STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: September 27, 2013)

GEORGE E. RANDEAU	:	
	:	
v.	:	**C.A. No. WC-2011-0116**
	:	
DONNA LAPLANTE	:	

DECISION

K. RODGERS, J. This matter is before the Court on Plaintiff George E. Randeau's (Plaintiff) Amended Verified Complaint against Defendant Donna LaPlante (Defendant), through which Plaintiff seeks both monetary damages and injunctive relief to enforce certain alleged verbal agreements that arose during the course of the parties' personal, romantic relationship. The alleged agreements center on (1) the use of certain funds in joint accounts maintained by the parties, and (2) title to two vacant parcels of land located in Westerly, Rhode Island.

For the reasons set forth herein, this Court finds that Plaintiff has failed to present sufficient credible evidence to sustain his burden of proof and is, therefore, not entitled to the relief requested. Accordingly, judgment shall enter for Defendant on all remaining counts in Plaintiff's Amended Verified Complaint.

I

Facts and Travel

Having reviewed the evidence presented by both parties at a jury-waived trial, the Court makes the following findings of fact.

Plaintiff and Defendant were engaged in a substantial dating relationship from 1989 to 2009. From approximately 1991 through the end of their relationship, the parties lived together at 48 Oak Street in Westerly, Rhode Island, along with Defendant's three children until they each were grown and moved out. Because Defendant's three children were between the ages of eleven and fourteen at the time he moved in, Plaintiff stayed in and maintained his own bedroom and bathroom in the basement of the house. The property at 48 Oak Street was, at all times, owned by Defendant.

Plaintiff and Defendant were never married, nor did they present testimony to this Court that they ever held themselves out as being married. They filed separate tax returns each year, and they each maintained separate checking and savings accounts. In addition to their individual accounts, however, the parties maintained a joint "house account" for paying common expenses, and, over time, they established a Money Market Account and certificates of deposit, all of which were held in their joint names. These accounts and CDs were maintained at the Westerly Community Credit Union.

Over the course of their twenty-year relationship, the parties each contributed financially to the arrangement, not unlike a married couple. Also, not unlike a married couple, the parties had their ups and downs. As a result, this Court heard testimony akin to airing dirty laundry, nitpicking over unreimbursed improvements dating back to the 1990s, and casting blame on one another, and observed acrimonious behavior between and among the parties and the witnesses, much like one would expect in Family Court. Notwithstanding this display, this Court will focus attention on the facts pertinent to the causes of action at issue.

In 2003, Plaintiff was given the opportunity to purchase sixty-seven acres of undeveloped property in Westerly. The original objective on Plaintiff's part, as discussed with Defendant and her children, was to develop a large "family compound." This project would be Plaintiff's first and only foray into the residential development business. Rather than purchasing this property in his own name, in 2004, Plaintiff founded GeoSolutions LLC, of which he was at all times the sole member, to acquire the land. Plaintiff borrowed money from both Defendant's daughter and her husband, Anita and Joseph Guarnieri, as well as from Defendant herself, to be used towards the purchase and development of the land. The Guarnieris loaned Plaintiff $300,000 from the proceeds from the sale of their own home. While they did not require any security or anything in writing from Plaintiff for this loan, Plaintiff later, of his own accord, executed a promissory note in connection with this loan. Defendant entered into a line of credit agreement, secured by the real property at 48 Oak Street held in her own name, and lent those funds to Plaintiff to be used toward the purchase price and development of the property.

Plaintiff soon realized that he and/or GeoSolutions LLC would be unable to afford to develop strictly a "family compound" and that subdividing the property would be necessary. Accordingly, Plaintiff developed the land into a forty-five lot subdivision known as Potter Hill Preserve, which received final approval from the Town of Westerly in 2006. In that same year, Plaintiff sold thirty-two of the forty-five lots to a developer, Gashy Dowlatshahi, for $40,000 per lot, or $1,200,000. Thereafter, Plaintiff repaid the equity line of credit secured by Defendant's home and repaid the loan to the Guarnieris. The same year, in keeping with the notion of creating a "family compound," Plaintiff

gave three of the remaining lots to the following people: (1) Defendant's son, Jace LaPlante, as a joint tenant with Defendant; (2) Defendant's daughter, Jaclyn Tripp, and her husband; and (3) the Guarnieris. No consideration was paid for any of these lots. New homes were thereafter constructed on both the Tripp and Guarnieri lots; the other lot remained vacant.

The parties' "house account" was initially set up in the early 1990s, with Plaintiff depositing a monthly sum as "rent" and Defendant depositing a lesser sum when she had the funds available from her salary as a Westerly Town employee. As other accounts were established in Plaintiff's and Defendant's names jointly, including the Money Market Account maintained at the Westerly Community Credit Union, Plaintiff funded such accounts primarily from the sale of lots in Potter Hill Preserve.

By late 2008, the parties' relationship hit a rocky patch. Both Plaintiff and Defendant testified that there was an attempt to rekindle their relationship in or about February 2009, and, while it was a slow process, the parties became intimate partners again. Plaintiff asserts that it was these relationship troubles that prompted him, in the ensuing months, to execute a quitclaim deed transferring his ownership interest in two of the remaining undeveloped lots in the Potter Hill Preserve subdivision—namely, lots 8 and 9—to Defendant. Am. Verified Compl. ¶¶ 26-28. At trial, the parties offered differing accounts concerning how the transfer of these two lots came about. Plaintiff claims that in early 2009, subsequent to rekindling their relationship, he and Defendant were sitting alone on the porch at the home Defendant owned when Defendant "demanded" that he convey to her two lots "in [Defendant's] trust to justify [Plaintiff's] faithfulness to keep the relationship going," along with $100,000 to be treated in the same

manner. Two weeks after that conversation, according to Plaintiff's trial testimony, Defendant "screamed at [Plaintiff]," demanding to know where the deed was, to which Plaintiff replied that it was in his attorney's hands. A short while later, perhaps another week or two, on April 8, 2009, Plaintiff executed the quitclaim deed conveying the two lots to Defendant. See Pl.'s Ex. 1. Plaintiff testified on direct examination that he conveyed the lots in this manner so that if the parties separated, then Defendant would be required to return the lots to Plaintiff. According to Plaintiff's testimony on cross-examination, Plaintiff agreed to these "conditions" involving the transfer of the lots at the time of this "sit down agreement" on the porch, which was before he met with his attorney to draft the quitclaim deed. It is undisputed that there is no reference in the quitclaim deed to any conditions placed upon Defendant or agreed to by Plaintiff concerning their continued relationship and/or any future conveyance of these lots back to Plaintiff. It is also undisputed that there was no consideration paid for the transfer of these two lots.

With regard to the $100,000 Plaintiff testified that Defendant demanded in the early spring of 2009, Plaintiff stated that he transferred $98,000 to the "house account" to which she had access. Notably, he also stated that the additional $2000 was money that Defendant "stole from the other Money Market Account." Although Plaintiff contends that Defendant immediately transferred the $98,000 from the "house account" into an account with her daughter, he also testified that they later agreed to put that money into a joint certificate of deposit where it would be "held in trust to build [Plaintiff's home]." According to Plaintiff, Defendant would benefit from the $100,000 if they stayed together by living in the newly constructed home, but if they split up, then Defendant

would return the funds to Plaintiff to be used to build his house. Like the quitclaim deed, there is nothing in writing to memorialize this convoluted money trail and the conditions that Plaintiff believed were placed on the funds being held in trust for his benefit.

Defendant's recollection of these series of events differed significantly. At trial, she specifically denied having "demanded" that Plaintiff transfer the two lots and $100,000 to her as a sign of his commitment to rekindling their relationship. Rather, Defendant recalled that she had discovered in February 2009 that Plaintiff had closed out a joint Money Market Account at a time when their relationship was still on rocky ground. At that time, Defendant confessed that she was livid that he did so without communicating his intentions to her. Sometime thereafter, in late February, the parties began to rekindle their relationship and, to her surprise, on or about April 9 or 13, 2009, Plaintiff expressed his idea that he would put money into Defendant's account with whom her daughter, Anita, was a joint holder; when combined with funds in that account, it would hold roughly $100,000. Additionally, to Defendant's surprise, on or about April 13, 2009, Plaintiff presented Defendant—on the porch of her home—with an executed and recorded quitclaim deed conveying the two undeveloped lots across the street from her daughters' new homes at the Potter Hill Preserve. Defendant was elated and invited her children to come over and share in the excitement. These lots, all in close vicinity to one another, would then be kept in the family and not sold to persons unrelated to Defendant. According to Defendant, she and Plaintiff had never, prior to this conveyance, discussed deeding these lots to Defendant, and there was never any discussion with Plaintiff that the conveyance of the lots and/or the funds was somehow conditioned on their relationship continuing. She further testified that sometime after

Plaintiff presented her with the executed and recorded quitclaim deed, the parties agreed to move the roughly $100,000 into a thirty-three month certificate of deposit held in their names jointly.

The parties' rekindled relationship in the Spring of 2009 was relatively short-lived. By June 2009, the parties hit another rough patch. The parties weren't speaking and at times Defendant slept at her daughters' houses. By September 2, 2009, Defendant closed out the thirty-three month certificate of deposit and transferred the entire amount, $101,066.76, into her own account. See Pl.'s Ex. 23. By December 2009, Defendant had vacated the house at 48 Oak Street.

Emails and letters introduced into evidence were exchanged during and following the parties' final rocky patch in the Fall of 2009 and reveal the significant animosity that had been brewing for years as between and among the parties and Defendant's adult children. Importantly, such communications also reveal how the Plaintiff characterized the transfer of the two lots and the $100,000 to Defendant. In an October 19, 2009 email from Plaintiff to Jace LaPlante, Plaintiff states, "I was thinking that giving her the two lots that she demanded as part of our reconciliation and $100,000 in cash after our previous conflict, was telling her that I really did care about her and that I saw us as life time companions." Pl.'s Ex. 4. In a November 4, 2009 email exchange between the parties, Plaintiff directs, "You need to tap your $100,000 that I gave you until everything gets settled as you threatened." Pl.'s Ex. 5. Just days later, in expressing his dismay at having paid the bills, mortgage, taxes, remodeling and repairs on Defendant's home and then having her move out, Plaintiff states in a November 13, 2009 email, "On top of that I gave you $100,000 in cash." Pl.'s Ex. 6. Finally, in the aftermath of the unprecedented

flooding that Rhode Island experienced in 2010, Plaintiff's email to Defendant laments his lost home and adds, "Would you like to reimburse me for the taxes I had to pay on the two lots and the $100,000 you got because I trusted you that we would stay together?" Pl.'s Ex. 7.

When Plaintiff's demands for the reconveyance of the two lots and return of the $100,000 were rejected, this suit followed. Plaintiff's Amended Verified Complaint sets forth the following counts: (I) Breach of Contract - $101,008.00; (II) Breach of Contract – Transferred Lots; (III) Injunctive Relief; (IV) Conversion; (V) Constructive Trust for Land; and (VI) Attorney's Fees. Counts II, IV, and VI of the Amended Verified Complaint, as well as Defendant's Counterclaim[1], were each dismissed at trial pursuant to Super. R. Civ. P. 52, leaving only Counts I, III, and V of the Amended Verified Complaint for this Court's consideration.

II

Standard of Review

In a non-jury trial, the trial justice is responsible for deciding both issues of fact and questions of law. Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). As such, the trial justice "weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences." Id. However, "a trial justice 'need not engage in extensive analysis and discussion of all the evidence' when rendering a decision in a non-jury trial; indeed, '[e]ven brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" Cathay Cathay, Inc.

[1] Defendant's Counterclaim asserted that Plaintiff's Amended Verified Complaint is frivolous and has caused her to suffer monetary damages and emotional distress, for which she sought punitive damages.

v. Vindalu, LLC, 962 A.2d 740, 747 (R.I. 2009) (quoting Donnelly v. Cowsill, 716 A.2d 742, 747 (R.I. 1998) (quotation omitted)).

III

Analysis

A

Breach of Contract

Count I of Plaintiff's Amended Verified Complaint alleges a claim for breach of contract relative to the approximately $100,000 Defendant received in 2009. "The long-recognized essential elements of a contract are 'competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation.'" R.I. Five v. Med. Assocs. of Bristol Cnty., Inc., 668 A.2d 1250, 1253 (R.I. 1996) (quoting Black's Law Dictionary 322 (6th ed. 1990); citing Lamoureux v. Burrillville Racing Ass'n, 91 R.I. 94, 98, 161 A.2d 213, 215 (1960)). The Rhode Island Supreme Court more recently has discussed the latter two elements:

> "Every contract must be formed though mutual assent or, in other words, an intention to promise or be bound through offer and acceptance. . . . In addition to mutual assent, a bilateral contract requires mutuality of obligation, which is achieved when both parties are bound legally by the making of reciprocal promises. Mutuality of obligation fulfills the consideration requirement of contracts."

Filippi v. Filippi, 818 A.2d 608, 623-24 (R.I. 2003) (internal citations omitted). Thus, to determine whether a valid contract existed in this matter, this Court must first determine whether both parties intended to be bound by the terms of the agreement. See id. at 623 (citing Smith v. Boyd, 553 A.2d 131, 133 (R.I. 1989)).

Before turning to the facts in this case, a brief recitation of the law concerning joint bank accounts is also necessary. "[T]he existence of a joint bank account gives rise

to a rebuttable presumption of an intent to make a gift of a joint interest therein, albeit the establishment of a joint account is one that 'creates immediate possessory as well as survivorship rights' in both joint-account parties." Mitchell v. Mitchell, 756 A.2d 179, 182 (R.I. 2000) (quoting Robinson v. Delfino, 710 A.2d 154, 160 (R.I. 1998)) (emphasis provided). This presumption could be rebutted, for example, upon proof that a joint account was established for convenience only, such as when an adult child is placed on a joint account for the purposes of paying an elderly parent's bills and expenses and assisting in banking. See Mitchell, supra (overturning summary judgment where genuine issues of material fact exist concerning the intent in establishing joint account with adult son); Bielecki v. Boissel, 715 A.2d 571 (R.I. 1998) (affirming trial judge's determination that joint account was created for convenience only and ordering daughter to return funds to be distributed in accordance with father's will).

In this matter, Plaintiff claims that the roughly $100,000 was a loan to Defendant that the parties verbally agreed would be paid back. Am. Verified Compl. ¶¶ 50, 53. He asserts in his Amended Verified Complaint that Defendant withdrew $2508 from a joint Money Market Account without Plaintiff's permission, and that he transferred $98,600 into the parties' "house account" to make it available to Defendant, which she, in turn, transferred into her own account on April 13, 2009, without Plaintiff's consent. Id. ¶¶ 17, 21, 22. Notably, the trial testimony and exhibits reveal that, following the $98,600 transfer made from the "house account" to an account shared by Defendant and her daughter, a $100,000 transfer was made on April 24, 2009 from the same account to a thirty-three month certificate of deposit in the parties' joint names. See Pl.'s Exs. 8, 23. Plaintiff's "money trail" set forth in his Amended Verified Complaint fails to account for

this important fact. Notwithstanding this oversight in Plaintiff's presentation to this Court, Plaintiff would have this Court accept that, amid all the series of financial transactions documented in Plaintiff's Exhibits 8 and 23 and the numerous joint accounts that existed, Plaintiff and Defendant mutually agreed that this particular amount, $101,008, was a loan to Defendant to be paid back. It is undisputed that there is nothing in writing which memorializes this agreement.

This Court finds Plaintiff's testimony and assertions lacking in credibility and, thus, failing to meet his burden of proving that both he and Defendant intended to be bound by the alleged verbal agreement. There is undisputed evidence that the parties maintained several joint accounts at Westerly Community Credit Union, and there was no evidence that either party's access to any such joint accounts was restricted in any way. There was no evidence whatsoever that Defendant's name was placed on all or any of such joint accounts for convenience only or with any other restrictions, and therefore Plaintiff is presumed to have gifted to and created an immediate possessory right to the funds in the accounts for Defendant. See Mitchell, 756 A.2d at 183. To assert that a specific amount ultimately placed into one account[2] was to be treated differently—as a loan as opposed to as joint funds—defies common sense. Moreover, Plaintiff's testimony attempted to demonstrate that not only was this sum a loan to Defendant that she agreed to pay back, but also that Defendant agreed to hold that sum "in trust" for his benefit so that he could use the funds to build his own home. Plaintiff cannot have it both ways–

[2] The Court specifically rejects the accuracy of Plaintiff's money trail as set forth in his Amended Verified Complaint. Plaintiff's own trial testimony reflects that Defendant's closure of the thirty-three month certificate of deposit in September 2009 was the basis for Plaintiff's complaint for the loss of approximately $100,000, and not the separate withdrawal of $2508 from a Money Market Account and $98,600 transferred from the "house account" to Defendant's account jointly held with her daughter.

either the parties agreed that Defendant could use the money and pay it back, or the parties agreed that it would simply remain in an account for a period of time, ultimately to be used by Plaintiff to build a house. Plaintiff's own varied interpretation of the use of the funds leads this Court to conclude that there was no mutual assent, for if Plaintiff cannot state clearly what the terms of the agreement were, then it stands to follow that neither can Defendant.

There is simply a lack of evidence presented in this matter to show that the parties entered an agreement for the repayment of these funds, much less that any such agreement was entered with the objective intent of both Plaintiff and Defendant to be bound. Defendant credibly testified that she never demanded the funds nor ever promised to pay back $100,000. The evidence demonstrates that Plaintiff's deposits into the joint accounts were, in fact, gifts made in an attempt to patch the parties' failing relationship and, when this was ultimately unsuccessful, Plaintiff demanded that the funds be returned. Plaintiff has not rebutted the presumption that he created an immediate possessory right to the funds in these accounts for the benefit of Defendant by placing these funds in jointly held accounts. See Mitchell, 756 A.2d at 183. Further, in email correspondence between the parties in late 2009 and early 2010, Plaintiff never once references any agreement to repay the $100,000; rather, he repeatedly references the $100,000 he "gave" Defendant. See Pl.'s Exs. 5-7.

Thus, for the reasons stated herein, Plaintiff has failed to meet his burden of proof as to his breach of contract claim in Count I of the Amended Verified Complaint. As such, this Court finds in favor of Defendant on that Count.

B

Constructive Trust

Count V of Plaintiff's Amended Verified Complaint seeks to have this Court impose a constructive trust as to both the $101,008 Plaintiff claims to be owed and the two lots that he claims should have been reconveyed to him upon the termination of the parties' personal relationship. In support of this Count, Plaintiff claims that, at the time of these transfers, the parties "were in a fiduciary relationship" and "stood in a relationship of trust and confidence." Am. Verified Compl. ¶¶ 124-25. For the reasons stated in this section, this Court declines to impose a constructive trust relative to either of these transfers.

"Trusts are either express or arise by operation of law." Broadway Bldg. Co. v. Salafia, 47 R.I. 263, 132 A. 527 (1926). One example of a trust that arises by operation of law is the constructive trust. See id. A constructive trust is "[a] trust imposed by a court on equitable grounds against one who has obtained property by wrongdoing, thereby preventing the wrongful holder from being unjustly enriched." Black's Law Dictionary 1515 (7th ed. 1999). Under Rhode Island law, such a trust arises "where a person who holds title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it." Desnoyers v. Metro. Life Ins. Co., 108 R.I. 100, 112, 272 A.2d 683, 690 (1971) (citing V. Scott, Trusts (3d ed.) § 462 at 3413).

The Rhode Island Supreme Court has further stated:

> "A constructive trust arises by operation of law. It is based on fraud or deceit practiced upon the grantor by the grantee, not necessarily actual fraud but constructive fraud. * * * In 1 Scott on Trusts, s 44.1, p. 251, the principle is

> stated thus: 'If it can be shown that the transferee procured the conveyance by a consciously false representation of fact, a constructive trust will be raised in favor of the transferor. Thus if it is proved that when the transferee promised to reconvey the property he did not intend to fulfill his promise, there is more than a mere promise subsequently broken, there is actual misrepresentation as to the fact of his present intention. If this is proved, a constructive trust will be raised in favor of the transferor.'"

Id. (quoting Lawrence v. Andrews, 84 R.I. 133, 139, 122 A.2d 132, 135-36 (1956)). In constructive trust cases, it is the Plaintiff who bears the burden of establishing by clear and convincing evidence that such a trust should be imposed. See id. (citing Sterns v. Indus. Nat'l Bank, 96 R.I. 313, 191 A.2d 152 (1963)).

As an equitable remedy, constructive trusts may be imposed in a variety of circumstances, including when property is "obtained (1) by fraud, (2) in violation of a fiduciary or confidential relationship, or (3) by testamentary devise or intestate succession in exchange for a promise to hold in trust." Simpson v. Dailey, 496 A.2d 126, 128 (R.I. 1985) (citing Desnoyers, 108 R.I. 100, 272 A.2d 683; State Lumber Co. v. Cuddigan, 51 R.I. 69, 150 A. 760 (1930)). Additionally, constructive trusts "can be employed independently of the intent of the parties" and "are not within the statute of frauds." Id. (citation omitted).

In this case, Plaintiff claims that a constructive trust should be imposed based on the parties' alleged fiduciary or confidential relationship at the time the transfers in question were made. Plaintiff alleges that such a confidential relationship exists in this case because of his longtime personal relationship with Defendant at the time of the conduct in question during 2009. Typically, "[a] constructive trust will be imposed upon property that is obtained in violation of a fiduciary duty." Id. (citation omitted). A

fiduciary relationship is defined as "[a] relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship." Black's Law Dictionary 640 (7th ed. 1999). However, in determining if a sufficiently confidential—or fiduciary—relationship exists, "[t]here are no hard and fast rules." Simpson, 496 A.2d at 129. Our Supreme Court has stated:

> "The court may consider a variety of factors, including the reliance of one party upon the other, the relationship of the parties prior to the incidents complained of, the relative business capacities or lack thereof between the parties, and the readiness of one party to follow the other's guidance in complicated transactions. There is no requirement in this jurisdiction that a defendant must occupy a position of dominance over a plaintiff."

Id. at 129 (internal citation omitted). Further, it has been held that in order for this Court to impose a constructive trust based upon an alleged breach of a fiduciary or confidential relationship, "a plaintiff is required to show by clear and convincing evidence (1) that a fiduciary duty existed . . . and (2) that either a breach of a promise or an act involving fraud occurred as a result of that relationship." Manchester v. Pereira, 926 A.2d 1005, 1013 (R.I. 2007) (emphasis added) (citations omitted).

It is undisputed that the parties had dated for approximately twenty years at the time of the transfers at issue in this case. Family relationships have sometimes been recognized as confidential relationships in Rhode Island. See Cahill v. Antonelli, 120 R.I. 879, 883, 390 A.2d 936, 939 (1978) (finding a fiduciary relationship between a brother and sister where the brother was acting as an agent of his sister); Del Greco v. Del Greco, 87 R.I. 435, 442, 142 A.2d 714, 717 (1958) (finding a fiduciary relationship between a mother and son because the mother had placed "trust and confidence in her son" to care for her during her remaining years). In Cahill, the fiduciary relationship

arose from the brother's promise to take the property, clear it of existing liens, and reconvey the property to his sister. See 120 R.I. at 883, 390 A.2d at 939. Similarly, in Del Greco, the son's fiduciary relationship arose from his agreement that, once his mother transferred her house to him, he would care for her and allow her to remain in the house for the remainder of her life. See 87 R.I. at 438, 142 A.2d at 715. Thus, each of those cases arose from situations in which the party who made the particular transfer relied heavily on his or her trust of the other party to do what was agreed upon or promised based on the nature of their preexisting relationship.

While it is undisputed that the parties' relationship was unraveling in 2009 at the time of the transfers that are the subject of this lawsuit, there was evidence presented that the parties still held on to some semblance of a trusting relationship. Certainly, in the preceding two decades, the parties trusted each other and built a life together. The parties intended to develop a "family compound" with Defendant's adult children, and Plaintiff gifted lots to each of the children in furtherance of this plan. Both parties confirmed that they had rekindled their relationship in the late Winter or early Spring of 2009. Defendant acknowledged in her testimony that even in April 2009, at the time the parties agreed to place $100,000 into a joint certificate of deposit, she did so because they "tried to be a family" and that "they trusted one other to a degree." Additionally, Plaintiff acknowledged that the reasons the lot and money transfers were made were "as proof that he was invested in salvaging their personal relationship," Am. Verified Compl. ¶ 115, and to "justify [his] faithfulness in keeping their relationship together." Thus, Plaintiff has proven by clear and convincing evidence that a fiduciary relationship existed between the parties in 2009 at the time he transferred both the money and land to Defendant.

However, Plaintiff has failed to prove by clear and convincing evidence that Defendant made any promise either to repay the approximately $100,000 given to her by Plaintiff or to reconvey the two lots given to her via quitclaim deed to warrant imposition of a constructive trust. This Court has already found that Plaintiff failed to prove by a preponderance of the evidence that there was an agreement to repay the $100,000. See Section III.A, supra. It stands to reason that Plaintiff also failed to sustain the higher burden of clear and convincing evidence that Defendant promised to repay the $100,000. To that end, this Court specifically finds Defendant's testimony to be more credible and plausible than Plaintiff's in expressly denying that she ever demanded $100,000 from Plaintiff and ever promised to repay that amount placed in one of several joint accounts.

Similarly, this Court also finds Defendant's testimony more credible and plausible than Plaintiff's in expressly denying that she ever demanded the conveyance of the two lots and ever promised to return them if their relationship ended. Moreover, the email correspondence introduced as full exhibits continually reference that Plaintiff "gave" Defendant the lots and never mentioned a promise by Defendant to return the lots if the relationship soured. This Court concludes that Plaintiff gifted the lots to Defendant, with no strings attached, and that Defendant never promised to return the lots to him.

The instant case presents a much different set of facts than in Cahill and Del Greco, wherein the evidence demonstrated that there had been an agreement or promise to do something that was, ultimately, never done. Here, Plaintiff has wholly failed to prove by clear and convincing evidence that there was a promise or agreement made by Defendant to return the $100,000 or reconvey the lots. Likewise, there has been no demonstration of any fraud—actual or constructive—on Defendant's part where there

was no promise or agreement made by Defendant. See Manchester, 926 A.2d at 1013. Accordingly, this Court finds in favor of Defendant on Count V of the Amended Verified Complaint and declines to impose a constructive trust on either the money or the land involved in this case.

C

Injunctive Relief

Count III of Plaintiff's Amended Verified Complaint alleges a claim seeking injunctive relief relative to an alleged breach of contract regarding the two undeveloped lots that were transferred by quitclaim deed to Defendant. However, Count II—which alleged a claim for such breach of contract—was dismissed at the conclusion of Plaintiff's case pursuant to Super. R. Civ. P. 52 based upon the statute of frauds, see § 9-1-4 and, as set forth in Section III.B. supra, this Court has found in favor of Defendant on Plaintiff's request to impose a constructive trust relative to the lots. For these reasons and the reasons that follow, the Court denies the request for injunctive relief.

In Rhode Island, the Superior Court has exclusive jurisdiction over issues arising in equity, including requests for injunctive relief. See G.L. 1956 § 8-2-13. It is within the sound discretion of this Court to grant or deny such injunctive relief, and a trial justice's findings will not be disturbed on appeal "unless he or she is clearly wrong or has misconceived or overlooked material evidence of a controlling issue." Ruggieri v. City of E. Providence, 593 A.2d 55, 57 (R.I. 1991). However, this Court must carefully consider whether or not to issue injunctive relief because "[a]n injunction is 'an extraordinary remedy.'" In re State Emps.' Unions, 587 A.2d 919, 925 (R.I. 1991) (quoting Brown v. Amaral, 460 A.2d 7, 10 (R.I. 1983)).

At earlier stages of litigation, when this Court is faced with determining whether to grant or deny preliminary injunctive relief, the Court must typically consider the following factors:

> "(1) whether the moving party has established a reasonable likelihood of success on the merits; (2) whether the moving party will suffer irreparable harm without the requested injunctive relief; (3) whether the balance of the equities, including the public interest, weighed in favor of the moving party; and (4) whether the issuance of a preliminary injunction served to pPreserve the status quo ante."

Sch. Comm. of N. Kingstown v. Crouch, 808 A.2d 1074, 1077 (R.I. 2002) (citing Iggy's Doughboys, Inc. v. Giroux, 729 A.2d 701, 705 (R.I. 1999) (citing Fund for Cmty. Progress v. United Way of Se. New England, 695 A.2d 517, 521 (R.I. 1997))). Having tried the relevant issues in this matter, the injunctive relief requested by Plaintiff is no longer merely preliminary relief; however, some of the above-listed elements remain relevant to this Court's analysis of Plaintiff's claim.

In this case, Plaintiff's request for injunctive relief seeks to have this Court issue an order either compelling Defendant to convey the transferred lots back to the Plaintiff or to compensate Plaintiff for the fair market value of those lots. See Am. Verified Compl. at pp. 9-10. In support of this request, Count III of Plaintiff's Amended Verified Complaint relies solely on the allegation that "[t]he parties verbally agreed that [] Plaintiff would execute the quit-claim deed, transferring his interest in the Transferred Lots to [] Defendant on a temporary basis" until the termination of the parties' relationship, at which time Defendant would transfer those lots back to Plaintiff. Id. ¶¶ 77-78. According to Plaintiff, he will suffer irreparable harm if Defendant is allowed to

retain ownership of those lots in contravention of the parties' alleged verbal agreement. Id. ¶¶ 84-85.

In looking to the elements used by this Court in granting injunctive relief, this Court finds that the injunctive relief requested in this Count should be denied. First, in this matter, it cannot be said that Plaintiff "will suffer irreparable harm without the requested injunctive relief." Crouch, 808 A.2d at 1077 (citations omitted). This lack of irreparable harm is crucial in the Court's determination of this Count. Indeed, the Rhode Island Supreme Court has stated that "the principal prerequisite to obtaining injunctive relief is the moving party's ability to prove that it is being threatened with some immediate irreparable injury for which no adequate remedy at law lies." In re State Emps.' Unions, 587 A.2d at 925 (citing Brown, 460 A.2d at 10; Paramount Office Supply Co. v. MacIsaac, 524 A.2d 1099, 1102 (R.I. 1987)). Here, this Count is based exclusively on Plaintiff's claim that Defendant breached an alleged verbal agreement to reconvey the two lots upon the termination of the parties' personal relationship. See Am. Verified Compl. ¶¶ 77-78. As previously noted, however, Plaintiff's independent claim for breach of this alleged verbal agreement (Count II) was dismissed pursuant to Super. R. Civ. P. 52, and this Court has found in favor of Defendant on Plaintiff's Count V seeking to impose a constructive trust. Accordingly, Defendant is not liable to Plaintiff on the merits of Plaintiff's claims and, therefore, Defendant is also not liable for any irreparable harm.

Similarly, it cannot be said in this matter that "the balance of the equities, including the public interest, weigh[s] in favor of [Plaintiff]." Crouch, 808 A.2d at 1077 (citations omitted). In fact, the equities relative to this Count weigh in favor of

Defendant based upon the entry of judgment in Defendant's favor on Count II and this Court's determination herein on Count V.

For these reasons, this Court finds in favor of Defendant on Count III of the Amended Verified Complaint and denies Plaintiff's request for injunctive relief requested therein.

IV

Conclusion

For the reasons set forth herein, this Court finds that Plaintiff has failed to meet his burden of proof on Counts I, III and V. There has been insufficient evidence presented by Plaintiff to prove the existence of either of the alleged verbal agreements in this case or a fiduciary relationship that would support the imposition of a constructive trust.

Counsel for Defendant shall submit a judgment consistent with this Decision.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**George Randeau v. Donna LaPlante**
CASE NO:	**WC 2011-0116**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**September 27, 2013**
JUSTICE/MAGISTRATE:	**Kristin E. Rodgers**
ATTORNEYS:	
For Plaintiff:	**Timothy J. Robenhymer, Esq.**
For Defendant:	**George A. Comolli, Esq.**