

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Deborah M. Bowens,	:	
Plaintiff/Appellee,	:	
v.	:	
Bruce Bowens, Jr.,	:	
Defendant/Third-Party	:	No. 19AP-45
Plaintiff/Appellee,	:	(C.P.C. No. 15DR-3993)
v.	:	(REGULAR CALENDAR)
Lynn Allen,	:	
Third-Party	:	
Defendant/Appellant.	:	

D E C I S I O N

Rendered on September 26, 2019

On brief: *Plymal & Dingus, LLC, and M. Shawn Dingus*, for appellee Bruce Bowens, Jr. **Argued:** *M. Shawn Dingus*.

On brief: *Ric Daniell*, for appellant. **Argued:** *Ric Daniell*.

APPEAL from the Franklin County Court of Common Pleas,
Division of Domestic Relations

SADLER, J.

{¶ 1} Third-party defendant-appellant, Lynn Allen, appeals the December 31, 2018 judgment and divorce decree of the Franklin County Court of Common Pleas, Division of Domestic Relations, finding in favor of defendant-appellee, Bruce Bowens, Jr., on his third-party complaint regarding real property owned by Lynn. For the following reasons, we reverse the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} This case involves a third-party defendant's appeal of a divorce decree that imposed a constructive trust under the theory of unjust enrichment in order to compensate the husband-defendant for real property owned by the third party.

{¶ 3} Bruce and plaintiff-appellee, Deborah M. Bowens, married in 1997. On May 9, 2014, Deborah signed a lease agreement pertaining to 5035 Chipman Drive (the "property"), a single family residence in Columbus owned by Wendy Rinehart. Pursuant to the lease terms, Rinehart agreed to "rent/lease" the property to Deborah in exchange for \$850 plus taxes and insurance each month. (Def.'s Ex. I, Lease at 1.) The "agreement shall commence on 6/1/14 and continue * * * until 3/1/15 * * *. Thereafter it shall become a month-to-month tenancy." (Lease at 1.) A handwritten note next to this term states "purchase complete by 3/1/15." (Lease at 1.)

{¶ 4} Under the payment provision of the lease, it states "\$10K down – deposit. * * * Owner acknowledges receipt of the First Month's rent of \$850, and a Security Deposit of \$10K, and additional charges/fees for INS. + Taxes [each] month, for a total payment of \$55,000." (Lease at 1.) A handwritten note states "[n]o deposit returned, if contract broken." (Lease at 1.)

{¶ 5} Under the provision for utilities, the lease states the tenant "pays all [utilities] + [is] responsible for all repairs – purchasing property in full by Feb. 2015, closing by 3.1.1." (Lease at 1.) Addressing the condition of the premises, alterations, and right of entry, more handwritten notes state "[t]enants becoming owners + aware of needs to home – renting + purchasing 'AS IS' – responsible for repairs * * * owner aware tenants will paint + remodel garage, roof, all repair[s.] * * * [R]epairs are responsibility of renter who will be purchasing Feb 2015." (Lease at 2-3.) On the signature page of the lease, in addition to the signatures of Deborah and Rinehart, a handwritten note states: "pd \$10,000 down for purchase of 55,000. Move in June 1st w/ rent due 850 + tax + ins." (Lease at 4.) Bruce did not sign the lease, and a handwritten note in the lease specifically excludes Bruce as a signing party to the lease.

{¶ 6} Deborah and Bruce separated on October 7, 2015, at which time Bruce moved out of the property. On October 27, 2015, Deborah filed a complaint for divorce. On November 25, 2015, Bruce filed both an answer to Deborah's complaint and a third-party

complaint against Deborah's father, Lynn. The third-party complaint against Lynn asserts that:

2. * * * Rinehart decided to divest herself of the property and the parties contacted [Lynn] to assist them with purchasing the property. The parties did not believe at the time that [Bruce] could own real property as he was receiving social security disability benefits.

3. * * * [Lynn] agreed to purchase the property for the sum of \$55,000.00 and for the property to be deeded in his sole name. The parties would then live at the residence and pay him a set amount of money each month. After approximately fifteen (15) years or the payment of the purchase price, he would then transfer ownership of the property jointly to both parties.

4. At the time of the purchase of the marital residence, [Bruce] provided [Lynn] with \$5,000.00, which was applied against the purchase price of the property and for closing costs. [Bruce] also believes that the original \$10,000.00 that he paid to [Rinehart] was also applied toward the purchase price as [Lynn] secured a loan in the amount of \$41,250.00 to purchase the property. [Bruce] has also invested approximately \$10,000.00 in repairs and renovations to the property, all based on the belief that he would eventually own the property jointly with his wife.

5. [Deborah] and [Bruce] separated on or about October 7, 2015. [Deborah] continues to reside in the marital residence with the parties' minor children.

(Nov. 25, 2015 Answer & Third-Party Compl. at 2-3.) Based on these facts, Bruce contended that a constructive trust should be created to protect his interest in the marital residence and that it would be unjust and inequitable for Lynn to retain the marital residence without compensating Bruce for his financial contributions to the property. Bruce additionally sought any appreciation in the value of the property since the date of the purchase.

{¶ 7} On December 16, 2016, Lynn filed a motion for summary judgment. Within it, he stated there are no allegations of fraud, duress, abuse of confidence, or questionable means, that Bruce is not approaching the court with clean hands since he apparently was attempting to purchase the property in a manner to avoid the Social Security Administration from knowing about it, and Bruce cannot meet his burden of proof to impose a constructive trust on the facts of the case. Bruce filed a memorandum contra

summary judgment and accompanying affidavit that asserted the \$10,000 deposit withdrawn from their joint bank account for the deposit to Rinehart was only possible because he had received \$24,569.25 in Social Security disability benefits. Bruce contended that while he did not sign the contract, he was expressly "obligated" under it and that Rinehart essentially allowed Lynn to purchase the home under the terms of the lease "in their stead." (Jan. 13, 2017 Memo. Contra at 2-3.) The trial court denied Lynn's motion for summary judgment on March 1, 2017. The case thereafter came to trial on October 2, November 15-16, December 18, 2017, and January 4, 2018.

{¶ 8} At trial, Lynn testified Deborah approached him around February 2015 regarding the property. At that time, Lynn believed Deborah rented the property on a month-to-month basis since the rent to own provision of the lease had terminated. According to Lynn, Deborah could not get a mortgage to buy the property, so he bought the property with the understanding that Deborah would live there as a month-to-month tenant and pay rent to him in the amount of \$445 per month, approximately the payment amount to cover his mortgage payment and interest, homeowner's insurance premiums, and real estate taxes. No written agreement is in place between Lynn and Deborah and/or Bruce to document the arrangement.

{¶ 9} According to Lynn, Deborah would wait until her credit improved and then attempt to buy the property from him, but he did not establish a time frame for her to do so. Lynn testified he viewed the property as an investment, and if Deborah could not obtain financing, he would keep the property. Lynn testified that there was no understanding in place regarding what would happen if he were to pass away prior to the mortgage being paid off; no transfer on death deed was in place. Since purchasing the home, he replaced the furnace and air conditioning for about \$3,000; he did not ask Deborah to reimburse him for this improvement since it was "upkeep on a rental property." (Tr. Vol. 1 at 45.)

{¶ 10} On cross-examination, Lynn agreed that he purchased the home directly from Rinehart for \$55,000, a price he did not negotiate, that he took out a loan in the amount of \$41,250 with a 30-year mortgage with a "five-year ARM," and that he did not pay the \$10,000 deposit listed on the HUD-1 form. (Tr. Vol. 1 at 32.) Lynn agreed the \$3,750 given to him by Deborah as a gift was applied to the \$5,942.90 he paid in closing costs to the title agency, leaving a balance of about \$2,200 that Deborah and Bruce owed

him to cover the title agency costs. When asked whether Deborah, if she could obtain credit, would be offered the property for the balance of the mortgage at the time of the purchase, Lynn stated he would have to discuss that with his wife but that scenario was possible.

{¶ 11} Virginia Allen, Deborah's mother and Lynn's wife, testified to generally keeping track of the financial aspects of the property, which she considers to be an investment property. According to Virginia, Deborah was originally in a rent-to-own arrangement with Rinehart, but the agreement reverted to a month-to-month tenancy when Deborah was unable to get financing to purchase the property. At that time, around April or May 2015, Deborah called Virginia asking to see if Lynn could get financing to purchase the home. Lynn agreed and obtained a loan through a bank to purchase the property for \$41,000. According to Virginia, during the loan approval process, the appraisal by the bank set the value of the property at \$70,000. Virginia testified that neither she nor Lynn ever met or spoke with Rinehart and that no written purchase agreement was made between Lynn and Rinehart. Virginia testified the monthly payment Lynn owes on the loan, including insurance and taxes, is \$427.

{¶ 12} Virginia testified the closing costs for purchasing the home were about \$6,000 and that Deborah gave them a check for \$3,900, which Virginia said Deborah told her came from pawning her jewelry, and the remainder of the closing costs were paid by Virginia and Lynn. Virginia expects Deborah to pay her back for the balance of the closing costs and believed Deborah had been able to pay about \$500 of that amount so far. Deborah pays monthly rent to live at the property on a month-to-month basis. According to Virginia, Deborah wants to buy the property eventually but she will have to do so "legitimately" and it will not be a "gift."¹ (Tr. Vol. 1 at 113.) Virginia does not expect Deborah to pay back the cost of the new furnace and air conditioning.

¹ In a confusing exchange with the trial court judge, Virginia seems to testify that Deborah's rental payments would be applied to her possible future purchase of the property, but the judge and Virginia's discussion clouds whether rental payments means "every payment [Deborah and Bruce] made during the marriage," or the rent Virginia and Lynn paid on behalf of Deborah and Bruce when they were unable to make payments, or whether rental payments are being "appl[ie]d" to [Lynn and Virginia's] purchase of the property." (Tr. Vol. 1 at 113, 114.) The trial court followed up by asking whether "those payments" will be applied when "they" purchase the property; however, it is difficult to discern what payments are specifically being referred to and who "they" are within this context. (Tr. Vol. 2 at 114.)

{¶ 13} Deborah testified she spoke to Rinehart in February 2014 about the property, and Rinehart expressed her desire to be free of the rental property and did not care that Deborah ran a day care business or that Deborah and Bruce would convert the garage to a fourth bedroom or make other improvements. They put \$10,000 down on the house, which came from Bruce's Social Security settlement payment.² According to Deborah, if they failed to purchase the home under the agreement, "we forfeited all of our money and everything and it would be on a month-to-month basis." (Tr. Vol. 2 at 135.)

{¶ 14} Deborah and Bruce paid a contractor \$4,875 to refinish the floors, put in a ceiling fan, install floor molding, put a new doorknob on the front door, and convert the garage to a bedroom. The contractor did not complete the work and cut the electrical power to the rest of their basement by mistake. Deborah also testified she paid \$650 to another person to have gutters installed, and they financed a new roof and decking for \$7,460. They moved into the property in June 2014.

{¶ 15} Deborah testified she and Bruce, who have four children, had "no way to achieve financing" for the property because their "credit was awful," and they had been through two bankruptcies and a recent foreclosure. (Tr. Vol. 2 at 149, 150.) She asked Lynn to buy the house so they will have someplace to live. According to Deborah, after "[r]un[ning] the numbers" and considering the tax breaks involved, Lynn thought it made sense for him to have an investment property and agreed to buy the house and have Deborah pay him \$450 per month in rent. (Tr. Vol. 2 at 151.) Deborah also testified Rinehart told her that although Rinehart was not obligated to abide by the terms of the lease, she kept the purchase price at \$55,000 and applied the \$10,000 deposit to the purchase price for Lynn "in good faith" and because she needed money for the house. (Tr. Vol. 2 at 245.) Deborah testified she paid a portion of the closing costs at the time of the sale, paid Lynn \$500 toward the closing costs later, and still owes Lynn the remainder of the closing costs, approximately \$1,700, although there was no agreement to that effect.

{¶ 16} According to Deborah, she and Bruce intended to purchase the home when their credit improved. Deborah ultimately filed for divorce in October 2015, and Bruce

² Deborah later testified that \$1,700 of the down payment came from her day care account but agreed that money was marital property.

moved out of the property that same month. Deborah, her children, and now her boyfriend live in the property.

{¶ 17} Bruce testified both he and Deborah entered into an original contract with Rinehart to purchase the property. According to Bruce, Rinehart lost the original contract he signed along with Deborah, and he did not sign the second document, the lease exhibited in the instant case, because there was not an extra space for him to sign. Bruce testified Rinehart "just wanted to get out of the house" and was flexible on the terms. (Tr. Vol. 3 at 287.) For example, according to Bruce, there was an unwritten understanding that while the lease stated they were going to get financing by March 1, 2015, "it wasn't going anywhere and she was going to work with us," and if they could not secure financing, "we would just continue on * * * with the agreement until we could" purchase the property. (Tr. Vol. 3 at 288-89, Vol. 4 at 484.) Bruce understood the written lease created a month-to-month arrangement after March 1, 2015, whereby they would be renting the property.

{¶ 18} Bruce testified they paid \$10,000 to Rinehart by cashier's check from their joint bank account. The couple then pursued and paid for repairs because they intended to purchase the house. According to Bruce, in addition to the \$3,875 paid to the contractor by check, he paid the contractor \$6,125 in cash for the repair and remodeling work for a total of \$10,000. Bruce also financed the roof replacement for \$7,460, which is "sitting in delinquency against [his] name for nonpayment," and they had gutters installed for \$850 in cash, shed installed, a pool with a deck installed, and did some yard work. (Tr. Vol. 4 at 482.)

{¶ 19} According to Bruce, their original plan was to pay cash for the property by putting \$10,000 down and \$1,000 per month so they would own the house in 45 months, but then in December 2014, Rinehart "changed the terms and started collecting that money for rent and not giving [them] credit"—she "wasn't applying [the payments] toward[] the balance of the house." (Tr. Vol. 5 at 505, 534.) Bruce explained "[w]e thought all of those \$1,000 payments were going toward – off the balance of the 45,000" but agreed this was not a stated term of the lease. (Tr. Vol. 5 at 534-35.) Instead, this understanding arose from the original agreement that Rinehart lost.

{¶ 20} Bruce applied for financing to purchase the house but was denied. They spoke to Deborah's parents, who agreed to help them. Specifically, Bruce said he:

[A]sked [Lynn] to get a loan to pay off the balance, and we would pay him for the house; when my credit was able to accommodate the loan, we would transfer back into my name. There was no intent on [Lynn's] part of profit at all, and he was just helping us out.

(Tr. Vol. 3 at 303.)

{¶ 21} Bruce agreed with counsel's statement that Rinehart agreed to "still offer the same terms" as were stated in the lease to Lynn. (Tr. Vol. 3 at 306.) Bruce testified until he and Deborah separated, he made the "mortgage payments" to Lynn. (Tr. Vol. 3 at 304.) According to Bruce, the property is worth \$110,000 or "at least \$80,000." (Tr. Vol. 3 at 308.) Bruce testified if everything is being split "50/50" in the divorce, "the equity in the home should be split because it's our home in [Lynn's] name." (Tr. Vol. 5 at 533.)

{¶ 22} Melissa Freed, a real estate appraiser, testified based on three comparable properties, her inspection of the property in question, the fair condition of the property, and her experience, the property was worth \$80,000 as of the date of the appraisal report (March 15, 2017). She testified at the time she completed the appraisal, values of properties in the neighborhood varied from \$12,500 to over \$100,000. On cross-examination, Freed agreed the property sold in 2011 for \$31,000 and for \$55,000 in 2015 and explained the increase in value from 2011 to her current assessment in 2017—an increase of \$49,000—can be attributed to market recovery. According to Freed, since the date of her appraisal, the values in the neighborhood have remained stable rather than increasing.

{¶ 23} All the exhibits submitted by the parties were admitted without objections. Pertinent to the property issue, the exhibits included: the lease agreement with Rinehart; the HUD-1 Settlement Statement documenting the sale of the property from Rinehart to Lynn; the deed passing ownership of the property from Rinehart to Lynn; Lynn's affidavit; a bank form gift letter from Deborah to Lynn; a check from Deborah to a contractor for \$3,875; the depositions of Bruce, Deborah, and Lynn; a pawn ticket for jewelry; letters from the Social Security Administration documenting Bruce's monthly benefits and his \$24,569.25 award; a May 5, 2015 invoice from a contractor for \$10,000 marked paid in full; the financing contract with a roofing contractor; and a cashier's check from Lynn to the title agency in the amount of \$5,942.90.

{¶ 24} According to the HUD-1 Settlement Statement, the contract sales price for the property was \$55,000 plus settlement charges of \$2,908.62 due from Lynn. The form

shows a \$10,000 deposit retained by seller, and a principal amount of a new loan in the amount of \$41,250, with a 30-year term with an initial interest rate of 3.75 percent which could rise to 9.75 percent. The initial monthly amount owed for principal, interest, and insurance was \$191.04. The "gift letter" from Deborah to Lynn is on a bank form stating she was giving him a "bona fide gift" of \$3,750 toward his purchase of the property with "no obligation, expressed or implied, to repay this sum at any time." (Dec. 6, 2016 Aff. at 1; Union Savings Bank Gift Letter at 1, attached to Def.'s Ex. I.)

{¶ 25} On December 31, 2018,³ within the context of the divorce decree, the trial court entered judgment in favor of Bruce on his third-party complaint "on the equity principles of part performance and unjust enrichment." (Dec. 31, 2018 Decision at 30.) Regarding the original "lease-purchase" contract, the trial court found a "*de facto* contractual relationship" existed between Bruce and Rinehart. (Emphasis sic.) (Dec. 31, 2018 Decision at 4.) The trial court found that after Deborah and Bruce were unable to exercise the option to purchase the property, Lynn agreed to purchase the property for Deborah and Bruce "on the condition that the parties pay the down payment and any closing costs, * * * and finance the property in their own names when they were credit worthy"; that Lynn agreed to sell the property to them in the future for the balance of the loan; and that Lynn did not purchase the property or act in his own self-interest but acted to benefit the parties. (Dec. 31, 2018 Decision at 5.) The trial court further found Rinehart agreed the deposit paid by the parties would be applied to the down payment and operated as if she were merely substituting Lynn for the parties. According to the trial court, the parties paid \$32,380 toward the purchase of the home and have been making mortgage payments—not rent payments—to Lynn.

{¶ 26} The trial court then found part performance on the part of Deborah and Bruce removed the oral contract between Lynn and the parties from the statute of frauds and that "[i]n effect, [Lynn] had 25% equity in the property at the time of purchase." (Dec. 31, 2018 Decision at 12.) According to the trial court, allowing Lynn to retain or sell the property himself without repaying Bruce would unjustly enrich him, and the "principles of equity

³ The trial court amended the judgment on January 15, 2019, pursuant to Civ.R. 60(A), with changes unrelated to the present action.

dictate a constructive trust is necessary to prevent [Lynn] being unjustly enriched." (Dec. 31, 2018 Decision at 12.) Regarding the constructive trust, the trial court states:

The Court finds by clear and convincing evidence that [Bruce] has conferred a benefit to [Lynn]. Further, a constructive trust is necessary to prevent [Lynn] being unjustly enriched by [Bruce's] payment of down payment and repairs in the home that increased the appraisal and market value of the home at the time of purchase.

The Court finds that it would be unjust and contrary to the principles of equity if [Lynn] were to retain the property located at 5035 Chipman Drive, Columbus, Ohio 43232 without repaying [Bruce]. Third-Party Defendant [Lynn] has ninety (90) days to refinance said property and repay [Bruce] \$10,000.00 for the down payment, plus \$8,130.00 for repairs made from his separate property funds. The Court SUSTAINS [Bruce's] Motion for creation of a constructive trust. It is ORDERED that a Constructive Trust be created and recorded with the Franklin County Auditor's Office as a lien against the subject property. Said property shall be placed and held in a constructive trust until the house located at 5035 Chipman Drive, Columbus, OH 43232 is sold.

Third-Party [Lynn] has to list the home for sale in six months unless he refinances the home and repays [Bruce's] expense money and divides the equity interest in the property between [Deborah] and [Bruce]. The Court cannot make any orders as to Third-Party selling/transferring the property to [Deborah] as there is no written sales agreement as required by Statute of Frauds. The Court finds that [Bruce] is entitled to 50% of the equity that accrued between April 11, 2014⁴ and the end date of the marriage, for these purposes January 4, 2018. [Deborah] has paid the mortgage payments, based upon testimony, from January 4, 2018 until date of filing of this decree. [Deborah] is awarded all equity in the property that accrued from January 4, 2018. The cost of the repair/replacement to the HVAC unit will be deducted from the remaining equity prior to [Deborah] and [Bruce] each receiving 50% of the remaining equity accrued prior to January 4, 2018.

(Dec. 31, 2018 Decision at 13-14.)

⁴ We are unsure what the relevance of this date is to calculating Bruce's equity. The only reference to April 11, 2014 in the record is the date Bruce received Social Security money.

{¶ 27} Later, within its decision specific to the third-party complaint, the trial court orders Lynn to: remit \$10,000 to Bruce to reimburse him for the Social Security funds used to provide the down payment for the home at issue; remit \$10,650 to Bruce to reimburse him for the repairs that he made and/or funded via his Social Security funds on the home at issue; and pay Bruce one-half of the equity in the home at the time the decree was issued. If Lynn did not satisfy these obligations, the trial court ordered the property listed for sale with a real estate brokerage firm for an amount of not less than \$80,000 unless Bruce provided his written consent to accept an offer of another amount. On such a sale, Bruce would be "entitled to the first \$41,013.12 (repair reimbursement, down payment reimbursement & his share of the equity as of January 4, 2018) of the net proceeds," with any additional equity that accrued since January 4, 2018 to be divided equally between Lynn and Deborah. (Dec. 31, 2018 Decision at 31.)

{¶ 28} Lynn filed a timely appeal.

II. ASSIGNMENTS OF ERROR

{¶ 29} Lynn assigns the following as trial court error:

1. The trial court erred, abused its discretion, and ruled against the manifest weight of the evidence in its decision of December 31, 2018, when it imposed a constructive trust over the Chipman Drive property.
2. The trial court erred, abused its discretion, and ruled against the manifest weight of the evidence in its decision of December 31, 2018, when it determined that Lynn Allen had been unjustly enriched.

III. STANDARD OF REVIEW

{¶ 30} "The party seeking to have a constructive trust imposed bears the burden of proof by clear and convincing evidence." *Estate of Cowling v. Estate of Cowling*, 109 Ohio St.3d 276, 2006-Ohio-2418, ¶ 20, citing *Univ. Hosps. of Cleveland, Inc. v. Lynch*, 96 Ohio St.3d 118, 2002-Ohio-3748, paragraph three of the syllabus. "As to that burden, * * * a finding of a trust is not appropriate if the evidence is doubtful or capable of reasonable explanation upon a theory other than the existence of the trust." (Citations omitted.) *Neighbarger v. Neighbarger*, 10th Dist. No. 05AP-651, 2006-Ohio-796, ¶ 47. "Further, these statements reflect judicial caution in accepting oral evidence which is intended to contradict absolute conveyances." (Citations omitted.) *Id.*

{¶ 31} A trial court's decision to impose a constructive trust based on unjust enrichment will not be reversed as against the manifest weight of the evidence where the judgment is supported by some competent, credible evidence going to all the essential elements of the case. *LeCrone v. LeCrone*, 10th Dist. No. 04AP-312, 2004-Ohio-6526, ¶ 16-17, 19. Questions of law are reviewed de novo on appeal. *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, ¶ 47.

IV. LEGAL ANALYSIS

{¶ 32} Because Lynn's assignments of error are interrelated, we address them together. Under his first assignment of error, Lynn contends the trial court erred in imposing a constructive trust over the Chipman Drive property. Under his second assignment of error, Lynn contends the trial court erred in determining he had been unjustly enriched. For the following reasons, we agree with Lynn.

{¶ 33} The third-party complaint in this case sought monetary compensation from Lynn under the theory of unjust enrichment and/or a court order imposing a constructive trust over the property owned by Lynn based on a claim of unjust enrichment. "Unjust enrichment occurs when a party retains money or benefits which, in justice and equity, belong to another." *LeCrone* at ¶ 17. "The elements of a cause of action for unjust enrichment are: (1) a benefit conferred by the plaintiff on the defendant, (2) knowledge of the benefit by the defendant, and (3) retention of the benefit by the defendant in circumstances where it would be unjust to do so." *Lundeen v. Smith-Hoke*, 10th Dist. No. 15AP-236, 2015-Ohio-5086, ¶ 51, citing *Hambleton v. R.G. Barry Corp.*, 12 Ohio St.3d 179, 183 (1984).

{¶ 34} A constructive trust is a remedy for unjust enrichment. *Ferguson v. Owens*, 9 Ohio St.3d 223, 225-26 (1984). As defined in *Ferguson*, a constructive trust is:

[A] trust by operation of law which arises contrary to intention and in invitum, against one who, by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal right to property which he ought not, in equity and good conscience, hold and enjoy. It is raised by equity to satisfy the demands of justice. * * *

* * *

This type of trust is usually invoked when property has been acquired by fraud. However, a constructive trust may also be imposed where it is against the principles of equity that the property be retained by a certain person even though the property was acquired without fraud.

Id., citing 76 American Jurisprudence 2d, Trusts, Section 221, at 446 (1975); 53 Ohio Jurisprudence 2d, Trusts, Section 88, at 578-79 (1962); V. Scott, *Trusts*, Section 462, at 3412 (3d Ed.1967).

{¶ 35} "Constructive trusts should be placed over the property of the party who wrongfully obtained the property. When * * * the property was subsequently transferred to third parties, a constructive trust can be imposed." *Estate of Cowling* at ¶ 26. *Franks v. Rankin*, 10th Dist. No. 11AP-962, 2012-Ohio-1920, ¶ 65 (finding absent a finding that the third party wrongfully received particular property or funds, the trial court had no basis on which to impose a constructive trust), citing *State ex rel. Marietta v. Groves*, 4th Dist. No. 84 X 7 (Aug. 9, 1985).

{¶ 36} In this case, as stated in more detail above, the trial court found in favor of Bruce "on the equity principles of part performance and unjust enrichment" and imposed a constructive trust "to prevent [Lynn] being unjustly enriched by [Bruce's] * * * down payment and repairs in the home that increased the appraisal and market value of the home at the time of purchase." (Dec. 31, 2018 Decision at 13, 30.) We disagree.

{¶ 37} First, we find the trial court decision is partly based on legal error. Pursuant to the plain language of Deborah's lease agreement with Rinehart, supported by the testimony at trial, when Deborah and Bruce were unable to exercise their option to purchase the property on March 1, 2015, the contract automatically became a month-to-month tenancy and their \$10,000 deposit was essentially forfeited.⁵ Bruce himself argues that he agreed to be obligated under this lease, and the testimony of Deborah and Bruce indicate they were aware of the risk of losing their deposit and the benefit of their renovations; this is the very reason they asked Lynn to purchase the property. As a result, at the time Lynn purchased the home in 2015, it was Rinehart, rather than Bruce, who had the legal right to the \$10,000 deposit and improved property. In other words, contrary to the trial court's conclusion, it was Rinehart rather than Bruce that conferred a benefit to

⁵ We note the parties do not argue, and the testimony at trial does not suggest, an installment contract was involved in this case.

Lynn in selling him the property for \$55,000 less the \$10,000 deposit when she was not legally obligated to do so. In such circumstances, where someone other than the person seeking the constructive trust conferred a benefit on the third party, imposition of a constructive trust due to unjust enrichment is unwarranted. *Lundeen* at ¶ 51, 54. Therefore, we find the trial court erred in relying on Bruce's contributions prior to Lynn purchasing the property as a basis to find unjust enrichment.

{¶ 38} Second, competent, credible evidence does not show circumstances in which it would be unjust for Lynn to retain any benefit alleged to be provided by Bruce in this case (such as Bruce's share of the closing costs and monthly payments Deborah provided to Lynn). *Id.* at ¶ 51. It is undisputed that neither Deborah nor Bruce have ever held legal title to the property. Deborah and Bruce could not purchase the home themselves from Rinehart due to their extensive credit problems, they asked Lynn to do so, and Lynn purchased the home without wrongful conduct or intentions. While all the parties agreed they discussed Deborah and Bruce purchasing the property from Lynn sometime in the future, none of the parties testified to the terms of that possible purchase. After Lynn purchased the property, Bruce only lived at the property for approximately four months. The only improvement to the property after Lynn bought it—replacement of the furnace and air conditioning—was funded by Lynn, and no party disputes Bruce and Deborah were not expected to pay that cost back. We note that contrary to the trial court decision, competent and credible evidence did not show that Lynn (or Virginia) applied the couple's monthly payments while Bruce was living in the house as a reduction in the future purchase price of the property. Finally, in order to purchase the property, Lynn obligated himself on a \$41,250 bank loan for which he alone bears the risk.

{¶ 39} Overall, the trial court's finding that Lynn has been unjustly enriched by Bruce, and the imposition of the construction trust as a remedy, is not supported by competent, credible evidence and was against the manifest weight of the evidence in this case. *LeCrone* at ¶ 19. Therefore, we find Lynn's assignments of error to have merit.

{¶ 40} Accordingly, Lynn's first and second assignments of error are sustained.

V. CONCLUSION

{¶ 41} Having sustained Lynn's two assignments of error, we reverse the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, and

remand the matter to the trial court to proceed consistent with this decision and to consider the effect, if any, this decision has on the divorce decree.

*Judgment reversed;
cause remanded with instructions.*

BROWN and BEATTY BLUNT, JJ., concur.
