. West, 105 R.I. 61, 64, 249 A.2d 414, 416 (1969). A party seeking to prove the existence of an implied-in-fact contract must demonstrate mutual agreement or consent, intent to promise, and a meeting of the minds. Id. at 64-65, 249 A.2d at 416. Determining whether a "meeting of the minds" existed between the parties and ascertaining the parties' intent requires this Court to assess witness credibility and weigh the evidence. See Soares v. Langlois, 934 A.2d 806, 809 (R.I. 2007). At trial, the moving party has the burden of proof as to each element of the contract. Douglas Furniture Corp. v. Ehrlich, 91 R.I. 7, 160 A.2d 362 (1960).

From the evidence before it, this Court finds that Pelletier has failed to prove the existence of a contract between her and Dubin for the transfer of Mr. Big's ownership from

Dubin to Pelletier that can be implied from their course of dealings. After Pelletier accepted Mr. Big, she never inquired as to Mr. Big's ownership and never billed Dubin for her services; however, Dubin made several payments to Pelletier, which Pelletier accepted. See Bailey, 105 R.I. at 64, 249 A.2d at 416 (considering the parties' acts and their ordinary course of dealings to determine mutual agreement and intent to contract). Although Pelletier argues that it was mutually understood that Dubin provided financial support simply to offset Mr. Big's show expenses, the testimony from Pelletier's clients and the course of dealings between Dubin and Pelletier do not support Pelletier's assertion in this regard. See also Kenney Mfg. Co. v. Starkweather & Shepley, Inc., 643 A.2d 203 (R.I. 1994) (considering the prior course of dealings between the parties to determine that there was no established pattern of acceptance by silence).

Indeed, when Pelletier trained and handled Dubin's other Norfolk Terriers—including Classie, Winnie, Iffy, and Wilma—Pelletier did not provide a bill until she returned the dogs to Dubin. (Def. Ex. E, Final Lea's First Class Ticket "Classie" Invoice, Oct. 5, 2005 to Dec. 9, 2007; Joint Ex. 3, July 5, 2010 Billing for Iffy; Joint Ex. 4, July 5, 2010 Billing for Wilma.) Pelletier engaged in a similar course of dealing with her other clients, which was evidenced by the trial testimony of Nichola Conroy and Susan Newell and the deposition of Marsha Penrose. (Joint Ex. 11, Depo. Penrose, Aug. 10, 2011, at 10, 56-58.) Further, the testimony of James Covey, a registered AKC judge, suggests that Pelletier's usual practice of not providing a bill is consistent with the industry practice regarding billing in the dog show world. (Joint Ex. 12, Depo. Covey, Aug. 10, 2011, at 65-66, 83-84, 86.) Accordingly, in reviewing this evidence presented during the trial, this Court finds that there was no mutual agreement and "intent to promise" between the parties so as to establish an implied-in-fact contract for Pelletier to own Mr. Big. See Bailey, 105 R.I. at 64, 249 A.2d at 416; Kenney Mfg. Co., 643 A.2d at 203.

Further, the evidence at trial shows that Pelletier and Dubin continued to work together as they had in the past: selecting shows for Mr. Big and determining which dogs could be bred to Mr. Big. See Def. Ex. HHH, E-mail Between Parties Regarding Breeding, Dec. 28, 2010; Joint Ex. 12, Depo. Covey, Aug. 10, 2011, at 25-27, 54. Pelletier took little, if any, independent action with respect to Mr. Big as might be expected of a true owner. She even sought Dubin's permission to withdraw Mr. Big from the October 2008 Montgomery dog show.

Fundamentally, there was no credible evidence at trial that Dubin intended to divest herself of all dominion and control over Mr. Big when hiring Pelletier to handle and show Mr. Big through his specials campaign. See John Deere Plow Co. v. Gooch, 230 Mo. App. 150, 91 S.W.2d 149 (1936) (explaining that ownership of an animal's offspring continues until divested by some contract, express or implied, between the owner and some other person). Instead, her payments to Pelletier throughout Mr. Big's career reveal an opposite intent: intent to maintain ownership of Mr. Big and simply to hire Pelletier to handle and show him. See Pl. Ex. 1, Handwritten Ledger Jayne Dubin; Pl. Exs. 2, 3, 46, Checkbook Page Dubin; cf. Notarantonio, 941 A.2d 138 (concluding that plaintiff's intent to divest herself of dominion and control over shares of stock was negated by failure to sign the operative transfer document). Although some of Pelletier's clients testified that Dubin said Pelletier was Mr. Big's owner, their testimony cannot clearly and convincingly establish ownership in Pelletier where the testimony of Pelletier herself as well as her clients, Karen Stefkovich and Marsha Penrose, referred to Dubin as Mr. Big's owner. (Pl. Ex. 56, Depo. Stefkovich, Oct. 28, 2011, at 28-29, 33-34, 77-80; Jt. Ex. 11, Depo. Penrose, Aug. 10, 2011, at 33-35; Pl. Ex. 59, E-mail from Pelletier to Stefkovich, June 30, 2009.)

Indeed, this Court finds Pelletier's own testimony as to her conduct during Mr. Big's specials campaign and after the retirement dinner more persuasive than her clients' testimony about her conduct. See McEntee v. Davis, 861 A.2d 459, 464 (R.I. 2004) (explaining that "[t]he task of determining credibility of witnesses is peculiarly the function of the trial justice when sitting without a jury."). Pelletier registered Mr. Big in the Westminster dog show in 2009 and listed Dubin as the dog's owner. See Pl. Ex. 57, The Westminster Kennel Club 133rd Annual Dog Show, Feb 9 and 10, 2009. She knew that Dubin was the registered owner of Mr. Big and never quarreled with that fact. In fact, she acknowledged Dubin as Mr. Big's owner. Pl. Ex. 59, E-mail from Pelletier to Stefkovich, Jun. 30, 2009; Pl. Ex. 56, Depo. Stefkovich, Oct. 28, 2011, at 28, 34, 78-80; Pl. Ex. 6, Sponsor's Questionnaire at 2. Pelletier consulted with Dubin regarding Mr. Big's breedings, knew that Dubin had possession and control of his frozen sperm that she had collected in 2008 and 2009, and continued to credit Dubin for his stud fees, even after his retirement dinner. See Def. Ex. HHH, E-mail Between Parties Regarding Breeding, Dec. 28, 2010; Jt. Ex. 12, Depo. Covey, Aug. 10, 2011, at 25-27, 54; Jt. Ex. 8, Chronological Order of Bitches Bred to Big. As such, Pelletier's conduct does not evidence ownership of or the right to possess Mr. Big and, in fact, suggests the opposite. Through this evidence of the parties' course of dealings, Pelletier simply failed to rebut the presumption of Dubin's ownership interest in Mr. Big with clear and convincing evidence. Cf. Brunswick, 389 A.2d at 1253.

Pelletier also argues that the length of time that she possessed Mr. Big serves as indicia of ownership. Pelletier relies on 4 Am. Jur. 2d Animals § 5, "Indicia of Ownership," which provides that "[m]ere documentary title is not conclusive of ownership of an animal. . . . Exclusive possession of an animal for a period of time is presumptive evidence of ownership thereof, and long possession of animals is strong evidence of ownership." The cases cited in this

secondary authority recognize, however, that long possession—although strong evidence of ownership—does not stand up when in conflict with direct evidence of ownership in another. See, e.g., Terral v. La. Farm Bureau Cas. Ins. Co., 892 So. 2d 732 (La. Ct. App. 2005) (explaining that a possessor of a lost animal is presumed to be its owner until the right of the true owner is established); Schutzman v. Munson, 51 So. 2d 125 (La. Ct. App. 1951) (finding plaintiff's ownership of cows trumped defendant's claim of ownership when defendant was a mere possessor and could not provide clear and definite proof of ownership); Sandefur, 9 So. 2d 80 (holding that plaintiff's possession of mules for many years was not sufficient to establish ownership when there was no evidence that defendant sold them or gave them to plaintiff). Accordingly, Pelletier's argument that exclusive possession is superior to direct evidence of ownership must fail. Her possession of Mr. Big—even if for a period of years—is insufficient to rebut the presumption of ownership in Dubin and establish, clearly and convincingly, that Pelletier is his owner and has the right to exclusive possession of him.

Accordingly, the parties' conduct does not support an implied-in-fact contract by which they agreed to vest ownership of Mr. Big in Pelletier. It necessarily follows, therefore, that Pelletier's counterclaim based on implied contract must be rejected. As Pelletier has failed to rebut Dubin's prima facie case of ownership by clear and convincing evidence—either through a theory of gift or implied contract—Dubin is entitled to a declaratory judgment establishing her ownership of Mr. Big. The question of whether Dubin is likewise entitled to possession of Mr. Big, however, depends on further consideration of the parties' competing claims of possession in this case.

2

The Parties' Competing Claims for Possession of Mr. Big

In addition to seeking a declaratory judgment to establish her right of ownership of Mr. Big, Dubin seeks to replevy Mr. Big and argues that Pelletier has wrongfully retained possession of him. Dubin claims that her ownership of the dog entitles her to possession of him. Pelletier counters that she has a superior ownership interest in Mr. Big based on her status as his guardian under §§ 4-13-1.2 and 4-13-41, implied contract, and because it is in Mr. Big's best interest to remain with her. She advances these theories in a counterclaim by which she seeks declaratory relief to establish her right to own and possess the dog. This Court thus must analyze the interplay between rights of ownership and possession to determine who has the right to possess Mr. Big.[4]

"Ownership of property implies the right of possession[.]" Judson v. Bee Hive Auto Serv. Co., 136 Or. 1, 8, 297 P. 1050, 1052 (1931). Although an owner will not always have the right of possession, see Everly v. Creech, 139 Cal. App. 2d 651, 657, 294 P.2d 109, 113 (1956), such a right will be presumed absent a superior right or an agreement to the contrary. Lane v.

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[4] As part of her complaint, Dubin has filed a claim for replevin by which she seeks to retake possession of Mr. Big. In Rhode Island, replevin is an "action for the repossession of personal property wrongfully taken or detained by the defendant." Gem Plumbing & Heating Co. v. Rossi, 867 A.2d 796, 806 n.14 (R.I. 2005) (citation and internal quotation marks omitted). "Replevin is merely a provisional remedy that applies prior to a trial on the merits." Goldberg v. Lancellotti, 503 A.2d 1129, 1130 (R.I. 1986). That is, replevin only applies "when the plaintiff seeks pretrial seizure of personal property pending a trial to determine ownership." Moseman Const. Co. v. State Dep't of Transp., 608 A.2d 34, 36-37 (R.I. 1992). When, as in this case, the plaintiff brings a civil action seeking declaratory judgment of ownership over personal property and proceeds to trial, therefore, a writ of replevin is not necessary; the rightful owner will be entitled to possession after a trial on the merits. Assocs. Capital Servs. Corp. v. Riccardi, 122 R.I. 434, 408 A.2d 930, 935 (1979). As this Court has already conducted a trial on the merits and declared Dubin to be the owner of Mr. Big, a writ of replevin is inapplicable in this case. Instead, this Court will treat Dubin's claim for declaratory judgment as encompassing a claim for possession of Mr. Big based on her ownership of him.

Alexander, 168 Ark. 700, 271 S.W. 710, 712 (1925) ("[I]f appellee is the owner, right of possession follows general ownership unless otherwise shown[.]"); see Credit Bureau of San Diego v. Horeth, 60 Cal. App. 2d 47, 48, 139 P.2d 962, 963 (1943) (concluding that owner was entitled to the immediate possession of chattels).

Accordingly, Dubin has a presumptive right to possession of Mr. Big arising from her ownership of him. Pelletier can overcome that presumption, however, through clear and convincing evidence that she has a superior right to possession. See Black v. Weisner, 112 R.I. at 268, 308 A.2d at 515 (applying clear and convincing evidence as standard for possession in context of gifts); Dellagrotta, 873 A.2d at 110 (same). To determine whether Pelletier can meet her burden of proof in this regard, this Court must go on to consider her arguments, advanced in her counterclaim for declaratory relief, that she has the right to possess Mr. Big as his guardian under §§ 4-13-1.2 and 4-13-41, implied contract, and a best interests of the dog analysis.

a

Right to Possession Under Statutory Scheme

Pelletier argues that she has the right to own and retain possession of Mr. Big as his "guardian" or "owner keeper" under §§ 4-13-1.2 and 4-13-41.[5] Section 4-13-1.2(6) provides that an "owner keeper" of a dog is:

[5] In response to this argument, Dubin argues that it is necessary, as a threshold issue, to determine the choice of law applicable to this case. She contends that Massachusetts law—which is devoid of any statute regarding guardianship of dogs—should apply because Pelletier lived in that jurisdiction when she accepted Dubin's offer to hire her as Mr. Big's specials campaign handler and trainer. Pelletier counters that Rhode Island law—and more particularly §§ 4-13-1.2 and 4-13-41—should apply, as this jurisdiction has the weightier interest in this action.

The alleged conflict between the laws of Rhode Island and Massachusetts thus arises because Rhode Island defines an owner and guardian as it relates to dogs while Massachusetts does not statutorily define an owner or guardian of a dog. Yet, in this case, this Court need not

> any person or agency keeping, harboring or having charge or control of or responsibility for control of an animal or any person or agency which permits any dog . . . to habitually be fed within that person's yard or premises. This term shall not apply to veterinary facilities, any licensed boarding kennel, municipal pound, pet shop, or animal shelter.

Sec. 4-13-1.2(6). In addition, § 4-13-1.2(10) defines a "guardian" of a dog as:

> a person having the same rights and responsibilities of an owner, keeper and both terms shall be used interchangeably. A guardian shall also mean a person who possesses, has title to, or an interest in, harbors or has control, custody or possession of an animal and is responsible for an animal's safety and well-being.

Sec. 4-13-1.2(10). Pelletier maintains that the statutory definitions of "guardian" and "owner keeper" contain the guiding indicia in determining ownership or right to possession in this case, including "exclusive possession," "length of possession," "care," and "feeding." See §§ 4-13-1.2(6) and 4-13-1.2(10). She argues that she assumed the responsibility for providing Mr. Big with "daily care, love, affection, veterinary care, food, shelter, training[,] and handling,"—factors that militate in favor of finding her to be Mr. Big's legal guardian and owner.

To determine if Pelletier meets the definition of "owner keeper" under § 4-13-1.2(6), this Court must apply settled rules of statutory construction. When the language of a statute is clear and unambiguous, the Court must interpret the statute literally and give the words of the statute their plain and ordinary meanings. Sindelar v. Lequia, 750 A.2d 967 (R.I. 2000). Section 4-13-

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engage in an extensive choice of law analysis because it finds that the outcome of the case would be the same regardless of whether it applies Rhode Island or Massachusetts law. As will be discussed, the statutory definition of a dog owner or guardian provided in Rhode Island law simply has no effect on the outcome of this case. See § 4-13-1.2. Moreover, it appears that Dubin agrees that Rhode Island law applies because she recites the elements of each of her claims and counterclaims as provided under Rhode Island law. See Vineberg v. Bissonnette, 529 F. Supp. 2d 300, 305 n.9 (D.R.I. 2007). As such, this Court will resolve this case under the laws of this jurisdiction. See Nat'l Refrigeration, Inc. v. Staden Contracting Co., 942 A.2d 968, 973 (R.I. 2008) (providing that a court need not engage in a choice-of-law analysis when no conflict-of-law issue is presented); O'Brien v. Slefkin, 88 R.I. 264, 267, 147 A.2d 183, 184 (1958).

1.2(6) defines "owner keeper" as "any person or agency keeping, harboring or having charge or control of or responsibility for control of an animal or any person or agency which permits any dog . . . to habitually be fed within that person's yard or premises." Sec. 4-13-1.2(6). Further, this statute provides that the term "owner keeper" "shall not apply to . . . any licensed boarding kennel." Id. Under Rhode Island statutory law, a "kennel" is defined as a "place or establishment other than a pound or animal shelter where animals not owned by the proprietor are sheltered, fed, and watered in return for a fee." Sec. 4-19-2(15).

This Court must determine, therefore, whether Pelletier's services constitute those of a kennel so as to be exempt from the definition of "owner keeper." To answer that question, the words—"sheltered, fed, and watered"—used to define "kennel" must be given their plain and ordinary meaning. See § 4-19-2(15); Sindelar, 750 A.2d at 972. In this case, Pelletier's business card states that she is a "professional exhibitor" and also provides "grooming" and "boarding" services. (Pl. Ex. 4, Pelletier Business Card; Pl. Ex. 5, Pelletier Business Card.) Pelletier described her services during trial as providing animals shelter, food, and water, which are the same terms used by state law to define "kennel." See § 4-19-2(15). Pelletier's description of her services, therefore, is consistent with the definition of "kennel" under section 4-19-2(15). See 2A Norman J. Singer, Sutherland Statutory Construction § 46.01 (2007) ("In the absence of a specific indication to the contrary, words used in the statute will be given their common, ordinary and accepted meaning, and the plain language of the statute should be afforded its plain meaning."); see also Planned Env'ts Mgmt. Corp. v. Robert, 966 A.2d 117 (R.I. 2009) (explaining that when a statute does not define a word, courts often apply the common meaning as given by a recognized dictionary). Dubin hired Pelletier to provide services similar to a licensed boarding kennel, which is specifically exempt from the definition of "owner keeper"

under Rhode Island law. See § 4-13-1.2(6). Further, providing day-to-day care of Mr. Big does not serve as indicia of ownership in this case as those services were equivalent to the services that Dubin hired Pelletier to perform. See § 4-19-2(15). Accordingly, this Court does not find that Pelletier was the owner of Mr. Big under Rhode Island statutory law.

Even assuming, arguendo, that Pelletier meets the definition of "owner keeper" and "guardian" under §§ 4-13-1.2(6) and 4-13-1.2(10), this Court is not persuaded that those statutory provisions assist Pelletier in establishing her ownership or right to possession of Mr. Big. Our Supreme Court has interpreted the purpose of chapter 13 of title 4 as providing general guidelines for the regulation of dogs. Specifically, in Vukic v. Brunelle, the Rhode Island Supreme Court explained:

> [i]n 1896[,] the General Assembly enacted comprehensive legislation for the purpose of regulating the activities of dogs in Rhode Island and their ownership, later codified as G.L.1956 (1976 Reenactment) chapter 13 of title 4. The legislation included provisions concerning the licensing of dogs, the liability of dog owners for damage caused by their animals, and the right of private citizens to defend themselves against dog attacks.

609 A.2d 938, 940-41 (R.I. 1992) (emphasis added). As such, the primary purpose of this statutory scheme is to provide guidance with respect to the imposition of liability for damages caused by dogs and the right of private citizens to defend themselves against dog attacks. See § 4-13-1; Vukic, 609 A.2d at 940-41. Indeed, the broad definition of "owner" in section 4-13-1.2—imposing the same liability as an owner upon the keeper, harborer, or guardian—supports the conclusion that the purpose of the statute is to protect public health and safety by requiring licensing of those persons best able to control dogs and imposing liability for damages resulting from dog attacks. See §§ 4-13-1.2—4-13-11.

Based on the intent of these statutory provisions, as recognized by our Supreme Court, this Court is persuaded that the broad definitions of "owner" and "guardian" have no bearing on the disposition of the case at bar—that is, determining who has rightful ownership or possession of a dog when two or more individuals claim ownership of that dog. Accordingly, Pelletier's attempt to employ this statutory scheme to defeat Dubin's presumptive right to possession of Mr. Big, as well as her request for declaratory relief to establish her own right to possession, must fail.

b

Implied contract

Pelletier also argues that Mr. Big's extended stay with her is evidence of an implied-in-fact contract between her and Dubin that Pelletier would possess Mr. Big. The evidence of the parties' conduct after Mr. Big's retirement dinner, however, negates a finding that Dubin manifested assent to give Mr. Big to Pelletier. Although Pelletier claims that Dubin promised to transfer the AKC registration papers for Mr. Big to Pelletier, Dubin never did so, and Pelletier never questioned her failure to do so. Further, Pelletier testified that if Dubin had asked her to return Mr. Big any time between 2005 and 2009, she would have done so; she would have billed Dubin and when the bill was paid, she would have sent Mr. Big back. See also Bailey, 105 R.I. at 64, 249 A.2d at 416 (explaining that an implied contract is presumed from the parties' acts).

This Court finds that there was a meeting of the minds only with regard to handling and showing Mr. Big through his specials campaign. The Court does not find the requisite meeting of the minds between Dubin and Pelletier that Pelletier would permanently possess Mr. Big after his show career. See Opella, 896 A.2d at 720 ("[A] litigant must prove mutual assent or a 'meeting of the minds between the parties' for an implied contract."). Accordingly, just as this

Court found that Pelletier failed to prove an implied-in-fact contract with Dubin to grant ownership of Mr. Big to Pelletier, it likewise finds that Pelletier cannot prove an implied-in-fact contract with Dubin to grant Pelletier possession of Mr. Big.[6] Pelletier cannot use this theory of implied contract, therefore, to defeat Dubin's presumptive right to possess Mr. Big arising out of her ownership of him or to prove her counterclaim for declaratory relief.

c

"Best Interests" Analysis

Finally, Pelletier urges this Court to grant her possession of Mr. Big under a "best interest of the dog" analysis. She contends that it is in his best interest to remain with her because she has cared for him as her own dog for so long.

The cases relied on by Pelletier to support her best interest argument, however, are distinguishable from the case at bar. Those courts were either acting with specific legislative approval to engage in a best interests of the dog analysis, were interpreting statutes broadly to include the power to engage in property disposition, or did not engage in a best interests of the dog analysis. See Placey v Placey, 51 So. 3d 374, 379 (Ala. Civ. App. 2010) (concluding that ownership of an animal involves more than a mere right of property, and determining ownership

[6] As a result of this Court's determination that the evidence fails to establish an implied-in-fact contract between the parties to grant Pelletier permanent possession of Mr. Big in exchange for her services as his handler, it need not reach the Statute of Frauds defense to such a claim asserted by Dubin. Moreover, Dubin waived this argument by failing to brief the issue. See DeAngelis v. DeAngelis, 923 A.2d 1274, 1282 n.11 (R.I. 2007) ("It is well established that a mere passing reference to an argument is insufficient to merit . . . review."); Wilkinson v. State Crime Laboratory Comm'n, 788 A.2d 1129, 1131 n.1 (R.I. 2002) (explaining that "[w]ithout a meaningful discussion thereof or legal briefing," the court will deem an issue waived). Even assuming, arguendo, that this Court found that an implied-in-fact contract existed between the parties, it would have been an oral personal services contract that Dubin has failed to prove could not have been performed within a one-year period so as to be barred by the Statute of Frauds. See § 9-1-4(5) (providing that no action shall be brought to charge "any person under any agreement which is not to be performed within the space of one year from the making thereof" unless the promise or agreement is in writing and signed by the party to be charged).

of family dog under a state protection from abuse statute permitting the court to make property division in domestic relations cases); Raymond v. Lachmann, 695 N.Y.S.2d 308, 309 (N.Y. App. Div. 1999) (concluding that it would be "best for all concerned" if a cat continued the rest of its life with its current caretaker, but not engaging in a best interests analysis); Houseman v. Dare, 966 A.2d 24, 28-29 (N.J. App. Div. 2009) (concluding that the trial court erred by declining to consider the relevance of the oral agreement alleged, but declining to address whether the jurisdiction would adopt a rule requiring consideration of the best interests of the dog); Terral v. La. Farm Bureau, 892 So. 2d 732 (La. Ct. App. 2005) (not engaging in a best interests of the dog analysis, but merely concluding that "ownership of the black dog [could] be presumed from possession"). Accordingly, Pelletier's reliance on the law of these other jurisdictions is not persuasive.

Importantly, unlike the jurisdictions Pelletier cites for support, Rhode Island has not adopted a "best interest of the dog" analysis and adheres to the contrary view that an animal is property. See Harris v. Eaton, 20 R.I. 81, 37 A. 308 (1897) (noting that a licensed dog is property). It has not suggested either through statute or the common law that the owner of a pet can be divested of a right of possession simply because the interest of the pet favors a non-owner. Indeed, such a proposition, in the absence of statute, contradicts our law of possession which dictates that possession remains with the owner absent evidence of an intent to the contrary. See Hunt v. Pratt, 7 R.I. 283, 285 (1862).

Courts do not make the law but merely construe it. See Gilbane Bldg. Co. v. De Ruosi, 74 R.I. 200, 59 A.2d 846 (1948). Such an argument would be more properly addressed, therefore, to the General Assembly. Id. at 201, 59 A.2d at 847. To adopt a best interest analysis with regard to pets—analogous to the best interest of the child analysis commonly employed by

the Family Court in determining issues of child custody—could open the floodgates to the litigation of pet custody disputes and other issues involving pets. See Pettinato v. Pettinato, 582 A. 2d 909, 913-14 (R.I. 1990) (outlining best interest of the child test to be applied in child custody cases). As another court recently stated:

> "the prospect of applying the seven factors of [the best interest analysis] to a Zach, a Tabitha or even a fish called Wanda for that matter, would be an impossible task. For example, would it be abusive to forget to clean the fish bowl or have Tabitha declawed? If the door were opened on this type of litigation, the Court would next be forced to decide such issues as which dog training school, if any, is better for Zach's personality type and whether he should be clipped during the summer solstice or allowed to romp 'au naturel.'"

Nuzzaci v. Nuzzaci, No. CN94-10771, 1995 WL 783006 (Del. Fam. Ct. Apr. 19, 1995). This Court is reluctant to open the door to such potentially far-reaching novel causes of action absent explicit direction from the Legislature.

Accordingly, this Court must reject Pelletier's invitation to extend the best interest of the child standard to pets. While both this Court and Dubin herself acknowledge the wonderful care that Pelletier has given Mr. Big, Pelletier's attempt to employ this novel best interest of the dog theory to defeat Dubin's presumptive right to possession of Mr. Big and establish her own right of possession must fail.

This Court concludes, therefore, that Pelletier has failed on all counts to overcome Dubin's presumptive right to possession of Mr. Big arising out of her ownership of him. Pelletier has not established a superior right to possession as the dog's alleged guardian under §§ 4-13-1.2 and 4-13-41, implied contract, or a best interest of the dog analysis. As such, this Court declares not only that Dubin is the owner of Mr. Big, but also that, as owner, she is entitled to immediate possession of him. Pelletier's contrary request for a declaratory judgment for possession of Mr. Big is denied.

3

Dubin's Claim of Conversion

Having determined that Dubin has ownership of and the right to possess Mr. Big, this Court must go on to address Dubin's claim that Pelletier wrongfully converted the dog to her own use. Dubin alleges that by retaining possession of Mr. Big and maintaining control over him, Pelletier wrongfully interfered with Dubin's property rights, thereby making Pelletier liable to her for damages for the conversion of Mr. Big. Pelletier disputes that she has any liability for conversion.

To maintain an action for conversion, a plaintiff must establish an intentional, un-consented-to exercise of dominion or control over a chattel that so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel. Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 97 (R.I. 2006); see also Fuscellaro v. Indus. Nat'l Corp., 117 R.I. 558, 560, 368 A.2d 1227, 1230 (1977); Montecalvo v. Mandarelli, 682 A.2d 918, 928 (R.I. 1996). In determining the seriousness of the interference and the equity of requiring the actor to pay full value, a court will consider:

> (a) the extent and duration of the actor's exercise of dominion or control [over the property];
> (b) the actor's intent to assert a right inconsistent with the other's right of control;
> (c) the actor's good faith;
> (d) the extent and duration of the resulting interference with the other's right of control;
> (e) the harm done to the chattel; and
> (f) the inconvenience and expense caused to the other.

Wilkinson v. United States, 564 F.3d 927, 931 (8th Cir. 2009) (quoting Restatement (Second) of Torts § 222A(1) (1965)); see Montecalvo, 682 A.2d at 928 (citing Restatement (Second) of Torts § 222A(1)); see, e.g., Prof'l Consultation Servs. Inc. v. Schaefer & Strohminger Inc., 412 F. App.

822, 826 (6th Cir. 2011); Welded Tube Co. of Am. v. Phoenix Steel Corp., 512 F.2d 342 (3d Cir. 1975); Stevenson v. Economy Bank of Ambridge, 197 A.2d 721 (Pa. 1964).

Applying these factors to the circumstances of this case, this Court finds that the first factor is equivocal. On the one hand, Pelletier has exercised control over Mr. Big. On the other hand, for the majority of time that Mr. Big was in Pelletier's possession, that control was not complete: Pelletier continued to consult with Dubin about dogs to which Mr. Big could be bred, permitted Dubin to take Mr. Big to have his semen collected, and testified that she would have willingly returned Mr. Big to Dubin had Dubin asked her to do so. The second factor suggests conversion—Pelletier intended to assert a right inconsistent with Dubin's right to control by maintaining possession of Mr. Big after Dubin requested his return. In evaluating the third factor, however, this Court finds that Pelletier acted in good faith because she reasonably believed that she could keep Mr. Big. See Scott v. Jackson County, 260 P.3d 744, 752 (Or. Ct. App. 2011); Montgomery v. Devoid, 915 A.2d 270, 277 (Vt. 2006). The fourth factor—the extent and duration of the resulting interference with the other's right of control—similar to the first factor, is not entirely clear. Although Pelletier has interfered with Dubin's control, that interference has been for a limited time—only since Dubin made her demand for return, Pelletier rejected that demand, and this litigation ensued. The fifth factor militates against a finding of conversion because there has been no harm to Mr. Big. If anything, Mr. Big has benefited from Pelletier's continued care and affection. Likewise, the sixth factor does not suggest conversion—the inconvenience and expense caused to Dubin were merely the expense and inconvenience of boarding a dog, a price which Dubin had previously paid for Mr. Big's care.

When all of these factors are balanced, therefore, this Court is hard-pressed to find conversion. Pelletier legitimately disputed ownership and her right to possess Mr. Big.

Although Pelletier improperly retained possession of him, Dubin has not been in any worse position vis-à-vis Mr. Big than she was in for the period of years that she willingly let Pelletier care for him.

Absent evidence of such harm, courts have been reluctant to impose liability for conversion. Compare Elliott v. Hurst, 817 S.W.2d 877, 880 (Ark. 1991) (upholding fact-finder's conclusion that dog had been converted when defendant had given dog to an exotic pet farm where it was euthanized), Snead v. Soc'y for Prevention of Cruelty to Animals of Penn., 929 A.2d 1169, 1184 (Pa. Super. Ct. 2007), aff'd, 985 A.2d 909 (Pa. 2009) (concluding that defendant had committed conversion when it euthanized dogs in its possession), and Lincecum v. Smith, 287 So. 2d 625, 628 (La. Ct. App. 1973), writ refused, 290 So. 2d 904 (La. 1974) (holding that defendant was liable for wrongful conversion when he authorized the euthanasia of an ill dog that he had found), with Johnson v. Weedman, 5 Ill. 495, 497 (1843) (holding that conversion should only be found when the defendant causes harm or injury to the property), and Jamgotchian v. Slender, 170 Cal. App. 4th 1384, 1401 (2009) (holding implicitly that steward of a horse, by preventing the owner from retrieving his horse from the grounds of a race track and requiring that the horse be raced against the owner's wishes, did not commit a conversion). Significantly, there is no evidence that Mr. Big has suffered any harm while in Pelletier's custody. Indeed, he has benefited from her continued love and affection. Accordingly, this Court declines to find Pelletier liable for conversion.

4

Pelletier's Claim of Fraudulent Inducement and Misrepresentation

Pelletier alleges that she is entitled to damages because Dubin fraudulently represented to her that she could keep Mr. Big, a representation that Pelletier relied on and that induced her to

provide services for Mr. Big's specials career. Dubin counters that she never made a representation to Pelletier that she intended to give her Mr. Big.

To establish a claim of fraudulent misrepresentation, "the plaintiff must prove that the defendant 'made a [misrepresentation] intended thereby to induce plaintiff to rely thereon' and that the plaintiff justifiably relied thereon to his or her damage." Travers v. Spidell, 682 A.2d 471, 472-73 (R.I. 1996) (quoting Cliftex Clothing Co. v. DiSanto, 88 R.I. 338, 344, 148 A.2d 273, 275 (1959)). To prevail on a claim of fraudulent misrepresentation, a party must establish: (1) a false misrepresentation; (2) knowledge of the statement's falsity; (3) intent to induce reliance; and (4) detrimental reliance. See Women's Dev. Corp. v. City of Cent. Falls, 764 A.2d 151, 161 (R.I. 2001).[7] In bringing a claim for fraudulent misrepresentation, a plaintiff has the burden to demonstrate the elements of such a claim by a preponderance of the evidence. See Travers, 682 A.2d at 472-73.

In this case, Pelletier argues that Dubin misrepresented to her that she could keep Mr. Big to induce Pelletier to provide services during Mr. Big's specials campaign. Pelletier bases her counterclaim for fraudulent misrepresentation on "Dubin's present position[, which] indicates a lack of any intent to complete her obligations pursuant to the parties' agreements." It is well-established in Rhode Island, however, that to bring a claim of fraudulent misrepresentation, the deceiving party must have had the fraudulent intent at the time he or she made the promise to do something in the future. See Grassi v. Gomberg, 81 R.I. 302, 304-05, 102 A.2d 523, 524, 525 (1954). Here, Pelletier relies only on Dubin's present position of alleged nonpayment of her financial obligations to Pelletier to support her claim and fails to proffer any evidence that Dubin

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[7] These same elements are required to prove a claim of fraudulent inducement. See Manchester v. Pereira, 926 A.2d 1005, 1012 (R.I. 2007); Women's Dev. Corp., 764 A.2d at 161. As such, this Court will subsume Pelletier's claim of fraudulent inducement in its analysis of her claim of fraudulent misrepresentation.

did not intend to abide by the representations that she made during their negotiations concerning Mr. Big's specials campaign. See id. (Explaining that for a party to bring a fraud action, he or she must establish a promise to act in the future and a present intention not to fulfill that act or to deceive). As such, Pelletier has failed to meet her burden of establishing that Dubin made intentional misrepresentations during the negotiations over Mr. Big's specials campaign, with the intent to induce Pelletier to agree to provide her services.

Further, Pelletier argues that in reliance on Dubin's promise that she would give her Mr. Big, she provided services as a handler and trainer. While Pelletier agreed to show Mr. Big in December of 2004, she testified that Dubin did not make the alleged promise that Pelletier could keep Mr. Big until the retirement dinner in February of 2008. Accordingly, Pelletier could not have relied on this alleged promise—which occurred at the end of Mr. Big's show dog career and after Pelletier had provided the bulk of her services—when she agreed to provide services almost three years before the alleged promise. Thus, based on the lack of evidence presented by Pelletier, as well as her contradictory testimony, this Court finds that Pelletier has failed to prove, by a preponderance of the evidence, that Dubin fraudulently induced Pelletier to enter into an agreement for her services based on a misrepresentation by Dubin that she would give Mr. Big to Pelletier. See Travers, 682 A.2d at 472-73.

5

The Parties' Claims of Unjust Enrichment for Mr. Big

Pelletier argues that if the Court finds that she is not the owner of Mr. Big, then she is entitled to monetary damages from Dubin under a theory of unjust enrichment to compensate her for the expenses she incurred over the past seven years for the care, custody, training, and show career of Mr. Big. Pelletier alleges that the amount Dubin owes her is $80,261.86. Further,

Pelletier contends that Dubin has not proven past payments to Pelletier for Mr. Big, as she failed to produce any bank records to document those payments. Dubin responds that Pelletier improperly calculated the value of her services. In addition, Dubin claims that she is entitled to monetary damages under a theory of unjust enrichment for the stud fees collected by Pelletier.

Under Rhode Island law, "[t]o recover on an action in quantum meruit, it must be shown that the owner derived some benefit from the services and would be unjustly enriched without making compensation therefor." Nat'l Chain Co. v. Campbell, 487 A.2d 132, 135 (R.I. 1985) (citing Montes v. Naismith & Trevino Constr. Co., 459 S.W.2d 691, 694 (Tex. Civ. App. 1970)); see also Landi v. Arkules, 835 P.2d 458, 467 (Ariz. Ct. App. 1992) ("'Quantum meruit' is the measure of damages imposed when a party prevails on the equitable claim of unjust enrichment."). To recover damages under a theory of quantum meruit, a party must satisfy the following elements of unjust enrichment: "(1) the plaintiff conferred a benefit upon the defendant; (2) the defendant appreciated the benefit; and (3) under the circumstances it would be inequitable for the defendant to retain such benefit without payment of the value thereof." Hurdis Realty, 121 R.I. at 278, 397 A.2d at 897 (citing Bailey v. West, 105 R.I. 61, 249 A.2d 414 (1969)); see also Narragansett Elec. Co. v. Carbone, 898 A.2d 87, 99 (R.I. 2006) (citing Bouchard v. Price, 694 A.2d 670, 673 (R.I. 1997)).

The proper measure of damages on a claim for unjust enrichment is the "fair and reasonable value of the work done." ADP Marshall, Inc. v. Brown Univ., 784 A.2d 309, 312 (R.I. 2001). This measure is appropriate "where there was no agreement between the parties but a benefit was conferred on the owner." Id.; see Fondedile, S.A. v. C.E. Maguire, Inc., 610 A.2d 97 (R.I. 1992) ("The obligation to pay in cases of quasi-contract 'arises, not from consent of the

parties, as in the case of contracts, express or implied in fact, but from the law of natural immutable justice and equity.'”).

a

Pelletier's Claim of Unjust Enrichment to Recoup the Costs of Her Care and Custody of Mr. Big

In this case, Pelletier served as Mr. Big's handler and alleges to have spent approximately $74,887.80 for his care, custody, training and showing in the course of his specials campaign, thus conferring this benefit upon Dubin. See Narragansett Elec. Co., 898 A.2d at 99 (stating that the first element of unjust enrichment is satisfied by a showing that improvements are made to property, materials are furnished, or services are rendered without payment). In addition, Dubin received value from Pelletier's services as Mr. Big's handler during his specials campaign and appreciated the benefit of her services. See id. at 100 (stating that the second element—appreciation of the benefit—is satisfied where the party profits from the benefit).

In this case, it would be unjust to allow Dubin to recover Mr. Big and also to retain the benefit of the services conferred on her by Pelletier, prior to her demand for Mr. Big's return, without payment to Pelletier of the fair and reasonable value of those services. Here, Pelletier sets that value at $74,887.80. Dubin contests this valuation, as she disputes the inclusion of breeding fees and post-show career grooming fees in the damages, contests the value alleged for veterinarian fees, board fees, and travel fees, and leaves Pelletier to her proof of damages on all expenses asserted.

First, with regard to the entry fees and handling fees for Mr. Big's show career, Pelletier claims $7419.50 in entry fees for the shows in which Mr. Big participated and $15,275 in handling fees for her services in showing him at those shows. Pelletier was unable to present proof of payment of entry fees for the dog shows in which Mr. Big participated. In her response

to Dubin's interrogatory, Pl. Ex. 30, p. 8, Pelletier states that she has records for $7419.50 in entry fees. Yet, Pelletier does not provide proof of payment of the entry fees, nor does she itemize the entry fees by show. She further states in her response to the interrogatory that the average entry fee equals approximately $28. That estimation fits with the total cost of entry fees originally billed to Dubin for Wilma—$413 in entry fees for fourteen shows, averaging to $29.50 per show—and Iffy—$305 in entry fees for ten shows, averaging to $30.50 per show. The measure of damages for entry costs is therefore reduced from $7419.50 to $6580, representing a $28 per show fee for each of the 235 shows attended by Mr. Big.

Pelletier also claims $15,275 in handling fees for her services in showing Mr. Big at each dog show. Mr. Big attended 235 shows from when Mr. Big began his specials campaign on February 14, 2005 until his final show in February 2009. (Exhibit T.) Further, the $65 per show fee was not only listed on Pelletier's business cards, but was also the fee that Dubin had previously paid for Pelletier to handle her dogs. (Pl. Ex. 4; Pl. Ex. 5; Pl. Ex. 21, Wilma Bill from Lori Pelletier; Pl. Ex. 22, Iffy Bill from Lori Pelletier.) Thus, concerning the handling fees alleged by Pelletier, this Court concludes that Pelletier has met her burden of proof in establishing the full measure of damages alleged, $15,275, representing a $65 per show fee for each of the 235 shows in which Mr. Big participated.

Further, regarding boarding fees for Mr. Big, Pelletier's spreadsheet of expenses indicates that she charged Dubin $10 per day for boarding Mr. Big for 1696 days for a total of $16,960 in boarding fees. (Def. Ex. JJ, Payment Owed Chart.) Pelletier has not put forth sufficient evidence, however, to prove that she is entitled to that measure of damages. Pelletier testified that she charged Dubin a special reduced rate of $8 per day for boarding Mr. Big. In addition, there is little documentation to establish the specific dates for which the boarding fees apply. As

a starting point, Mr. Big began to live with Pelletier as his specials campaign began on or around February 14, 2005. Furthermore, after the retirement dinner, on or around February 8, 2008, Mr. Big lived with Pelletier as Pelletier's pet. This Court concludes that it would be inequitable for Pelletier to charge Dubin boarding fees for the time that Pelletier kept Mr. Big as a pet after the show of February 2008 and for the time after Dubin demanded Mr. Big's return. That span of time equals approximately 1093 days, far less than the 1696 days alleged by Pelletier. Additionally, there was credible testimony that Pelletier told Dubin that she would not charge Dubin boarding fees during breaks between shows. This arrangement is further supported by the fact that Mr. Big was treated differently than other dogs Pelletier was hired to train and show—Mr. Big was kept in Pelletier's home, rather than the kennel, slept in Pelletier's bed, and attended classes daily at the Norfolk County Agricultural High School with Pelletier. Accordingly, this Court concludes that Pelletier has not met her burden in proving damages for boarding fees except for those days on which there were shows. As laid out in Exhibit T, Pelletier showed Mr. Big for a total of 272 days. Therefore, adjusting Pelletier's claim for boarding fees to reflect this reduced rate results in a total amount of claimed boarding fees of $2176. (Def. Ex. JJ, Payment Owed Chart.)

Pelletier also includes the following amounts in her damages claim: $5000 for breeding fees, $1080 for post-show career grooming fees, and $8799 for veterinarian fees. Pelletier testified, however, that she does not charge breeding fees to sire owners—only to female dogs. In addition, it would be inequitable to charge Dubin for Mr. Big's post-show career grooming fees because after Mr. Big's show career he lived with Pelletier as her pet. As such, her claims for recoupment of breeding and grooming fees for Mr. Big are rejected.

As for veterinarian fees, Pelletier produced receipts for paid veterinarian fees for Mr. Big totaling $2380.51. (Def. Ex JJ; Def. Ex. F, Greenwich Valley Veterinary Clinic, Patient History Report Mr. Big; Def. Ex. G, Greenwich Valley Veterinary Clinic, Patient History Report Wilma; Def. Ex. H, Greenwich Valley Veterinary Clinic, Patient History Report Iffy.) Accordingly, Pelletier's claim for damages for veterinary fees should be limited to that amount. Dubin argues that that amount should be further reduced based on Dr. Kimberly Nelson's testimony that she provided discounts to Pelletier for veterinarian services. That discount amount was not quantified, however, and will not apply to damages awarded in this case, which are based entirely on paid veterinary fees. As such, this Court has no basis upon which to further reduce Pelletier's claim for reimbursement of veterinarian fees.

Finally, Pelletier includes in her claim for damages special trip costs, totaling $6198.31, hotel costs, totaling $3525, and mileage costs, totaling $6068.49. Pelletier alleges that she is entitled to $6198.31 in damages for special trip costs. She fails, however, to provide any proof of incurring those costs, nor even an explanation of the damages. Pelletier makes bare statements of costs and fees incurred, alleging that the cost for Mr. Big was $2000 for the Westminster show, $748.31 for a "Canada" show, and $3450 for what is listed in the show column as "Ohio, Orlando, Texas, North Carolina." Pelletier has failed to prove that she incurred these costs or, to the extent that she may have incurred costs, the extent of her payment. Furthermore, the costs for these shows seem to encompass shows after the retirement dinner, at which time Mr. Big was living with Pelletier as a pet. Accordingly, damages for costs incurred at these shows would be inappropriate.

Similarly, although Pelletier alleges that she is entitled to $3525 for hotel costs and $6068.49 for mileage costs, neither of those expenses are supported with any documentation.

Pelletier has not provided any receipts or invoices demonstrating the nights for which she stayed at hotels, nor the costs for nights alleged. She has not provided specific dates, or even the names of the alleged hotels. Pelletier simply failed to provide adequate supporting documentation for her mileage costs. Her sole evidence supporting these costs is a table of distances, manufactured for purposes of litigation, that she alleges to have driven on specific dates, and the IRS mileage rates on the dates driven. Furthermore, the method of billing per mile and for each night at the hotel is inconsistent with the prior dealings between the parties. Specifically, after Pelletier returned Wilma and Iffy to Dubin, she provided Dubin a bill with flat rates for travel. Pelletier did not itemize her travel costs or separate costs for hotel and mileage. In fact, despite the fact that Iffy and Wilma participated in a different number of shows, stayed in hotels for a different number of nights, and traveled different distances, Pelletier charged Dubin the same price for each—$277 for all travel expenses, all costs included. Accordingly, because Pelletier has failed to present sufficient evidence to prove the measure of her damages for mileage costs or hotel costs, this Court will not grant damages for those expenses.

Finally, Pelletier alleges that she is entitled to $4562.50 for expenses incurred in hiring kennel help while traveling with Mr. Big to his shows. Yet, she fails to provide evidence demonstrating that she actually incurred these damages. She has failed to provide any records, either in relation to Mr. Big, or other dogs, demonstrating that this expense was an expense normally charged to clients. In the bills for Wilma and Iffy, for example, Pl. Exs. 21, 22, "travel expenses" were charged as a single expense, including all travel expenses from all shows, and was charged as a flat rate—$277 for each dog. Pelletier has failed to establish that she incurred travel expenses for kennel help. Accordingly, this Court will not grant her claim for damages for kennel help.

As such, Pelletier has proven damages with respect to her claim of unjust enrichment for her care, showing, and handling of Mr. Big in the total amount of $26,411.51. There is evidence in the record, however, that Pelletier accepted at least $10,000 in cash from Dubin in partial payment of Mr. Big's expenses. Although Dubin alleges that she contributed cash payments to Pelletier totaling approximately $28,000, Dubin's ledgers do not provide sufficient evidence of amounts paid to Pelletier throughout Mr. Big's show career. This Court sees no reason, therefore, to reduce Pelletier's damage award by more than $10,000.

Dubin also argues, however, that her payments to Pelletier over the course of Mr. Big's show career constituted an accord and satisfaction. Pelletier responds that Dubin failed to produce any credible testimony regarding her alleged payments made for Mr. Big.

The common law doctrine of accord and satisfaction provides that "when two parties agree to give and accept something in satisfaction of a right of action which one has against the other, and that agreement is performed, the right of action is subsequently extinguished." ADP Marshall, Inc. v. Brown Univ., 784 A.2d 309, 313 (R.I. 2001). For an accord and satisfaction to be binding, "[t]here must be accompanying expressions sufficient to make the creditor understand, or to make it unreasonable for the creditor not to understand, that the performance is offered to him [or her] as full satisfaction of his [or her] claim and not otherwise." Weaver v. Am. Power Conversion Corp., 863 A.2d 193, 198 (R.I. 2004) (internal quotations omitted). When determining whether an accord and satisfaction exists, the intention of the parties must be "determined by the usual processes of interpretation, implication and construction." Id. (internal quotations omitted). Furthermore, the party asserting the affirmative defense of accord and satisfaction must show that an agreement exists and that the "agreement was accepted in exchange for refusal to press a right of action." Kottis v. Cerilli, 612 A.2d 665 (R.I. 1992).

Here, Dubin argues that Pelletier's acceptance of Dubin's payments through Mr. Big's dog show career is sufficient to support her accord and satisfaction defense. Testimony about Pelletier and Dubin's course of dealings and testimony by Pelletier's other clients show, however, that it was common for Pelletier to accept partial payment during the dog's show career and then provide an invoice with the remaining balance when the dog was returned. When Pelletier handled Mr. Big in pursuit of his AKC championship, for example, Pelletier sent Dubin a bill only at the conclusion of Mr. Big's AKC championship, and Dubin paid the bill without question. Pelletier also handled four other Norfolk Terriers owned by Dubin, and Dubin was not billed until the dogs were returned after their show careers. (Joint Ex. 3, July 5, 2010 Billing for Iffy; Joint Ex. 4, July 5, 2010 Billing for Wilma.) Finally, Pelletier's clients, including Penrose, Conroy, and Newell, testified that Pelletier did not send them bills until after their dogs were shown. (Joint Ex. 11, Depo. Penrose, Aug. 10, 2011, at 10, 56-58.) Thus, there is no evidence presented during the trial that Pelletier's right to compensation for expenses associated with her care and custody of Mr. Big was extinguished in accepting partial payment, as Dubin suggests. See Soares, 934 A.2d at 810. Accordingly, Dubin has failed to meet her burden in establishing the affirmative defense of accord and satisfaction. Nonetheless, because Pelletier admitted to receipt of $10,000 in cash over the course of Mr. Big's show career, her damages on her claim of unjust enrichment are reduced from $26,411.51 to $16,411.51.

b

Dubin's Claim of Unjust Enrichment to Recoup Stud Fees

In this case, Pelletier collected fees for the times during which Mr. Big stood at stud, thus deriving a financial benefit from the use of Dubin's property. See Narragansett Elec. Co., 898 A.2d at 99. Pelletier received value equaling $16,000 from Mr. Big's stud fees and did not

compensate Dubin for that benefit. See id. at 100. Thus, under the theory of unjust enrichment, Dubin is entitled to compensation for the reasonable value of this benefit received by Pelletier. As the reasonable value of the stud fees received by Pelletier is $16,000, Dubin is entitled to recover that amount from Pelletier under her claim of unjust enrichment. See ADP Marshall, Inc., 784 A.2d at 312.

B

Wilma and Iffy

1

Implied-In-Fact Contract

Pelletier argues that the Court should find an implied-in-fact contract between Dubin and Pelletier that obligated Dubin to pay Pelletier for services rendered to Wilma and Iffy. Specifically, Pelletier argues that she acted as the handler and trainer for the two dogs during their show careers with the expectation that Dubin would compensate her for the services performed and care provided. Pelletier contends that the training and handling that she provided for Wilma and Iffy, and the payment of travel expenses and entry fees, are sufficient to prove that there was a contract between Dubin and Pelletier for Pelletier to show and handle Wilma and Iffy and for Dubin to pay for those services. Dubin counters that the statute of frauds bars any alleged agreement concerning Wilma and Iffy because there is no writing to support its existence. In response, Pelletier argues that she performed under the agreement by providing services to Dubin in reliance on her alleged promise.

As discussed more fully above, under Rhode Island law, an implied contract arises when the parties intend to create an obligation between themselves and that obligation can be presumed from their acts or from the circumstances. Bailey, 105 R.I. at 64, 249 A.2d at 416. To

prove an implied-in-fact contract, a party must demonstrate mutual agreement or consent, intent to promise, and a meeting of the minds. Id. at 64-65, 249 A.2d at 416. Determining whether a "meeting of the minds" existed between the parties and ascertaining the parties' intent requires this Court to assess witness credibility and weigh the evidence. See Soares v. Langlois, 934 A.2d at 809; see also Bailey, 105 R.I. at 64, 249 A.2d at 416 (considering the parties' acts and their ordinary course of dealings to determine mutual agreement and intent to contract).

Implied-in-fact contracts are subject to the statute of frauds. George Spalt & Sons v. Maiello, 48 R.I. 223, 136 A. 882 (1927); Philo Smith & Co., Inc. v. USLIFE Corp., 554 F.2d 34, 35 (2d Cir. 1977). Thus, an implied contract not capable of being performed within a year may not be enforced. R.I. Gen. Laws Ann. § 9-1-4 (2012). Declining to enforce such contracts under "[t]he Statute of Frauds fosters certainty in transactions by ensuring that contract formation is not based upon loose statements or innuendos long after witnesses have become unavailable or when memories of the precise agreement have been dimmed by the passage of time." Mut. Dev. Corp. v. Ward Fisher & Co., LLP, 47 A.3d 319, 329 (R.I. 2012) (quoting Waddle v. Elrod, 367 S.W.3d 217 (Tenn. 2012)) (internal annotations omitted).

Although the statute of frauds applies when a contract is deemed not capable of being performed within a year, if the contract could have been performed within a year, the statute of frauds will not bar the claim. Greene v. Harris, 9 R.I. 401, 405 (1870); Warner v. Texas & P. Ry. Co., 164 U.S. 418, 425 (1896); see Warren v. Ayres, 126 Md. 551, 95 A 52 (1915) ("The statute will not apply where the contract can, by any possibility, be fulfilled or completed in the space of a year, although the parties may have intended that its operation should extend through a much longer period." Furthermore, even when a contract would otherwise fail under the statute of frauds, courts will recognize an exception for partial performance. Baumgartner v.

Seidel, 75 R.I. 243, 247, 65 A.2d 697, 699 (1949). Under the doctrine of partial performance, courts of equity still may enforce an implied contract where one party to the contract has performed in full or in part. Tingley v. Jacques, 43 R.I. 367, 112 A. 781, 782 (1921); Hodges v. Howard, 5 R.I. 149 (1858).

First, this Court finds that there was an implied contract between Dubin and Pelletier for the handling and showing of Wilma and Iffy. When Dubin hired Pelletier to handle and show Iffy and Wilma, Pelletier and Dubin already had a prior working relationship in which Pelletier provided services in handling and showing Dubin's dogs, and Dubin paid for those services. In their prior dealings, Pelletier had sent Dubin a bill for the services provided to each dog after returning the dogs to Dubin. (Joint Ex. 4, July 5, 2010 Billing for Wilma; Joint Ex. 5, E-mail from Pelletier to Dubin, Invoice for Wilma, Jan. 3, 2010; Def. Ex. J, E-mail From Dubin to Pelletier Regarding Wilma, Apr. 1, 2010.) That course of dealing was not only Pelletier's usual practice, but also reflected the industry practice of billing in the dog show world. (Joint Ex. 12, Depo. Covey, Aug. 10, 2011, at 65-66, 83-84, 86.) The following facts—that Pelletier took the dogs, groomed the dogs, showed the dogs, and boarded the dogs, and that Dubin ratified Pelletier's conduct by assenting to the conduct and consulting with Pelletier on the care of the dogs—demonstrate that there was a meeting of the minds with regard to Pelletier's handling and showing of Wilma and Iffy. See Bailey, 105 R.I. at 64, 249 A.2d at 416; Kenney Mfg. Co., 643 A.2d at 203. The fact that Pelletier did not have a written contract for the handling of the dogs, and did not send frequent bills, is consistent with the prior agreements and course of dealings between Dubin and Pelletier as well as the practice in the dog-show world.

Furthermore, this Court finds that the implied contract between Dubin and Pelletier was not barred by the statute of frauds because the contract was capable of being performed within a

year. The implied contracts for the handling and showing of Wilma and Iffy were for show seasons. Those show seasons typically would last no more than a few months. After the show seasons, Pelletier would return the dogs to Dubin with a bill for her services. (Joint Ex. 4, July 5, 2010 Billing for Wilma; Joint Ex. 5, E-mail from Pelletier to Dubin, Invoice for Wilma, Jan. 3, 2010; Def. Ex. J, E-mail From Dubin to Pelletier Regarding Wilma, Apr. 1, 2010.) Based on the past dealings between the parties, it is clear that the implied contract between Dubin and Pelletier was intended to last, at a maximum, for a few months. Cf. Katz v. Mendheim, 244 So. 2d at 562 (Fla. Dist. Ct. App. 1971) (concluding that the statute of frauds barred a contract for the life of a racing greyhound, when it was shown that the "established period of the racing life of Greyhounds is in excess of two years"). Neither party has suggested that the show season for Wilma and Iffy would have extended beyond a year.

Moreover, even if the statute of frauds applied here, Pelletier still would be entitled to relief based on her full performance under the implied contract. See Fluor Enterprises, Inc. v. United States, 64 Fed. Cl. 461, 495 (2005). Pelletier handled, showed, groomed, and boarded Wilma and Iffy for their respective show seasons. When those seasons were completed, Pelletier returned the dogs to Dubin with invoices for her services. Under these circumstances, in which Pelletier rendered complete performance under the implied contract, and Dubin accepted that performance, it would be unjust to bar recovery to Pelletier.

Pelletier seeks damages from Dubin for breach of their implied contract for the expenses she incurred for Wilma and Iffy that she claims total $5374.06. Pelletier alleges that she is entitled to $530.90 in mileage costs, $266.66 in hotel costs, $928 in entry costs, $1710 in boarding fees, $1560 in handling fees, and $378.50 in veterinary fees. Regarding Pelletier's expenses for mileage and hotel costs for Wilma and Iffy, Pelletier has failed to provide

documentation supporting her alleged costs. She has not provided invoices or receipts through which this Court can determine the actual cost incurred to her. Furthermore, in her bills to Dubin at the end of Wilma and Iffy's campaigns, she charged Dubin $277 for each dog's travel costs, all shows included. She did not separate her costs for mileage and hotels, nor did she itemize the cost for each dog. This Court concludes, therefore, that Pelletier has failed to provide proof of actual damages incurred. Accordingly, the damages alleged for Wilma and Iffy's travel costs are denied.

Pelletier alleges damages for $928 in entry costs, but has not provided documentation for payment of those costs. In her bills to Dubin after returning Wilma and Iffy, Pelletier charged $413 for Wilma's entry fees and $305 for Iffy's entry fees, totaling $718 in entry fees for both dogs. The parties do not dispute that Wilma and Iffy attended the dog shows for which Dubin was billed, nor does Dubin dispute that Pelletier paid the entry costs for Wilma and Iffy at those shows to the extent billed. Accordingly, the damages for entry costs are allowed in the amount of $718.

Pelletier also alleges that she is entitled to $1710 in boarding fees, representing fees for 171 days of boarding at a rate of $10 per day. Dubin does not dispute that Wilma and Iffy were in Pelletier's possession for the dates stated on the bill. Previous bills sent to Dubin, however, quoted an $8 a day rate for boarding Wilma and Iffy. That rate was consistent with the prior dealings between Dubin and Pelletier. The damages for boarding fees are therefore reduced from the asked for $1710 to $1368 to represent the agreed upon rate for boarding for Wilma and Iffy.

Pelletier also claims $1560 in handling fees for her services in showing Wilma and Iffy at their respective dog shows, representing fees for twenty-four shows at $65 per show. Wilma

attended fourteen shows in her campaign with Pelletier; Iffy attended ten shows in her campaign. The $65 per show fee listed on Pelletier's business cards was consistent with the fee that Dubin had previously paid for Pelletier to handle her dogs and was listed on the bill provided to Dubin after Iffy and Wilma's campaigns had ended. (Pl. Ex. 4; Pl. Ex. 5; Pl. Ex. 21, Wilma Bill from Lori Pelletier; Pl. Ex. 22, Iffy Bill from Lori Pelletier.) Thus, concerning the handling fees alleged by Pelletier, this Court concludes that Pelletier has met her burden of proof in establishing the full measure of damages alleged, $1560, representing a $65 per show fee for each of the twenty-four shows in which Wilma and Iffy participated.

Finally, Pelletier alleges that she is entitled to $378.50 for veterinary fees incurred while Wilma and Iffy were in her custody. Pelletier produced receipts for paid veterinarian fees for Wilma and Iffy totaling $378.50. (Def. Ex JJ; Def. Ex. G, Greenwich Valley Veterinary Clinic, Patient History Report Wilma; Def. Ex. H, Greenwich Valley Veterinary Clinic, Patient History Report Iffy.) Accordingly, Pelletier's claim for damages for veterinary fees is granted in the amount of $378.50.

In summary, Pelletier's claims for damages for $530.90 in mileage costs and $266.66 in hotel costs are denied. Her claims for damages for $1710 in boarding fees are reduced by $342 to $1368 to reflect the standard boarding rate of $8 per day, and the damages for $928 in entry costs are reduced by $110 to $718 to reflect the amount originally billed. Pelletier's claims for $1560 in handling fees and $378.50 in veterinary fees are granted. Accordingly, the damages alleged for Wilma and Iffy's costs are denied in part and allowed in part in the total amount of $4024.50.[8]

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[8] Because this Court concludes that Pelletier succeeds on her implied contract claim, it will not address her alternative claim for unjust enrichment. Nonetheless, this Court concludes that even

2

Fraudulent Misrepresentation

Pelletier also alleges that Dubin fraudulently represented to her that if Pelletier provided care, handling, and training for Wilma and Iffy, Dubin would pay Pelletier for those services. Pelletier further argues that she relied on those representations in providing services for Wilma and Iffy's care. Dubin counters by arguing that although she agreed to compensate Pelletier for services provided to Wilma and Iffy, Pelletier is not entitled to additional compensation because she wrongfully withheld from Dubin the stud fees she collected from breeding Mr. Big.

As noted above, a plaintiff may establish a claim of fraudulent misrepresentation by establishing that the defendant made a misrepresentation, which the defendant intended the plaintiff to rely on, and which the plaintiff justifiably relied on to his or her damage. Travers, 682 A.2d at 472-73; Cliftex Clothing Co., 88 R.I. at 344, 148 A.2d at 275. The party alleging fraudulent misrepresentation has the burden to demonstrate the elements of the claim by a preponderance of the evidence. See Travers, 682 A.2d at 472-73.

In this case, Pelletier bases her counterclaim for misrepresentation on Dubin's refusal to pay under the invoice provided for Wilma and Iffy. To bring a claim of fraudulent misrepresentation, however, the party alleging the claim must demonstrate that the other party had the fraudulent intent when the agreement was made. See Grassi, 81 R.I. at 304-04, 102 A.2d at 524-25. Here, Dubin does not dispute that Pelletier is entitled to compensation for the services she provided in caring for Wilma and Iffy, and there is no indication that Dubin intended to defraud Pelletier when the agreement was made. Rather, Pelletier relies solely on Dubin's present position and fails to provide any evidence that Dubin did not intend to abide by their

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if Pelletier were not entitled to relief for her breach of implied-in-fact contract with Dubin, she would be entitled to relief under a theory of unjust enrichment.

previous agreement concerning Wilma and Iffy's care. See id. As such, Pelletier has failed to meet her burden of establishing that Dubin made intentional misrepresentations during the negotiations over the handling and showing of Wilma and Iffy, with the intent to induce Pelletier to provide her services. Accordingly, Pelletier's claim of fraudulent misrepresentation as to Wilma and Iffy is denied.

IV

CONCLUSION

For the reasons set forth in this Decision, as to Plaintiff's Complaint, judgment shall enter for Plaintiff on her claim for declaratory relief to establish her right of ownership of Mr. Big (Count II). This Court declares that Plaintiff is the owner of Mr. Big and that, as owner, she is entitled to regain immediate possession of Mr. Big from Defendant. Having declared that Plaintiff is the owner and has the immediate right to possess Mr. Big, this Court denies Plaintiff's claim for replevin (Count I). Plaintiff's claim of conversion (Count III) is denied and dismissed. Judgment shall enter in favor of Plaintiff in the amount of $16,000, plus statutory interest, on her claim of unjust enrichment to recoup the stud fees for Mr. Big (Count IV). Plaintiff's claim for injunctive relief (Count V) is denied and dismissed as moot.

As to Defendant's Amended Counterclaim, judgment shall enter in favor of Defendant in the amount of $16,411.51 plus statutory interest, on her claim of unjust enrichment as to Mr. Big (Count VII). Judgment also shall enter in favor of Defendant in the amount of $4024.50, plus statutory interest, for breach of implied contract concerning Wilma and Iffy (Count II). Defendant's counterclaims for declaratory relief to establish her right to own and possess Mr. Big (Count I), unjust enrichment as to Wilma and Iffy (Count III), fraudulent misrepresentation and fraudulent inducement as to Wilma and Iffy (Count IV), fraudulent misrepresentation and

fraudulent inducement as to Mr. Big (Count V), breach of implied contract and gift with respect to Mr. Big (Count VI) are denied and dismissed.

Each party shall bear her own attorneys' fees and costs. Counsel shall confer and present to this Court forthwith for entry an agreed upon form of Order and Judgment that is reflective of this Decision.