STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: January 16, 2013)

MARVIN HOMONOFF, in his capacity as the Temporary Custodian of the Estate of Edward Voccola	:	
v.	:	**PC-2008-1467**
PATRICIA A. FORTE and RED FOX REALTY, LLC	:	
MARVIN HOMONOFF, in his capacity as the Temporary Custodian of the Estate of Edward Voccola	:	
v.	:	**PC-2008-6628**
PATRICIA A. FORTE	:	

DECISION

TAFT-CARTER, J. This matter arises before the Court from two consolidated actions, both initiated before the death of Edward E. Voccola ("Decedent"). Decedent filed the verified complaint in the initial action, PC-2008-1467, on March 12, 2008. The complaint was amended on June 2011, requesting that the Court grant injunctive relief restraining and enjoining Patricia A. Forte ("Forte") and Red Fox Realty, LLC (collectively, "Defendants") from alienating their interest in the disputed properties (Count I); declare the deeds executed on May 31, 2007 null and void and appoint a commissioner to re-convey the properties to the Estate (Count II); impose a constructive trust over the properties for the benefit of the Estate (Count III); award compensatory and punitive damages to the Estate for breach of duty of good faith, duty of loyalty, and duty to act in the best interest of the

shareholder (Count IV); and compel an accounting for all monies received and expended in connection with the land in dispute (Count V). Defendants reply denying the allegations in the complaint and arguing that the deeds were valid. The Defendants also filed a counterclaim, demanding reimbursement for sums expended for taxes, maintenance, insurance, and other charges on the properties totaling $250,000.

In the second matter, initiated October 17, 2008, Decedent filed an eleven count Complaint, along with Lakeview Realty, Inc., Capitol City Investments, Inc., City View Realty, Inc., and West Side Investments, Inc., as co-plaintiffs, against Forte and West Fountain Investments, Inc. as Defendants. In that case, PC-2008-6628, Decedent demanded that Forte discharge a mortgage deed encumbering undeveloped real estate in North Kingston, Rhode Island, owned by Lakeview Realty and identified as Assessor's Plat 63, Lots 13, 17, and 18 (Count I); and that Forte discharge two mortgage deeds and a secured promissory note encumbering property owned by Decedent and located at 165 Glen Hills Drive, Cranston, Rhode Island (Count II). Decedent also demanded judgment against West Fountain Investments for compensatory and punitive damages for slander of title (Count XI) arising from West Fountain Investments' recordation of assignments of mortgages from Redbrook Investments.[1] Additionally, Capitol City Investments demanded judgment of

[1] Decedent alleged that when West Fountain Investments recorded the assignments of mortgages against the title and interest of Capitol City Investments, City View Realty, and West Side Investments, it was aware that the mortgages were nullities, and it recorded the mortgages to wrongfully encumber Capitol City Investments', City View Realty's, and West Side Investments' titles to real estate. Although the Estate makes a claim for damages for slander of title for West Fountain Investments' allegedly false and injurious statements, it has failed to brief the issue or to provide any statutory or case law to support such a claim. Accordingly, this Court will treat his claim for slander of title as waived and will not examine it in this Decision. See Robideau v. Cosentino, 47 A.3d 338 (R.I. 2012); Rice v. State, 38 A.3d 9, 16 n.10 (R.I. 2012)); see also Stebbins v. Wells, 818 A.2d 711, 720 (R.I. 2003); S. Ct. R. App. P. 16(a) ("Errors not claimed, questions not

compensatory damages in excess of $5000 for Forte's failure to discharge mortgages on properties at 400 and 403 West Fountain Street, Providence (Count III); City View Realty demanded judgment of compensatory damages in excess of $5000 for Forte's failure to discharge mortgages on property at 361 West Fountain Street, Providence (Count IV); West Side Investments demanded judgment of compensatory damages in excess of $5000 for Forte's failure to discharge mortgages on property at 23 Penelope Place, Providence (Count V); 257 Dean Street, Providence (Count VI); 32 Cargill Street, Providence (Count VII); 14 Cargill Street, Providence (Count VIII); and 26 Cargill Street, Providence (Count IX). Decedent additionally requested that the Court appoint a commissioner with power and authority to execute all discharges and releases on Forte's behalf (Count X).

Decedent died on June 25, 2010. (Ex. 25; SOF, ¶ 3.) On April 11, 2011, Marvin H. Homonoff, in his capacity as Temporary Custodian of the Estate of Edward Voccola (Estate), filed a motion for substitution and a motion to consolidate. On April 18, 2011, an order entered granting both motions. The Estate was substituted as plaintiff in both cases and the cases were consolidated. In July 2012, the matters proceeded to a non-jury trial. Jurisdiction is pursuant to R.I.G.L. 1956 § 8-2-14.

I

Findings of Facts and Travel

This case, and the dispute from which it arises, involves the Decedent; corporations in which the Decedent was the sole shareholder and properties owned by Decedent's corporations; and Decedent's five children: Forte, Edward R. Voccola. Barbara Voccola,

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raised and points not made [in a party's brief] ordinarily will be treated as waived and not considered by the court.").

Stephen T. Voccola, and Paul Voccola.[2] Decedent was the sole shareholder in certain Rhode Island Corporations, including Lakeview Realty, Inc., Capitol City Investments, Inc., City View Realty, Inc., and West Side Investments, Inc. (Ex. 1, Complaint, Voccola v. Voccola, C.A. No. 2005-1303, ¶¶ 6-9; Ex. 6, at 2; Complaint, Voccola v. Forte, P.C. No. 2008-6628, ¶ 2.) Each of the corporations owned real estate in Providence, Rhode Island. (Agreed Statement of Facts ("SOF"), ¶ 14; Ex. 28; Ex. 29.) Specifically, Lakeview Realty owned undeveloped real estate in North Kingston, Assessor's Plat 63, Lots 13, 17, and 18; Capitol City Investments owned property at 400 West Fountain Street and 403 West Fountain Street; City View Realty owned property at 361 West Fountain Street; and West Side Investments owned property at 23 Penelope Street, 14 Cargill Street, 26 Cargill Street, 32 Cargill Street, and 257 Dean Street. (SOF, ¶ 14; Ex. 28; Ex. 29; Complaint, Voccola v. Forte, P.C. No. 2008-6628, ¶¶ 10-14.) Decedent individually owned property at 165 Glen Hills Drive, Cranston, Rhode Island. (Complaint, Voccola v. Forte, P.C. No. 2008-6628, ¶¶ 15-16.)

Although there was a lifetime of history relating to the interrelationship between the Decedent and his children, this particular saga began in 2005 when Decedent filed a complaint against two of his children, Stephen and Barbara, seeking to revoke a purported gift of stock to Redbrook Investments. (Ex. 1, Complaint, Voccola v. Voccola, C.A. No. 2005-1303.) Decedent alleged that on September 22, 1996, while incarcerated, he was fraudulently and deceitfully induced to execute a gift of stock transferring all his interest in Redbrook Investments to four of his five children: Forte, Paul, Barbara, and Stephen. Id. ¶¶ 18-20, 24-25. The Decedent's son Edward was not part of the transfer and was estranged from his father for most of his adult life. See id. Decedent alleged that his children

[2] For the sake of clarity, this Court hereinafter refers to Decedent's children with the last name Voccola by their first names. This Court certainly intends no disrespect.

represented to him he would be unable to obtain a loan to pay a criminal penalty to the United States Government unless he executed the gift to them. Id. ¶ 14. After the execution of the purported gift, Redbrook Investments secured a loan for the benefit of Decedent in the amount of $208,000. Id. ¶ 15. The Decedent received the loan proceeds. See id. ¶ 16. He was required to execute a promissory note and mortgage deeds secured by his real estate. Id. Accordingly, Jere Realty Co., Inc., a corporation owned solely by the Decedent, executed a promissory note in favor of Redbrook Investments in the amount of $208,000 to obligate Jere Realty Co. to repay Redbrook Investments for the loans extended for Decedent's benefit. (Ex. 2, Memorandum in Support of Motion to Discharge Mortgages, Voccola v. Voccola, C.A. No. 2005-1303, at 2-3, 4.) In addition, Lakeview Realty, Capitol City Investments, City View Realty, and West Side Investments executed mortgage deeds in favor of Redbrook Investments. Id. at 3. Each of those mortgages stated, in pertinent part, that they were to "secure the payment of Two Hundred Eight Thousand and 00/100 ($208,000.00) Dollars payable as provided in a certain negotiable promissory note of even date herewith." Id.

Upon his release from prison, Decedent sought to regain control of Redbrook Investments and to have the mortgages that had been recorded discharged. (Ex. 1, Complaint, Voccola v. Voccola, C.A. No. 2005-1303, ¶ 20.) In the 2005 four count complaint, Decedent requested a declaration that the purported deed of gift was invalid and unenforceable. Id. He also sought injunctive relief to compel his children to return control of Redbrook Investments, to turn over all books and financial records of the corporation, and to discharge the mortgages recorded on property owned by Decedent and his corporations; an accounting of all profits, income, and expenses derived by Redbrook Investments; and damages. Id. ¶¶ 23-37. Case No. 2005-1303 was dismissed by stipulation on April 13, 2007,

and refiled on May 11, 2007. (Ex. 5; SOF, ¶ 12.) In March 2007, in consideration of resolving the 2005 litigation, the Decedent and four of his five children—Barbara, Stephen, Paul, and Forte—executed a Settlement Agreement (the "Settlement Agreement"). (Ex. 6.) The Parties to the Settlement Agreement provided that the business property owned by Redbrook Investments would be sold and the proceeds from the sale would be used for the benefit of the Decedent during his lifetime. Id. All of the shareholders, including Forte, agreed. Id.

The Settlement Agreement provided that Decedent would dismiss all claims which had been or could have been raised in No. 2005-1303. Id. Forte, although not a party to the 2005 action, signed the Settlement Agreement in March 2007. Id. Forte asserted during this trial that she did not read the Settlement Agreement. (Forte Testimony, July 16, 2012.) She testified that she signed the Settlement Agreement after having a two minute conversation with her brother Stephen. Id. Under the terms of the Settlement Agreement, in exchange for Decedent's dismissal of all claims, Paul, Stephen, Barbara, and Forte agreed to discharge and release all mortgages and promissory notes which they held individually referencing Decedent or his corporations.[3] (Ex. 6, at 2.) The Settlement Agreement further provided that if any party to the Settlement Agreement refused to execute documents required to discharge

[3] The Settlement Agreement required release of all mortgages and promissory notes referencing Jere Realty, Inc., Lakeview Realty, Inc., Capitol Cities Investment, Inc., West Side Investments, Inc., and City View Realty, Inc. (Ex. 6, at 2.) At the time the Settlement Agreement was executed, certain properties owned by Decedent's corporations were encumbered by mortgages. (SOF, ¶ 16.) Specifically, 14 Cargill Street, 26 Cargill Street, 32 Cargill Street, 23 Penelope Street, and 257 Dean Street each were encumbered by $208,000 mortgage by West Side Investments to Redbrook Investments and $150,000 mortgages by West Side Investments to Forte; 400 West Fountain Street was encumbered by a $208,000 mortgage by Capitol City Investments to Redbrook Investments and a $150,000 mortgage by Capitol City Investments to Forte; and 361 West Fountain Street was encumbered by a $208,000 mortgage by City View Realty to Redbrook Investments and a $150,000 mortgage by City View Realty to Forte. Id.

the mortgages, then Forte would be granted the power of attorney to act on that party's behalf, and to perform all acts, including executing documents, necessary to release and discharge any mortgages or promissory notes. Id.

Shortly after executing the Settlement Agreement, Forte, on May 4, 2007, acting as the authorized agent of Redbrook Investments, assigned all of the mortgages held by Redbrook Investments to West Fountain Investments, Inc., a corporation owned solely by Forte. (SOF, ¶¶ 8, 17.) Thereafter, on June 4, 2007, three documents, purporting to be the Waiver of Notice of Minutes of a Special Joint Meeting of the Stockholders and Board of Directors of Capitol City Investments, City View Realty, and West Side Investments held on May 29, 2007 were executed and bore the signature of Decedent. Id. ¶ 18; Ex. 30; Ex. 31; Ex. 32. Each waiver purports to memorialize a meeting and vote that allegedly took place on May 29, 2007, to transfer each corporation's real estate to Red Fox Realty in exchange for the assumption of the mortgages on the property. See Ex. 30; Ex. 31; Ex. 32; SOF ¶ 19. On May 31, 2007, subsequent to the alleged shareholders meetings and votes, Forte executed three warranty deeds as the President of West Side Investments conveying property to Red Fox Realty. Id. ¶ 23. Red Fox Realty, which is owned solely by Forte, was not organized until June 1, 2007. Id. ¶ 9. It is the signature on the Waiver of Notice of Minutes of a Special Joint Meeting of the Stockholders and Board of Directors of these corporations that is the crux of this action.

On June 25, 2010, during the pendency of this action, Decedent died. (Ex. 25; SOF, ¶ 3.) Although Decedent had executed a number of estate planning documents from June 1,

1999 until April 29, 2010,[4] his most recent will and codicil executed on September 3, 2008, and April 29, 2010, respectively, reflected the family tension between Decedent and Forte. See Ex. 21; Ex. 22. Notably, in the September 5, 2008 will, Decedent provides that:

> "Patricia A. Forte, of Cranston, Rhode Island ("Patricia"), shall be deemed to have predeceased me without descendants for all purposes of this will unless prior to my death my daughter, Patricia, has 1) voluntarily transferred . . . all of the real estate in that Complaint filed by me against my daughter . . . and 2) caused all mortgages and other evidence of indebtedness claimed to be owed by me . . . to Patricia . . . to be released, discharged, or otherwise nullified."

Decedent's April 29, 2010 codicil additionally disinherited Paul and Stephen. The codicil states:

> "Notwithstanding anything herein to the contrary, my daughter, Patricia A. Forte, my son, Stephen Voccola[,] and my son, Paul Voccola shall be deemed to have predeceased me without descendants for all purposes of this my last will and testament."

In this litigation, the signatures of the Decedent on the documents dated June 4, 2007 as well as whether the Special Joint Meetings of the Stockholders and Board of Directors of Capitol City Investments, City View Realty, and West Side Investments occurred are facts

[4] From June 1, 1999 until April 20, 2010, Decedent executed four known wills and one known codicil. See Ex. 18; Ex. 19; Ex. 20; Ex.21; Ex. 22. Decedent's June 1, 1999 will bequeathed and devised Forte "all the rest residue and remainder of [his] estate, real, personal or mixed, of every kind and nature and wheresoever situated[.]" (Ex. 18.) The remainder included Decedent's entire estate after the Executrix paid all "just debts, funeral charges and expenses of properly settling [his] estate[.]" Id. The 1999 will disinherited his children Edward, Stephen, Paul, and Barbara. Id. If Forte predeceased him, Decedent directed that the estate should be bequeathed to his grandchildren, Forte's children. Id. Similarly, the January 2, 2004 will disinherited his children Edward, Stephen, Paul, and Barbara. (Ex. 19.) In the January 2, 2004 will, Decedent disposed of tangible personal property and any funds remaining in his joint accounts to Forte. Id. The residue of his estate poured into the "Edward E. Voccola Revocable Trust – 2004." Id. Although the November 5, 2004 will, like Decedent's two previous wills, disinherited his children Edward, Stephen, and Barbara, it made provisions for Paul. (Ex. 20.) It bequeathed and devised to Paul certain real estate, personal property, and Decedent's shareholder interest in Alpine Country Club. Id. It provided that Forte would receive the rest, residue, and remainder of the estate. Id.

which are highly disputed. Forte testified that Special Meetings of the Stockholders and Board of Directors of West Side Investments, Capitol City Investments, and City View Realty, did, in fact, take place on May 29, 2007 and that the Decedent signed the Waivers of Notice of Minutes of Special Joint Meetings of the Stockholders and Board of Directors for Capitol City Investments, City View Realty, and West Side Investments at that time. (Forte Testimony, July 24, 2012.) Buttressing Forte's claim that the signature was that of her father were Kenneth Salvadore and Raphael Fernandez. They testified the purported meeting. It is of note that Salvadore is Forte's fiancé of many years. Salvadore and Forte reside together. Salvadore clearly has an interest in the outcome of this litigation in light of his relationship with Forte. Fernandez is an acquaintance of Forte and of the Decedent. Fernandez occupied space in the body shop that Forte operated. Both individuals appeared biased toward Forte's point of view and little weight was placed on their testimony.

Stephen's testimony concerning his father's intent to obtain the property was the most credible. The Decedent asked Stephen on two occasions in 2008 to commence litigation against Forte to secure the property that she had placed in the name of Red Fox Realty. Edward corroborated Stephen's version of this fact when he testified that he had a conversation with the Decedent in January 2008 concerning the fact that Paul examined the titles to real estate and determined that the real estate was conveyed to an entity owned by Forte.

The Estate has challenged Decedent's signature and alleged that Forte, or someone acting on her behalf, intentionally and fraudulently signed Decedent's name to the documents. (Amended Complaint, Homonoff v. Forte, P.C. No. 2008-1467, ¶ 7.) According to the Estate, Forte, acting pursuant to the unauthorized waiver, signed the warranty deeds as

president of Decedent's corporations. Id. ¶ 10; Ex. 35; Ex. 36; Ex. 37; see Ex. 30; Ex. 31; Ex. 32. During the trial, the Court heard extensive testimony concerning the signatures, the Decedent's intent and commitment to secure the return of his property as well as the inter-relationship between the family members. The Court found most credible of any of the Voccola siblings the testimony of Stephen. He testified, in part, that in 2008 his father approached him about suing Forte about the transfer of the property. (Stephen Testimony, July 20, 2012.) He described Forte's committed relationship toward her father as well as the Decedent's anger toward Forte relative to the real estate transfer. Id.

At trial, both parties presented testimony of handwriting experts: the Estate's expert testified that the forms bearing the Decedent's signatures were signed by someone other than the individual identified as Edward Voccola; Defendants' expert testified the forms bearing the Decedent's signature were signed by the Decedent. Both experts based their opinion on analyses of the questioned signature on twelve known exemplars of Decedent's signature. (Ex. 23; Ex. 24; Seifer Testimony, July 19, 2012; Patchis Deposition.) The Court heard the deposition testimony of Pauline Patchis (Patchis), a handwriting expert who testified that, in her opinion, the questioned signature on the disputed waiver forms was not signed by the individual identified as Edward Voccola. (Patchis Deposition.) Mark Seifer, a handwriting expert who testified on behalf of the Defendants stated that in his opinion, Patchis did not use enough exemplars in her analysis to be able to render her opinion. (Seifer Testimony, July 19, 2012.) Additionally, Seifer concluded that in his opinion, the questioned signature on the disputed waiver forms was written by the same person who wrote the known samples. Id. Decedent also presented testimony of Stephen and Paul Voccola, both of whom testified as to their considerable familiarity and experience with their father's signature, and both of whom

stated that in their opinions, the signatures on the questioned documents belonged to their father. (Stephen Testimony, July 20, 2012; Paul Testimony, July 25, 2012.)

In addition to presenting live and deposition testimony, the parties included in the trial record numerous exhibits including the Decedent's wills and codicils from June 1, 1999 to his death, appraisals of the properties at issue, Forte's and Red Fox Realty's tax returns, and the mortgage deeds, promissory notes, and assignments of mortgages at issue. Both parties thereafter filed post-trial memoranda. After a review of all of the evidence and memoranda filed in this matter, this Decision follows.

II

Standard of Review

Non-jury trials are governed 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 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. LeClerc, 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).

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 to 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." Sec. 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).

III

Analysis

A

Count Two: Declaratory Relief[5]

1

Contract: Settlement Agreement

The Estate argues that it is entitled to a declaration that the transfers of real estate to Red Fox Realty are null and void. The Estate also requests that a commissioner be appointed to convey the properties to it. According to the Estate, it is entitled to this relief because the Settlement Agreement to the 2005 litigation, signed by Forte, is a binding contract supported by adequate consideration. Thus, the Estate argues, Forte is contractually obligated to perform under its terms, which provide that Forte was to discharge the mortgage. In response, Defendants argue that Forte was not a party to the 2005 action and therefore did not derive any benefit from the Settlement Agreement resolving that litigation. They further contend that there was no mutuality of agreement or mutuality of obligation.

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[5] Although in No. 2008-1467, the Estate brings a claim for preliminary, temporary, and permanent injunctive relief (Count I), this Court need not examine that claim. First, this Court granted a temporary restraining order on March 13, 2008, restraining and enjoining Forte or Red Fox Realty from alienating their interest in the properties at issue. Furthermore, when, as in this case, a plaintiff brings a civil action seeking declaratory judgment, and that action proceeds to trial, a preliminary or temporary injunction is not necessary—the rightful owner will be entitled to transfer or alienate his or her interest in the property after a trial on the merits. Accordingly, the claim for a preliminary or temporary injunction is moot. Furthermore, this Court will not grant a permanent injunction prohibiting a property owner from alienating any interest in his or her property. To do so would operate as a substantially absolute restraint upon alienation, repugnant to fee simple. See Manierre v. Welling, 32 R.I. 104, 78 A. 507, 512 (1911).

Our Supreme Court has noted that "a valid contract requires 'competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.'"[6] DeAngelis v. DeAngelis, 923 A.2d 1274, 1279 (R.I. 2007) (quoting R.I. Five v. Medical Assocs. of Bristol Cnty., Inc., 668 A.2d 1250, 1253 (R.I. 1996) (quoting Black's Law Dictionary 322 (6th ed. 1990))). Mutual assent merely means an intention to promise or be bound through offer and acceptance. See Filippi v. Filippi, 818 A.2d 608, 623-24 (R.I. 2003); Smith v. Boyd, 553 A.2d 131, 133 (R.I. 1989). Courts consider that intent objectively as determined by the "external interpretation of the party's or parties' intent as manifested by action." See Filippi, 818 A.2d at 623-24 (quoting Smith, 553 A.2d at 133. Generally, when evaluating written contracts, evidence of mutual assent consists of the parties' signatures. See Davis Sewing-Mach. Co. v. Richards, 115 U.S. 524, 525 (1885).

In addition to mutual assent, bilateral contracts require mutuality of obligation. Mutuality is achieved when both parties are legally bound by matching reciprocal promises. Crellin Technologies, Inc. v. Equipmentlease Corp., 18 F.3d 1, 7 (1st Cir. 1994); see Filippi, 818 A.2d at 623-24; Centerville Builders, Inc. v. Wynne, 683 A.2d 1340, 1341 (R.I. 1996). Nonetheless, courts have not required "equivalency of obligation." Harris v. Green Tree Fin. Corp., 183 F.3d 173, 180 (3d Cir. 1999). Courts accordingly will not engage in an analysis of whether the mutual obligation was equal or fair, merely whether both parties made a promise under the agreement. See Law v. Law Trucking Co., 488 A.2d 1225, 1227-28 (R.I. 1985); Centerville Builders, Inc., 683 A.2d at 1341. In Law, for example, our Supreme Court concluded that there was ample

[6] The parties do not dispute that the Settlement Agreement was executed by competent parties or concerned a competent subject matter. See DeAngelis, 923 A.2d 1279.

evidence of mutuality of obligation in the agreement at issue when the plaintiff-employer promised to keep the company open for a year in exchange for the employees' acceptance of lower wages. 488 A.2d at 1227-28. In contrast, in Centerville Builders, Inc., our Supreme Court held that there was no mutuality of obligation when the alleged contract permitted the seller to negotiate with other prospective buyers and was "little more than an agreement to see if the parties could agree on a purchase-and-sale agreement at some point in the future." 683 A.2d at 1341-42.

A valid contract further requires consideration, which consists of "some legal right acquired by the promisor in consideration of his promise, or forborne by the promisee in consideration of such promise." DeAngelis, 923 A.2d 1279 (quoting Darcey v. Darcey, 29 R.I. 384, 388, 71 A. 595, 597 (1909) (internal quotation marks omitted)). When considering settlement agreements, Rhode Island courts have generally concluded that settlement of the litigation and forbearance from pressing claims—even ill-founded ones—do constitute adequate consideration for the transfer of property. See Negris v. Cortellesso, 734 A.2d 955 (R.I. 1998); Lapan v. Lapan, 100 R.I. 498, 501, 217 A.2d 242, 244 (1966). Furthermore, some courts have concluded that, in a family settlement agreement, the parties' motive to amicably settle an estate constitutes sufficient consideration. See, e.g., Green v. McAuley, 953 S.W.2d 66 (Ark. App. 1997); King v. King, 405 S.E.2d 319 (Ga. App. 1991); Matter of Estate of Wise, 890 P.2d 744 (Kan. App. 1995); Matter of Estate of Grimm, 784 P.2d 1238 (Utah Ct. App. 1989).

There is an abundance of evidence on this record to demonstrate the parties intended to be bound by the Settlement Agreement, therefore, there exists mutual assent. First, all of the Decedent's children except Edward were signatories to the Settlement

Agreement. It is therefore clear that the family intended to settle the 2005 dispute. See Davis Sewing-Mach. Co., 115 U.S. at 525. Forte's signature clearly appears on the Settlement Agreement. Forte is a successful and sophisticated business woman. She testified that she had been engaged in a successful business for many years, and does not dispute that she signed the Settlement Agreement. Further, Stephen testified credibly that he did not procure Forte's signature. He testified that he negotiated the Settlement Agreement and all parties signed it separately. In light of the acrimonious relationships in this family, it is difficult to understand why Forte would sign an agreement without review. The Court places no weight on Forte's testimony that she did not read the Settlement Agreement. See Manchester v. Pereira, 926 A.2d 1005, 1012 (R.I. 2007) ("[I]t has long been a settled principle that 'a party who signs an instrument manifests his assent to it and cannot later complain that he did not read the instrument or that he did not understand its contents.'" (quoting F.D. McKendall Lumber Co. v. Kalian, 425 A.2d 515, 518 (R.I. 1981))). The Court finds that Forte intended to be bound by the Settlement Agreement.

Under the Settlement Agreement, Decedent promised to forbear bringing suit against Defendants for the claims that were raised or could have been raised in the 2005 litigation and further released and discharged all claims of a legal or equitable interest in the stock or assets of Redbrook Investments. The children—all shareholders of Redbrook Investments—promised to release any mortgages and promissory notes that had been placed on the property at issue and agreed to provide Decedent with a monthly income from Redbrook Investments' income. See Law, 488 A.2d at 1227-28; Filippi, 818 A.2d at 623-24. Thus, the Estate has demonstrated mutuality of obligation. Forte

agreed under the Settlement Agreement that if any individual who is a party to the Settlement Agreement refused to execute documents necessary to release and discharge all the mortgages, then she would be granted the power of attorney to act on that individual's behalf. None of the promises in the Settlement Agreement were conditioned on a future event. See Law, 488 A.2d at 1227-28.

Finally, this Court concludes that there is sufficient evidence on this record establishing that the Settlement Agreement was supported by adequate consideration and Forte was bound to perform under the terms. The Settlement Agreement required the Decedent to forbear from bringing suit for the claims that were raised or could have been raised in the 2005 litigation and further released and discharged all claims of a legal or equitable interest in the stock or assets of Redbrook Investments, a corporation in which Forte was a shareholder. The Court notes that the Settlement Agreement executed in March 2007 was a family settlement agreement that was motivated, at least in part, by a desire to amicably settle the 2005 litigation. See Negris, 734 A.2d 955; see, e.g., Green, 953 S.W.2d 66; King, 405 S.E.2d 319; Matter of Estate of Wise, 890 P.2d 744; Matter of Estate of Grimm, 784 P.2d 1238.

Forte was a party to the Settlement Agreement and was therefore legally obligated to perform under its terms, which required her to release the mortgages in exchange for the dismissal of the 2005 action and release of claims by the Decedent. See DeAngelis, 923 A.2d 1279; Darcey, 29 R.I. at 388, 71 A. at 597; Rose v. Daniels, 8 R.I. 381, 384 (1866). The mortgages should have been discharged effective as of the date of the Settlement Agreement. See Angel v. Murray, 113 R.I. 482, 489, 322 A.2d 630, 634 (1974); Rose, 8 R.I. at 384. Accordingly, any subsequent conveyance of property to

Forte, which was performed in exchange for Forte's release of mortgages on those properties, was done without consideration. See DeAngelis, 923 A.2d at 1279; Rose, 8 R.I. at 384.

2

Validity of Signature

The Estate additionally asserts that it is entitled to a declaration that the transfers of real estate to Red Fox Realty are null and void because Red Fox Realty is not a bona fide purchaser and any consideration for transfers, pursuant to the waivers, was the assumption of mortgages that should have been discharged pursuant to the Settlement Agreement. (Plaintiff Pretrial Memorandum, at 12.) In addition, the Estate argues that Forte did not have authority to sign the warranty deeds transferring the real estate to Red Fox Realty. According to the Estate, Forte's purported authority emanated from documents—namely, the June 4, 2007 Waivers of Notice of Minutes of Special Joint Meetings of the Stockholders and Board of Directors of Capitol City Investments, City View Realty, and West Side Investments for meetings allegedly held on May 29, 2007—that were ineffective in imbuing Forte with authority to transfer the real estate because the signature on the waivers was not that of Decedent. Defendants dispute the illegitimacy of the waivers of notice for the alleged May 29, 2007 meetings and argue that the document was genuine. Accordingly, they argue the conveyances should remain undisturbed. (Defendants' Post Trial Memorandum, at 2.)

In support of their argument, the Defendants point to the fact that Forte was the favorite child of the Decedent and his consistent companion and caretaker. Id. Although no one who testified would disagree with the statement that Forte did care for her father

over the years, the facts reveal a different picture of the relationship between Forte and Decedent immediately prior to Decedent's death. This was highlighted by Decedent himself when he filed a verified complaint against Forte and executed his September 5, 2008 will and subsequent codicil on April 29, 2010. While it is true that Forte was a dear and loving daughter who cared for Decedent while others did not, it is clear their relationship had changed. In addition, Decedent reconciled with his other children later in life which may have been disconcerting to the others. He mended his relationship with Edward after Edward, like his father, became a convicted felon and was incarcerated. Decedent, Edward testified, was the only one present at his sentencing. Decedent also mended his relationship with Barbara after a lifetime of estrangement. Finally, he mended his relationship with Stephen after a brief period of estrangement.

While it is easy to get caught in the web of the family dynamics, the fact remains that Forte was involved in a hotly contested law suit which was settled in 2007. She signed the Settlement Agreement and was bound by its terms.

Defendants argue that there was no evidence introduced to suggest the waivers and notices were not executed by Decedent. Therefore, they are valid. Defendants also argue that in the event they are valid, then there is no evidence of mutual mistake, fraud, or misrepresentation. (Defendants' Post Trial Memorandum, at 5-6.)

Rhode Island has long recognized that an unauthorized signature is ineffective in authenticating the document to which it is affixed. See Silvia v. Indus. Nat. Bank of R.I., 403 A.2d 1075, 1076 (R.I. 1979); Peck v. Providence Gas Co., 17 R.I. 275, 23 A. 967, 971 (1892); Millard v. Barton, 13 R.I. 601, 610 (1882). When a party seeks to invalidate a document as inauthentic, that party must introduce evidence sufficient to rebut the

presumption that the signature was genuine or authorized. Wooddell v. Hollywood Homes, Inc., 105 R.I. 280, 286, 252 A.2d 28, 31 (1969). Once the presumption of genuineness is rebutted, the burden is on the proponent of the signature to establish its genuineness by a preponderance of the evidence. McCusker v. Fascione, 117 R.I. 478, 485, 368 A.2d 1220, 1224 (1977). Our Supreme Court has recognized that a party's denial of a signature's authenticity coupled with a sample of an authenticated signature is sufficient evidence to rebut the presumption that a signature is genuine. Esposito v. Fascione, 111 R.I. 91, 94, 299 A.2d 165, 168 (1973); see McCusker, 117 R.I. at 485-86, 368 A.2d at 1224 ("Once [defendant] denied authorizing anyone to sign her name, the presumption that her signature was authorized vanished.").

Each party introduced the testimony of a handwriting expert during the proceedings: the Estate to challenge the authenticity of the Decedent's signatures on the Waivers of Notice signed on June 4, 2007, Defendants to support the authenticity of the signatures. Both experts based their analyses of the signature in dispute on twelve known exemplars of Decedent's signature. (Ex. 23; Ex. 24; Seifer Testimony, July 19, 2012; Patchis Deposition.) Patchis, the Estate's handwriting expert, testified that, in her opinion, the questioned signature on the disputed waiver forms was not signed by the individual identified as Edward Voccola. (Patchis Deposition.) Seifer, the Defendants' handwriting expert, testified that, in his opinion, Patchis did not use enough exemplars in her analysis to be able to render her opinion. (Seifer Testimony, July 19, 2012.) Additionally, Seifer concluded that in his opinion, the questioned signature on the disputed waiver forms was written by the same person who wrote the known samples. Id. Defendants also presented testimony of Stephen and Paul Voccola, both of whom testified as to their considerable familiarity and experience

with their father's signature, and both of whom stated that in their opinions, the signatures on the questioned documents belonged to their father. (Stephen Testimony, July 20, 2012; Paul Testimony, July 25, 2012.) The Court accepts the testimony of Patchis and finds that Decedent did not sign the Waivers of Notice of Minutes of Special Joint Meetings of the Stockholders and Board of Directors of Capitol City Investments, City View Realty, and West Side Investments for the meetings allegedly held on May 29, 2007 and dated June 1, 2007. (Ex. 30; Ex. 31; Ex. 32.) In addition to the expert testimony, the Court also finds as significant the fact that the Decedent signed a verified complaint, in which he denied that he had ever signed the waivers. (Ex. 1, Complaint, Voccola v. Voccola, C.A. No. 2005-1303.) The Court gave little weight to the testimony of Stephen and Paul on this issue due to the divisive nature of the relationship of the siblings. Stephen has sued Edward in a separate law suit while Paul has a potential economic interest in the case as a real estate broker. The Estate also put forth sufficient and credible evidence through the expert testimony of Patchis, who testified that, based on her analysis, the questioned signature was not written by the person identified as Edward Voccola. (Patchis Deposition.) Patchis noted that there were discrepancies between the questioned signature, on which she performed her analysis, and the signatures that were known to have been written by Decedent.

This Court further observes that there were inconsistencies among the three signatures on the waiver forms conveying the property to Red Fox Realty. Courts have long held that such comparisons by fact-finders are an appropriate means of evaluating whether writing is genuine. See, e.g., Wilber v. Eicholtz, 5 Colo. 240, 243 (1880) (concluding that it was not error to permit jurors to compare writing for the purpose of

determining its authenticity); Vinton v Peck, 14 Mich. 287 (1866) (noting that fact-finders may permissibly compare handwriting themselves to evaluate whether writing was authentic or had been altered). Although the three forms were alleged to have been written on the same day, the "e" and first "d" were formed differently; the "V", first "o", "l" and "a" were also formed differently.

Dr. Seifer testified that it is his preference to work with original documents. (Seifer Testimony, July 19, 2012.) Despite the preference, he reviewed copies and examined the same documents that Patchis examined. He acknowledged that Patchis was competent in her analysis and methodology. The Court found it interesting that although he criticized her opinion, he had already reached a conclusion that the Decedent's signature was not genuine before he prepared the report. This Court concludes, therefore, that Dr. Seifer's testimony was not credible. Finally, the Court notes that Forte produced two witnesses, Kenneth Salvadore and Raphael Fernandez, who testified that they observed the Decedent execute the waivers and notice. The Court will first note that Kenneth Salvadore is Forte's fiancé, who is very familiar with the case and aligned with Forte. Raphael Fernandez testified he worked at the body shop for years without paying rent. He was a friend of both Decedent and Forte. Clearly, these witnesses had Forte's interests in mind. Accordingly, the deeds which purport convey properties to Red Fox Realty are null and void.

3

Fiduciary Duty: Corporate Officers

The Estate further asserts that it is entitled to a declaratory judgment that the conveyances to Red Fox Realty are also null and void because Forte, as President of

Capitol City Investments, City View Realty, and West Side Investments, breached her fiduciary duty to Decedent's corporations by engaging in self-dealing. Essentially, the Estate contends that Forte conveyed corporate property worth approximately 1.7 million dollars to Red Fox Realty, a company that she exclusively owned, for no consideration. Furthermore, the Estate argues that the failure to append exhibits to the subject waivers specifically denoting the properties to which the waivers refer is fatally defective. Defendants respond that because Forte was not bound by the Settlement Agreement, her release of the mortgages on those properties constituted adequate consideration, and the conveyances were otherwise fair. Defendants also argue that the mere fact that the waivers did not include the appendices referenced in those waivers was a mere scrivener's error.

"Corporate officers and directors of any corporate enterprise, public or close, have long been recognized as corporate fiduciaries owing a duty of loyalty to the corporation and its shareholders." Hendrick v. Hendrick, 755 A.2d 784, 789 (R.I. 2000) (quoting A. Teixeira & Co. v. Teixeira, 699 A.2d 1383, 1386 (R.I. 1997)). Furthermore, in close, family-held corporations, the shareholders themselves have a fiduciary duty toward one another because of the potential for oppression by the majority toward the minority shareholders. Id. (citing Broccoli v. Broccoli, 710 A.2d 669, 673 (R.I. 1998); A. Teixeira & Co., 699 A.2d at 1386-87; Estate of Meller v. Adolf Meller Co., 554 A.2d 648, 651-52 (R.I. 1989)). In these circumstances, each shareholder has a fiduciary duty to act "with the utmost good faith." Id. (quoting Point Trap Co. v. Manchester, 98 R.I. 49, 54, 199 A.2d 592, 596 (1964)).

That duty of good faith prohibits the fiduciary from acting without the knowledge and consent of those to whom the fiduciary duty is owed when that fiduciary "has an individual interest in the subject matter or when his [or her] interest is in conflict with that of the person for whom he [or she] acts." Point Trap Co., 98 R.I. at 54, 199 A.2d at 596; Kessler v. Bishop, 51 R.I. 202, 153 A. 247. "[W]hen an officer or director is a party to a transaction in which he has acted both for himself and for the corporation in which he holds office" the transaction does not acquire validity because the price is fair. Point Trap Co., 98 R.I. at 54, 199 A.2d at 596. The corporate officer seeking to uphold the challenged transaction has the burden of proving that the transaction was fair to the corporation and was authorized, approved, or ratified. Tomaino v. Concord Oil of Newport, Inc., 709 A.2d 1016, 1021 (R.I. 1998).

This Court finds that Forte has not established either that the questioned transactions were fair to the corporation, or that the transactions were authorized, approved, or ratified. See id.; Point Trap Co., 98 R.I. at 54, 199 A.2d at 596. First, the Defendants have not put forth sufficient evidence to demonstrate that the transactions were authorized, approved, or ratified. This Court has previously found that the signature purporting to be Decedent's signature on the waiver was not his signature. In addition, although each of the Waivers of Notice of Minutes of Special Joint Meetings of the Stockholders and Board of Directors for Capitol City Investments, City View Realty, and West Side Investments signed on June 4, 2007 purport to represent votes that "the Corporation should transfer the property as represented on Exhibit 'A' to Red Fox Realty, LLC," none of the subject waivers have appended exhibits. Defendants failed to produce the appended exhibits specifically describing the transactions allegedly approved in the May

29, 2007 meetings for Capitol City Investments, City View Realty, and West Side Investments. Accordingly, this Court is unable to determine what transactions, if any, were approved at the alleged meeting because the transactions that Defendants contend were approved are not laid out or listed on the documents. Thus, Defendants have failed in their burden of proof that the transactions were authorized, ratified, or approved.

Second, in considering the fairness of the transaction, even if Decedent signed the contested waivers, which the Court has found he did not, doing so would have authorized the conveyance of real estate worth in excess of $1.6 million in exchange for no consideration. See, e.g., Cathedral Estates v. Taft Realty Corp., 228 F.2d 85, 87 (2d Cir. 1955) (concluding that lower court did not err in voiding transaction in part because inadequate consideration evidenced that transaction was not fair to corporation); Heffern Co-op. Consol. Gold Min. & Mill. Co. v. Gauthier, 22 Ariz. 67, 193 P. 1021 (1920) (concluding that a director's procuring a mortgage of $10,000 in consideration of an uncompleted mill worth only $5,000, was oppressive and unfair, and the transaction could be rescinded by the corporation). Under the Settlement Agreement, signed by all of the shareholders in the corporation, Forte was obligated to discharge the mortgages for which the real estate was exchanged, thus the purported transaction fails for lack of consideration. There is no evidence on this record to establish that the transaction was fair to the corporation or its shareholders. Therefore, although a corporate officer seeking to uphold a challenged transaction must establish both the transaction's fairness and its authorization or ratification, Defendants have failed to demonstrate that the transaction was fair or authorized or ratified. See Tomaino, 709 A.2d at 1021; Point Trap Co., 98 R.I. at 54, 199 A.2d at 596.

4

Gift

In their counterclaim, Defendants assert that Decedent for many years and on various dates promised Forte that he would convey all the property that is the subject of this action to her absolutely and forever. The Defendants imply that the conveyances should alternatively be upheld as valid inter vivos gifts to Forte from her father. The Estate disputes that the conveyances were valid. The Estate argues that the signature purportedly authorizing the transfers is not genuine and that Decedent's estate plan, prepared after the transfers, demonstrates a lack of intent to transfer title to Forte.

In Rhode Island, for a claimant to establish a valid inter vivos gift, that claimant must establish by clear and satisfactory evidence "'a present true donative intent' and 'some manifestation such as an actual or symbolic delivery of the subject of the gift[.]'" Notarantonio, 941 A.2d at 150-51 (quoting Dellagrotta v. Dellagrotta, 873 A.2d 101, 110 (R.I. 2005)); Wyatt v. Moran, 81 R.I. 399, 403, 103 A.2d 801, 803 (1954). Accordingly, the claimant must establish that at the time of the alleged gift, the donor intended to divest himself or herself of exclusive ownership and control, and vest that ownership and control in the claimant. Wyatt, 81 R.I. at 403, 103 A.2d at 803.

In addition to proving a present true donative intent on the part of the alleged 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). That is, 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, 873 A.2d at 110 (quoting Black v. Weisner, 112 R.I. 261, 267, 308 A.2d 511, 515 (1973)). When the purported manifestation of that present intent is a transfer document, then a conclusion that the alleged donor did not sign the operative document will negate both that donor's present donative intent, and actual or symbolic delivery of the property. Notarantonio, 941 A.2d at 150-51.

Forte has failed to establish that Decedent intended to divest himself of ownership and control and vest that ownership in Forte. See Wyatt, 81 R.I. at 403, 103 A.2d at 803. The Decedent executed a verified complaint stating that he did not sign the waivers. Further, Stephen testified that his father contacted him about commencing action against Patricia to secure the return of this property. As stated above, this Court concludes that Decedent did not sign the waivers, thus the waivers do not establish Decedent's donative intent. See Notarantonio, 941 A.2d at 150-51. Furthermore, Decedent's estate plans immediately following the challenged transfers further demonstrate his lack of intent to divest himself of ownership and control and to vest that control in Forte. In his September 5, 2008 will, Decedent provides that:

> "Patricia A. Forte, of Cranston, Rhode Island ("Patricia"), shall be deemed to have predeceased me without descendants for all purposes of this will unless prior to my death my daughter, Patricia, has 1) voluntarily transferred . . . all of the real estate in that Complaint filed by me against my daughter . . . and 2) caused all mortgages and other evidence of indebtedness claimed to be owed by me . . . to Patricia . . . to be released, discharged, or otherwise nullified."

That disposition is repeated in his April 29, 2010 codicil which says:

> "Notwithstanding anything herein to the contrary, my daughter, Patricia A. Forte, my son, Stephen Voccola[,] and my son, Paul Voccola shall be deemed to have predeceased me without descendants for all purposes of this my last will and testament."

Forte has also failed to establish that the alleged gift was delivered to her. See Silva, 913 A.2d at 1063; Ruffel, 900 A.2d at 1188. Just as an unauthorized signature on the operative document fails to provide evidence of donative intent, so too does an unauthorized signature fail to fulfill the delivery requirement. See Notarantonio, 941 A.2d at 150-51. Accordingly, this Court concludes that Defendants have failed to establish by clear and satisfactory evidence either a present donative intent or delivery of the subject of the gift. See id.; Dellagrotta, 873 A.2d at 110; Wyatt, 81 R.I. at 403, 103 A.2d at 803.

B

Count Three: Imposition of a Constructive Trust[7]

The Estate argues that it is entitled to judgment imposing a constructive trust over the transferred property for the benefit of Decedent's Estate or his corporations. According to the Estate, a constructive trust is appropriate because the transferred property is wrongly in the name of Defendants, thereby unjustly enriching them. In contrast, Defendants contend that the property is rightfully in the name of Red Fox Realty and that a constructive trust should not be imposed.

"[A] constructive trust is a relationship imposed by operation of law as a remedy to redress a wrong or prevent an unjust enrichment." Simpson v. Dailey, 496 A.2d 126, 128-29 (R.I. 1985). It requires the trustee to transfer title and possession of the property at issue to the beneficiary. Id. A court will impose this obligation on a party who obtains property fraudulently, or in violation of a fiduciary duty, if the party requesting the

[7] In Count X of the Complaint of P.C. No. 2008-6628, the Estate requests judgment appointing a commissioner with full power and authority to execute on behalf of Forte all discharges and releases of mortgages held by her and her corporation, West Fountain Investments.

imposition of the constructive trust is able to prove by clear and convincing evidence the existence of that fraud or breach of duty. Curato v. Brain, 715 A.2d 631, 634 (R.I. 1998). Additionally, to establish a constructive trust over real property, the proponent of the trust must establish at least some element of fraudulent conduct. Id.; see Lawrence v. Andrews, 84 R.I. 133, 139, 122 A.2d 132, 135 (1956).

Here, a constructive trust is appropriate. Forte has obtained the property by engaging in self-dealing in violation of her fiduciary duty as President of Decedent's corporations, Capitol City Investments, City View Realty, and West Side Investments. In addition, the Court has accepted the expert testimony of Patchis. Thus, absent such a remedy, Forte will be unjustly enriched. See Curato, 715 A.2d at 634. Forte obtained title to property valued in excess of $1.6 million dollars in exchange for a promise to discharge mortgages, which she had a pre-existing duty to discharge. See id. Further, there is no evidence on this record to establish either that the challenged conveyances were fair, or that the conveyances were authorized, approved, or ratified.

C

Counts Four and Five: Monetary Damages

1

Count Four: Compensatory and Punitive Damages for Financial Losses and Breach of Fiduciary Duty[8]

The Estate also alleges that it is entitled to judgment against Forte for compensatory and punitive damages for financial losses suffered by the Estate and for Forte's intentional and willful breach of her duties owed to Decedent. The Estate does

[8] In Counts I through IX of the Complaint of P.C. No. 2008-6628 demand judgment against Forte for Compensatory Damages in excess of $5000 for each of the properties at issue.

not provide a specific sum of damages, but asks for "a sum sufficient to confer jurisdiction upon the Superior Court, plus statutory interest, costs of suit and further relief as the Court deems just." Defendants counterclaim for $250,000, plus interest, costs, and attorney fees.

With respect to compensatory damages, the Estate has failed to provide documentation supporting the alleged financial losses from Defendants' actions. Furthermore, the Estate has not provided any means through which this Court can determine the actual measure of damages by a fair preponderance of the evidence. See Pimental v. Postoian, 393 A.2d 1097, 1101 (R.I. 1978). This Court concludes, therefore, that the Estate has failed to provide proof of actual damages incurred. Accordingly, the damages alleged for compensation for financial losses are denied.

Likewise, concerning punitive damages, the Estate has failed in its burden of proof. In Rhode Island, a court will only award punitive damages to punish malicious or intentional extreme conduct. Palmisano v. Toth, 624 A.2d 314, 317-18 (R.I. 1993); see City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 266-67 (1981); Greater Providence Deposit Corp. v. Jenison, 485 A.2d 1242, 1244 (R.I. 1984). "The party seeking punitive damages has the burden of producing 'evidence of such willfulness, recklessness or wickedness, on the part of the party at fault, as amount[s] to criminality, which for the good of society and warning to the individual, ought to be punished.'" Palmisano, 624 A.2d at 317-18 (quoting Sherman v. McDermott, 114 R.I. 107, 109, 329 A.2d 195, 196 (1974)). Thus, to justify the award of punitive damages, the proponent of those damages must show that the defendant acted with malice or in bad faith. Morin v. Aetna Casualty & Surety Co., 478 A.2d 964, 967 (R.I. 1984). In this case, the Estate has not put forth

sufficient evidence to demonstrate that Forte acted with malice or in bad faith. Accordingly, the damages alleged for punitive damages are denied.

Forte has established, however, damages in the amount of $82,000, plus statutory interest, for a debt owed her from Decedent. Forte testified credibly that she took out a mortgage on her house to pay for some of Decedent's criminal fines. (Forte Testimony, July 25, 2012). She credibly testified that she had paid $82,000 on Decedent's behalf, but was never compensated for her payment. This Court also heard corroborating testimony from Stephen that Forte paid Joseph Tosoni approximately $80,000 in exchange for a mortgage that Tosoni had secured for a loan to Decedent. (Stephen Testimony, July 20, 2012; Ex. 26). Accordingly, Forte's damages are denied, in part, and allowed, in part, in the amount of $82,000.

2

Count Five: Compensatory Damages for Monies Received in Connection with the Disputed Property

In addition to seeking compensatory and punitive damages from Defendants for financial losses and breach of fiduciary duties, the Estate also seeks an accounting for compensatory damages against Defendants of monies received and expended by Defendants in connection with the disputed land. In essence, the Estate argues that Defendants have been unjustly enriched to the extent that they have profited from the properties at issue. Defendants counterclaim that they are entitled to an accounting or compensation for monies expended to support those properties.

An accounting is an equitable remedy that arises from an obligation to account for a claimant's money or property. That obligation to account can arise in a number of circumstances, but it is "predicated upon the legal inability of a plaintiff to determine

how much, if any, money is due him from another." Bradshaw v. Thompson, 454 F.2d 75, 79 (6th Cir. 1972). In general, the burden of showing that an accounting is necessary is on the party requesting the accounting. See, e.g., Wisner v. Wisner, 631 P.2d 115, 123 (Ariz. Ct. App. 1981); Havana Nat. Bank v. Wiemer, 335 N.E.2d 506 (Ill. Ct. App. 1975); Stockmen's Ins. Agency, Inc. v. Guarantee Reserve Life Ins. Co. of Hammond, Indiana, 217 N.W.2d 455 (N.D. 1974). Further, the right to an accounting is not absolute but is accorded only on equitable principles. See, e.g., Tarin v. Pellonari, 625 N.E.2d 739, 748-49 (Ill. Ct. App. 1993); Heath v. Sims, 531 S.E.2d 115, 117 (Ga. Ct. App. 2000); King v. Bullard, 257 S.W.3d 175, 182 (Mo. Ct. App. 2008); see also 1A C.J.S. Accounting § 44.

An accounting will not be ordered, therefore, if the circumstances render an accounting unnecessary or improper. Tarin, 625 N.E.2d at 748-49. Accordingly, although a court may properly include rents or profits accruing pending a decision, it will only do so where the evidence furnishes a sufficient basis for it. See Hunt v. Hunt, 67 N.W. 510 (Mich. 1896); 1A C.J.S. Accounting § 44. As one court noted in denying a request for an accounting for damages pending payment after judgment, "[o]nce the final accounting has been determined and a judgment is entered, it would be expensive and time consuming for parties and witnesses to come back into court to determine the amount of profit from the date of judgment until payment." Lange v. Bartlett, 360 N.W.2d 702, 704 (Wis. Ct. App. 1984).

In this case, both parties have failed to introduce evidence demonstrating that a post-trial accounting is required. Defendants submitted Red Fox Realty's tax returns from 2007 until 2011. (Ex. 14.) From those tax returns, the Estate admitted, and this

Court agrees, that "Red Fox [Realty] broke even for all intents and purposes, meaning that the Court could fairly conclude that neither side should take anything." (Plaintiff's Post Trial or Reply Memorandum of Law, at 22.) Those tax returns showed that although Red Fox Realty did have annual losses, it offset those losses by taking depreciation deductions. See Ex. 14.

Further, this Court notes that neither party has provided any statute or case law to support a post-trial accounting. In fact, Defendants did not raise the issue in its post-trial briefs at all. See Robideau v. Cosentino, 47 A.3d 338 (R.I. 2012) ("[T]his Court 'deem[s] as waived issues that the appellant fails to brief, despite being addressed at oral argument.'" (quoting Rice v. State, 38 A.3d 9, 16 n.10 (R.I. 2012))); see also Stebbins v. Wells, 818 A.2d 711, 720 (R.I. 2003); S. Ct. R. App. P. 16(a) ("Errors not claimed, questions not raised and points not made [in a party's brief] ordinarily will be treated as waived and not considered by the court."). The Estate's brief, with regard to a post-trial accounting, consisted largely of conclusory assertions. The brief failed to state what, if any, evidence exists to support a post-trial accounting. The brief also neglects to cite any case or statute to support the proposition. See United States v. Brennick, 405 F.3d 96, 100 (1st Cir. 2005); Healey v. Bendick, 628 F. Supp. 681, 691 (D.R.I. 1986).

Accordingly, under these circumstances, this Court concludes that a post-trial accounting is not necessary, and it is therefore denied.

IV

Conclusion

For the foregoing reasons this Court grants judgment in favor of the Estate on its claim for declaratory relief in PC-2008-1467 and hereby declares the deeds dated May

31, 2007 are null and void. The Estate's claim for the imposition of a constructive trust (Count III) is granted. The Estate's claims for monetary damages for financial loss and breach of fiduciary duties (Count IV) are denied and dismissed. The Estate's claims for monetary damages for unjust enrichment from the disputed properties (Count V) are allowed. The Estate's claim for injunctive relief (Count I) is denied and dismissed as moot.

As to Defendants' Counterclaim, judgment shall enter in favor of Forte in the amount of $82,000 plus statutory interest. Forte's counterclaims for declaratory relief to establish her right to the property are denied and dismissed.

As to PC-2008-6628, the Estate's demand that Forte discharge a mortgage deed encumbering undeveloped real estate in North Kingston, Rhode Island, owned by Lakeview Realty and identified as Assessor's Plat 63, Lots 13, 17, and 18 (Count I); that Forte discharge two mortgage deeds and a secured promissory note encumbering property owned by Decedent and located at 165 Glen Hills Drive, Cranston, Rhode Island (Count II) are granted. Compensatory damages in excess of $5000 for Forte's failure to discharge mortgages on properties at 400 and 403 West Fountain Street, Providence (Count III); on property at 361 West Fountain Street, Providence (Count IV); on property at 23 Penelope Place, Providence (Count V); 257 Dean Street, Providence (Count VI); 32 Cargill Street, Providence (Count VII); 14 Cargill Street, Providence (Count VIII); and 26 Cargill Street, Providence (Count IX) are denied and dismissed. The Estate requests that a commissioner be appointed with power and authority to execute all discharges and releases on Forte's behalf (Count X) is granted. The Estate's request that the Court

award compensatory and punitive damages for slander of title (Count XI) is dismissed as waived.

Each party shall bear its 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.