FOR PUBLICATION

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

GUADALUPE P. MANGLONA, Plaintiff, v. MARGARITA R. TENORIO, Defendant.	Civil Action No. 93-1061 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. PROCEDURAL BACKGROUND

This matter came before the Court on February 11, 2002, for a bench trial dealing solely with the "unjust enrichment" issue.[1] Michael W. Dotts, Esq. appeared on behalf of the Plaintiff, Guadalupe P. Manglona [hereinafter Plaintiff]. Yoon H. Chang, Esq. appeared on behalf of the Defendant, Margarita R. Tenorio [hereinafter Defendant]. The Court, having heard the arguments of counsel, having examined the evidence, having reviewed the complete record, and being fully informed of the facts and premises of the current action, now renders its decision.

[1] This case previously came on for a bench trial on November 21, 1994, before the Honorable Marty W.K. Taylor, then Associate Judge. The sole issue at that trial was whether the $250,000 transferred to defendant constituted a loan. The court ruled that the monies transferred were not a loan, retained jurisdiction, and granted the Plaintiff leave to amend her complaint to conform with the evidence pleading the equitable remedy of unjust enrichment. *See Manglona v. Tenorio*, Civ. No. 93-1061 (N.M.I. Super. Ct. July 31, 1995) (Partial Judgement and Order for Status Conference). Pursuant to Com. R. Civ. P. 63, and law of the case principles, the court exercised it's discretionary power to grant a new trial given the intensive two-pronged factual inquiry which must be undertaken to establish a claim based on unjust enrichment. *See Manglona v. Tenorio*, Civ. No. 93-1061 (N.M.I. Super. Ct. November 18, 1997) (Order).

II. FINDINGS OF FACT

1. In 1990, Plaintiff was the president of Marianas Health Management, dba Saipan Health Clinic [hereinafter Clinic]. Stipulated Findings of Fact (February 11, 2002) [hereinafter Stipulated Facts] at ¶ 7. Dr. Larry Hocog was also part of the Clinic as the principal medical professional. *Id.* at ¶ 8.

2. Plaintiff and Dr. Hocog operated the Clinic out of the Horiguchi Building in 1990, but found the building to be inadequate for their purposes. Plaintiff and Dr. Hocog became aware of a building, on Beach Road in I-Liyang, owned by the Defendant, they believed would better suit their business needs.

3. In October 1990, Plaintiff, Defendant, Dr. Hocog and Defendant's husband, Dr. Joaquin A. Tenorio, all met at the Sunset Restaurant in Susupe to discuss the purchase of the I-Liyang property. Stipulated Facts at ¶ 1.

4. At the close of the Sunset Restaurant negotiations, Plaintiff and Defendant entered into an oral agreement concerning the I-Liyang property. Plaintiff contends that the oral agreement constituted the beginning of a purchase and sale agreement, with ongoing negotiations for confirmation of price and payment terms. Defendant contends that the parties entered into an oral option contract to purchase the property.

5. Two days after the Sunset Restaurant meeting, the Defendant received a cashier's check in the amount of $100,000, dated October 29, 1990, from Plaintiff for the I-Liyang property. On the check was written "DEP." Stipulated Facts at ¶ 4; Dep. of Tenorio (Oct. 1, 2001) at page 3.

6. The Plaintiff entered the property not long after the Sunset Restaurant meeting and began renovations to the I-Liyang property, spending approximately $71,910. Stipulated Facts at ¶ 9.

7. Over the period of the next three months, Defendant received payments from Plaintiff' totaling $150,000, in addition to the original $100,000. Check number 252, dated 12/12/90, for the amount of $10,000 had "*dep 150, 000*" written on the memo line. Check number 293, dated 1/ 11/91, for the amount of $17,000 had "*partial payment*" written on the memo line. Check number 307, dated 1/31/91, for the amount of $73,000 had nothing written on the memo line. Defendant also received a check from Dr. Hocog in the amount of $15,000, dated 12/13/90, with no memo at the bottom.

8. The parties did not enter into a written contract memorializing their oral negotiations either

before or after all of the checks were tendered to Defendant. *See* Plaintiff's Post Hearing Submission of (Proposed) Findings of Fact and Conclusions of Law (March 18, 2002).

9. Sometime in February 1991, Plaintiff severed her relationship with Dr. Hocog and the Clinic. Stipulated Facts at ¶ 11.

10. Also in February 1991, as a result of certain other litigation, Plaintiff discovered she did not qualify, under Article XII of the Commonwealth Constitution, to own real property in the Commonwealth. *See Manglona v. Kaipat*, Civ. No. 90-0618 (N.M.I. Super. Ct. February 28, 1991) (Order).

11. In February or early March 1991, Plaintiff informed Defendant in a telephone conversation that she would not proceed with the purchase of the property.

12. In a letter received April 1, 1991, Plaintiff billed Saipan Health Clinic for rent in the amount of $3,000 per month for the months of February, March, and April 1991, for a total of $9,000.

13. Plaintiff only received $3,000 rent from the Clinic, thereinafter, the Clinic paid all rental monies to the Defendant. Stipulated Facts at ¶15.

14. On April 5, 1991, Plaintiff informed Defendant, in writing, that she no longer intended to purchase the I-Liyang property. Stipulated Facts at ¶ 13.

15. On December 24, 1991, Defendant wrote to Plaintiff admitting both the amount of money received, and the intention to reimburse the Plaintiff that total amount.[2]

16. Defendant made payment in the amount of $1,000 to Plaintiff on July 9, 1992. Stipulated Facts at ¶ 14.

17. In early 1990, before Defendant had started negotiations with Plaintiff, an agreement was negotiated with another company, Niizeki, to lease the I-Liyang property for 1.7 million dollars, conditioned on the completion of probate. When Plaintiff informed Defendant she would no longer

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[2] *"Throughout this period of time you contributed in good faith, a total amount of $250,000, with the understanding that* ***this amount will be reimbursed*** *to you when Saipan Health Clinic executed the purchase agreement.*" Also, at the bottom of the page: "*Relative to the good faith $250,000 that you contributed,* ***I informed you that I will reimburse you*** *when my property is purchased, but that I cannot pay you any interest.*" Excerpt from Defendant's letter of December 24, 1991 (emphasis added).

proceed with the purchase of the I-Liyang property, Defendant made no attempt to determine if Niizeski was still interested in the lease. Stipulated Facts at ¶¶ 17-21.

18. The total stipulated amount in controversy paid to Defendant by Plaintiff during their negotiations for the purchase of the I-Liyang property is $249,000. Stipulated Facts at ¶ 25.

III. CONCLUSIONS OF LAW

A. Unjust Enrichment

"A person who has been unjustly enriched at the expense of another is required to make restitution to the other." *See* RESTATEMENT OF RESTITUTION § 1 at 12 (1937). Restitution is civil liability based upon unjust enrichment. An action in restitution is often an additional remedial option for a plaintiff who has a claim in contract or tort, but sometimes it is the sole remedy available to a plaintiff.[3] *See* ELAINE W. SHOBEN AND WILLIAM MURRAY TABB, CASES AND PROBLEMS ON REMEDIES 770 (2nd ed. 1995).

> Historically, restitution developed separately both at law and in equity. The common law courts developed a restitutionary device called "quasi-contract", which was based upon the action of assumpsit. Assumpsit was the action plaintiffs used to recover for breaches of express contracts. The law courts adapted assumpsit for restitution by finding that an unjustly enriched defendant became a party to a contract implied in law. The "contract" fashioned by the court was a fiction designed simply to oblige payment to the plaintiff of the amount of unjust enrichment.

Id. at 771.

"Contracts implied-in-law or quasi-contracts, also called constructive contracts, are inferred by law as a matter of reason and justice from the *acts and conduct of the parties and circumstances surrounding the transactions,* and are imposed for the purpose of bringing about justice *without reference to the intention of the parties*." *See John A. Artukovich & Sons, Inc. v. Reliance Truck Co.*, 614 P.2d 327, 329 (Ariz. 1980) (emphasis added). According to the RESTATEMENT, there are two elements that must be proven in order to maintain an action for unjust enrichment: 1) a person must have received a benefit, and 2) retention of the benefit would be unjust. *See* RESTATEMENT OF

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[3] In the present case, Plaintiff is unable to sue under a contract theory because she engaged in oral negotiations for real estate without memorializing the agreement in writing. Pursuant to the Commonwealth Statute of Frauds, 2 CMC § 4912, their agreement is unenforceable.

RESTITUTION §1 cmt. a (1937). Plaintiff must show that the defendant was unjustly enriched at plaintiff's expense and that the circumstances are such that defendant should be required to make restitution. *See Maruyama & Associates, Ltd. v. Mariana Islands Hous. Auth.*, 1 CR 798, 807 (Dist. Ct. 1983).

1. Defendant received a benefit

The court in the first trial was unimpressed with any of Defendant's arguments for the retention of Plaintiff's money. "In short, Counsel for the Defense has not offered the Court a single legal or equitable theory to satisfy the Court that his client is the rightful possessor of the $250,000 at issue in this case." *See Manglona v. Tenorio*, Civ. No. 93-1061 (N.M.I. Super. Ct. July 31, 1995) (Partial Judgment and Order for Status Conference at 10 n.6). It is undisputed that the Defendant received cash in the amount of at least $249,000. *See* Stipulated Facts at ¶ 25. Defendant admits that she used the $249,000 for improvements on another piece of property. Additionally, Defendant received the benefit of the rental monies from the Clinic after Plaintiff paid $71,910 for renovations. But for Plaintiff's expenditures for the additional accommodations on Defendant's I-Liyang property, Dr. Hocog could not have continued to operate the Clinic there.

Defendant asserts that she actually incurred financial detriment caused by the loss of the deal with Plaintiff by losing the opportunity to lease the property to Niizeki for 1.7 million dollars, and having to borrow additional funds for completion another construction project. *See* Def.'s Proposed Findings of Fact and Conclusions of Law at 5. These arguments fail for two reasons. First, Defendant failed to determine if Niizeki would still be interested in the lease agreement after Plaintiff gave notice of her intention to withdraw from the transaction. Plaintiffs' letter dated April 5, 1991 clearly states that she no longer intended to go through with the deal.[4] Defendant offers no excuse why, only a few short months after the initial negotiations with Niizeki, she did nothing to re-establish contact, when previous negotiations had ended amicably. Niizeki's final condition for signing the lease was that probate be completed. In fact, probate was finalized in March 1991, shortly before Plaintiff's notice, giving

[4] *"As you know our (Dr. Hocog and I) original intention of purchasing the former Saipan Office Supply Building will not be finalized."* *See* Letter from Tenorio to Maglona (April 5, 1991); Def. Ex. C, trial 2.

Defendant a clear title to proceed with the Niizeski deal. Second, the additional funds that Defendant borrowed were for a construction project begun before the transaction with the Plaintiff. The record shows no express obligation for Plaintiff to assume Defendant's construction costs, or that the assumption of such liability was ever a legally bargained for.

Most of Defendant's argument is based on the theory that the parties' negotiations created an oral option to purchase the I-Liyang property. An option contract is a contract where the purchaser agrees to buy land from the seller within a set period of time upon expressed terms and conditions. *See Aldan-Pierce v. Mafnas*, 2 N.M.I. 122, 145 (1991). A similar argument was recently made in *Allen v. Smith*, 114 Cal. Rptr. 2d 898 (Cal. Ct. App. 2002). In *Allen*, the prospective buyer tried to purchase a house for $1,775,000. Two separate written "offers" were exchanged by the parties. The first was tendered by the buyer and included a $20,000 "initial deposit" and provided for an "additional deposit" of $33,250, if certain contingencies related to an inspection of the property occurred, and provided for liquidated damage in the amount of 3% of the purchase price if the sale did not occur. The second "counter offer" was tendered by the seller and increased the deposit by $80,000. The buyer signed off on the counter offer and the deposit of $100,000 was released to the seller. The buyer then decided not to proceed with the purchase and demanded $80,000 of the deposit back (the buyer conceded that the purchaser could keep the $20,000 initial deposit as liquidated damages). The trial court granted summary judgment to the seller, finding that the parties had entered into an "option contract" and the full $100,000 was the option price. The Appellate Court, however, reversed in part, holding that what was intended was a "purchase and sale agreement" - not an option contract. The full deposit, minus the liquidated damages, had to be returned to the buyer by the seller. The plaintiff asked for the $50,000 back, and the defendant refused. The trial court ordered the defendant to return the money applying unjust enrichment, and the appellate court affirmed.

In the present case, the Defendant has failed to show any express terms or conditions, written or oral, agreed to evidencing an option contract. In fact, Defendant admits that at the close of the Sunset Restaurant meeting, there was an oral agreement *to purchase the property*, which is entirely different than an agreement just to *purchase an option*. *See* Stipulated Facts at ¶ 2 (emphasis added). However, “[t]he option contract secures the privilege to buy and is not a contract to purchase.” *See*

Bank of Saipan v. Avanzado, Civ. No. 94-0619 (N.M.I. Super. Ct. May 24, 1995) (Opinion and Order on Defendant Milne's Motion for Summary Judgment at 6). Notwithstanding Defendant's assertion, 2 CMC § 4912 clearly states that "[n]o estate or interest in real property . . . nor any . . . power in any manner relating thereto, can be created, granted, . . . [or] declared . . . except . . . by written conveyance".[5]

2. Retention of the benefit would be unjust

"[A] person is unjustly enriched if the retention of the benefit would be unjust." *See* RESTATEMENT OF RESTITUTION § 1 cmt. a (1937). In *Mafnas v. Laureta*, Civ. No. 88-0696 (N.M.I. Super. Ct. July 10, 1995) (Order Partially Granting Motions to Strike Affirmative Defenses, and to Dismiss Counterclaims and Third Party Claims; Order Granting Motion to Disqualify at 15-16), the Commonwealth Superior Court noted that "[i]n determining whether enrichment is 'unjust', the party seeking restitution need not always be innocent or have 'clean hands'." Even if Plaintiff bears some responsibility for Defendant's belief that she would buy Defendant's land, Plaintiff is still entitled to full restitution. Defendant's retention of the money, in absence of a written contract, even though she may have had a good faith belief of her entitlement, is simply not enough.

Allowing Defendant to keep the $249,000 would be "unjust" as it allows the Defendant a double recovery. She received Plaintiff's money without having to convey any of her interest in the I-Liyang property. These same facts were present in *Renaudin v. Zapata Dev. Corp.*, 339 So. 2d 942 (La. Ct. App. 1977). In *Renaudin*, the plaintiff paid $50,000 in contemplation of purchasing the defendant's property. The parties then met, and for a variety of reasons, failed to reach a contract for the sale of the property. *See also, e.g., Petrie v. LeVan*, 799 S.W.2d 632, 635 (Mo. Ct. App. 1990) (holding that seller of home would be unjustly enriched if allowed to keep proceeds of insurance policy for storm damage to house occurring the night before escrow closed, and reasoning that because seller received full purchase price for sale, and that insurance proceeds were for damage to real property sold, seller

[5] An option is an "*interest in real property*" as referenced in 2 CMC § 4912 as it creates an executory interest, and Defendant's attempt to assert such an interest, in absence of a writing, is what the statute intends to prohibit.

would enjoy double recovery if allowed to keep insurance proceeds and sales money). Here, Defendant took Plaintiff's money and used it toward construction costs of another commercial building, and then leased it out on a long term lease. Defendant also collected rent from the property Plaintiff sought to buy with an interruption of only one month's rent in the amount of $3,000, paid to the Plaintiff in April 1991.

As the Court noted earlier, it matters little in "quasi-contract" or "contract applied in law" what the parties original intentions are. When a purported contract for the purchase of real property doesn't satisfy the plain language of the Commonwealth's Statute of Frauds at 2 CMC § 4912, the only remedy will lie in restitution. Where restitution is sought in an action for unjust enrichment, the court only needs to look at the acts and conduct of the parties, as well as the circumstances surrounding the transactions to formulate the appropriate equitable remedy.

B. Prejudgment Interest

Generally, in order to make a plaintiff whole, where there has been an unjust deprivation of property by defendant, the court awards prejudgement interest dating back to when the deprivation accrued. In the CNMI, however "[a]n award of prejudgment interest lies within the sound discretion of the trial court; it is a question of fairness, requiring a balancing of equities." *See Deleon Guerrero v. Nansay Micronesia, Inc*., Civ. No. 94-0388 (N.M.I. Super. Ct. March 4, 1996) (Summary Judgment Order at 8) (*citing Temengil v. Trust Territory of the Pac. Islands*, 2 CR 952, 956 (Dist. Ct. 1987)); *See also Commonwealth v. Micronesia Ins. Underwriters, Inc.*, 3 CR 731, 744 (Dist. Ct. App. Div. 1989); *Hemlani v. Villagomez*, 1 CR 203, 208 (Dist. Ct. App. Div. 1981).

The manner in which the parties approached this ill-fated real estate transaction is certainly unorthodox. Both parties, being business-persons, and somewhat sophisticated in real estate transactions should have been aware of the necessity for a written contract. Admissions on both sides, and evidence on record, demonstrates that both parties had previous experience in real estate transactions. Admittedly, many transactions in real estate may start like this one, with an informal gathering of interested parties. However, once money starts to exchange hands, formalities are required. The evidence in this case leads the court to believe that both parties were cognizant of the importance of memorializing real estate contracts in writing, yet they continued to exchange monies and

transacted business in the absence of the legally required documents. The court finds that the events which gave rise to this lawsuit in the first place mitigates against awarding the plaintiff prejudgment interest. The law should not award plaintiffs who would intentionally circumvent the proper legal procedures for convenience then later complain of injustice.

Furthermore, the conduct of counsel during the course of this lawsuit served only to exacerbate the problem of reaching just adjudication of the claim. The record shows numerous delays and continuances that consumed not only their resources, but those of the court. At the first bench trial, Judge Taylor expressed extreme dissatisfaction with both counsel. *See Manglona v. Tenorio*, Civ. No. 93-1061 (N.M.I. Super. Ct. July 31, 1995) (Partial Judgment and Order for Status Conference at 10) (admonishing both counsel for arguments presented at trial). After close review of the entire record, the Court can only reason that numerous continuances for both personal and professional reasons, as well as overly zealous litigious practice, fueled by ambivalence, played an additional role in the unconscionable delay of this case. Additionally, the former attorneys of record in this case had been warned that there were facts that would potentially mitigate against recovery of any prejudgement interest. *See Manglona v. Tenorio*, Civ. No. 93-1061 (N.M.I. Super. Ct. November 18, 1997) (Order at 4) (stating that delays in litigation caused by Plaintiff may mitigate against discretionary granting of prejudgment interest). It should be noted that almost another five years have passed since this warning, while this case has languished in the court.

Upon examination of the record as a whole, and a balancing of all equitable considerations, this Court finds that Plaintiff's conduct has been equally as egregious as that of the Defendant.[6] The court must look at the record as a whole when making its decision whether to award prejudgment interest or attorneys fees. Due to the unusual circumstances of this case, a balancing of the equities dictates that Plaintiff should not be awarded prejudgment interest.

C. Conclusion

Based on the forgoing considerations, Defendant has been unjustly enriched in the amount of

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[6] The court takes note that present counsel for Defendant and Plaintiff have arrived in this case only recently, and cannot be held responsible for the actions of their clients or previous counsel.

$249,000. Judgment is hereby **ORDERED** for Plaintiff in the amount of $249,000. Both parties shall bear their own costs of litigation, and there shall be no award of prejudgement interest for the Plaintiff

SO ORDERED this 10th day of June, 2002.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge