IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

VINOD PATEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 1661-VCS
	)	
DIMPLE, INC. and CHETAN PATEL	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Date Submitted: August 13, 2007
Date Decided: August 16, 2007

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STRINE, Vice Chancellor.

I. Introduction

This post-trial opinion resolves a dispute about the ownership of a Millsboro, Delaware liquor store (the "Store") and the real property (the "Land") on which it sits (together, "Millsboro Liquors"). The parties are Vinod Patel and Chetan Patel, two small businessmen who immigrated to the United States from India in the 1980s. Vinod and Chetan are not related, though they at one time had a close personal relationship and have a number of social and family connections. Vinod is an older, established businessman who runs liquor stores and other businesses in Delaware and Maryland. Chetan is younger and less experienced. The Store is the first business he has owned.

Vinod is the sole legal owner of the Land and Chetan is the sole stockholder of a corporation, Dimple, Inc, which owns 100% of the Store. Vinod bought the Land and Chetan bought the Store in August 2001. Since that time, Chetan, through his corporation Dimple, has occupied the Land under two leases, a "First Lease" executed in 2001 at the simultaneous closing on the Land and the Store, and a "Second Lease" executed in January 2005. This litigation began in the spring of 2005 when the relationship between Vinod and Chetan turned sour and Dimple refused to pay rent under the Second Lease.

Chetan contends that Dimple is not obligated to pay rent because the Leases and the manner in which the Land is titled were a sham. Chetan contends that he and Vinod intended to own both the Store and the Land as 50-50% partners, sharing equally in the profits of Millsboro Liquors. The reason they set up the arrangement on paper the way they did was because Vinod was not legally allowed to own an interest in the Store. Under 4 *Del C.* § 546, no one person or entity may own an interest in more than two liquor stores in the

state of Delaware, and Vinod already owned two Delaware liquor stores. The leases and the titling of the Land were designed to hide from the Alcoholic Beverage Control Commission (the "ABCC") the fact that Vinod would be acquiring an interest in a third liquor store.

Vinod and Chetan never adhered to the terms of the First Lease. Although it called for monthly rental payments of $3,500, Dimple never paid that amount. Rather, Dimple made payments on — and largely paid off — the mortgage Vinod took out to acquire the Land. Vinod and Chetan also shared the profits on certain aspects of the Store's operations, particularly its "Check Cashing Business," which was initially funded by a $30,000 contribution from Vinod. During the early years after Dimple acquired the Store, Vinod did not act like an ordinary landlord, as he regularly brought inventory from his other liquor stores to the Store, operated the Store's cash register, and wrote and signed checks from Dimple's account to the Store's suppliers.

In early 2006, the ABCC launched an investigation into the ownership of the Store and the business relationship between Vinod and Chetan. Vinod pled guilty to owning an interest in more than two Delaware liquor stores and Vinod and Chetan both pled guilty to making false statements to the ABCC. Chetan claims, however, that he had no idea when the parties began their relationship that the informal 50-50% partnership he contends existed violated the liquor laws. I did not believe that testimony and find that both parties knew they were entering into an illegal business arrangement.

Vinod has now renounced any interest he may have had in Dimple or the Store. He simply wants to enforce the terms of the Second Lease that Chetan, on behalf of Dimple, knowingly and voluntarily signed in January 2005. In fact, according to Vinod, Chetan was

the one who brought up the idea of the Second Lease, as the First Lease did not expire for another six years, because Chetan wanted to extend his tenancy through 2025.

In response, Chetan seeks to enforce an equitable ownership interest in the Land. Chetan claims that the parties initially intended that he would be a part owner of the Land and that because Chetan made payments to and on behalf of Vinod that far exceeded the total rent due under the First Lease, Vinod cannot be allowed to retain full ownership of the Land. To allow that, says Chetan, would permit Vinod to be unjustly enriched and to retain the benefits of his knowing involvement in an illegal business arrangement.

But there is no equitable basis for the relief Chetan seeks. For one thing, although Chetan contends that the parties intended a 50-50% partnership, Chetan seeks an order giving him more than 50% of Millsboro Liquors, as he claims that he should continue to be the 100% owner of the Store. That is, Chetan is trying to exploit Vinod's legal predicament — a predicament Chetan was aware of from the beginning — to reap a financial boon from his, how shall I say it, co-conspirator. Chetan is trying to use the powers of an equity court to extract an undeserved windfall.

Moreover, throughout the entire business relationship between Vinod and Chetan, Chetan acted as a tenant in many respects, as he deducted "rent" on Dimple's tax returns, and knowingly executed a Second Lease with a longer term just months before stopping all payments of any kind to Vinod. Chetan knew at the time of the August 2001 closing that Vinod was buying the Land, that he was buying the Store, and that the two were entering into a formal landlord-tenant relationship. Although the parties in a few senses behaved otherwise for a time, their behavior does not negate the clear import of the documents

Chetan knowingly signed. Moreover, Vinod and Chetan's relationship was found by the ABCC to be illegal, and Chetan was found to have shared culpability in that regard. I agree with that determination. Both parties have displayed a brazen willingness to flout the unambiguous laws both of this State and of federal tax authorities. Although Vinod, as the more experienced businessman, is perhaps more directly responsible for the parties' illegal behavior, Chetan was a knowing participant in that conduct. His pleas of ignorance lack credibility and are not believable. In these circumstances, the type of relief Chetan seeks is itself inequitable and the parties shall be left to the formal landlord-tenant relationship that they indisputably set down on paper. That is especially so given that that formal arrangement, by all accounts, has been, and will likely continue to be, handsomely profitable for Chetan.

I am, however, cognizant of the manner in which Vinod extracted payments from Chetan during the period in which the First Lease was supposedly in force. Vinod ignored that document and convinced Chetan to make large cash and check payments to him in amounts that bear no reasonable relationship to those due under the First Lease. Vinod admits that he received payments in excess of those due under the First Lease and agrees that that excess should be offset against the unpaid rent owed to him under the Second Lease. Therefore, to the extent Chetan's payments to Vinod are credibly documented in the record, those payments will be credited to Chetan.

II. Factual Background

A. An Unusual Preface

Regrettably, both Vinod and Chetan have demonstrated a propensity for telling untruths. Perhaps they view lies in the aid of commercial advantage, especially when necessary simply to avoid legal regulations that seem to have more to do with protecting a guild of liquor store proprietors than the public,[1] as being an acceptable practice. For a finder of fact, their penchant for untruth makes it difficult to credit either's word. Chetan has tried to convince me that he is the more innocent deceiver. I do not perceive that to be so. Both he and Vinod are hard-working, industrious persons but willing to lie when that is in their interest. Neither is a saint nor a devil, they are humans but with an even greater than normal facility for falsehood. I find no reason to trust the word of Chetan more than that of Vinod. An innocent Chetan is not.

B. Chetan And Vinod's Acquisition Of Millsboro Liquors

Chetan came to the United States in 1988 when he was seventeen years old. Although English is not his first language, he speaks and understands it well. He finished his last two years of high school here and graduated in 1990. After that, Chetan took college courses in the areas of accounting and engineering but did not earn a degree. He spent most of the 1990's working in casinos in Atlantic City as a card dealer and eventually a floor supervisor, jobs that quickly season even an ingénue in the world of sharp practices.

[1] Violating such regulations is an act first year criminal law students might think of as *malum prohibitum* rather than *malum in se*.

Chetan met Vinod in about 2000 at a family gathering at Chetan's house. Chetan looked up to Vinod as a successful and respected businessman in the Indian community and considered him a mentor. Chetan ultimately asked for Vinod's help in getting established in business and Vinod showed Chetan a number of small businesses that Vinod thought Chetan might be interested in. During this time, Chetan expressed concerns to Vinod about his inexperience running a business. Vinod encouraged Chetan to rely on him and told Chetan that he would teach him what he needed to know.

Eventually, the two decided jointly to purchase Millsboro Liquors. Chetan and Vinod hired an attorney, Norman Aerenson, to handle the formation of Dimple, the liquor license application, and the financing and settlement of the transaction. Chetan and Vinod met with Aerenson a number of times in advance of the closing. Aerenson, who credibly testified at trial, explained that he had a number of conversations with Chetan and Vinod in which they discussed the nature and form of the transaction. According to Aerenson, Chetan understood that Vinod was buying the Land and that Chetan was buying the Store. Aerenson also said he explained to Chetan the reason for that arrangement — i.e., that Vinod could not own an interest in another Delaware liquor store.[2] According to Aerenson, there was also another reason the transaction was structured the way it was, which is simply "[t]his is the way they wanted it."[3]

In connection with Dimple's application for a package liquor license, Chetan signed an affidavit in which he stated:

[2] Trial Transcript ("Tr.") at 18.
[3] Tr. at 17.

> I am the sole stockholder of Dimple, Inc. . . . [T]here is no other individual who has an interest in Dimple, Inc. . . . I have an arrangement with Vinod Patel who is purchasing the real estate on which [the Store] is located . . . . Vinod Patel has no interest in or ownership in Dimple, Inc. and will be solely the landlord for Dimple, Inc.[4]

Chetan testified, contrary to Aerenson's testimony, that he did not know that it was illegal for Vinod to own an interest in the Store. He says that he knew the Land was being titled solely in Vinod's name, but he thought the reason was that it was the way the bank wanted things arranged, as Vinod and Chetan borrowed — on the strength of Vinod's credit — much of the money they used to buy the Land and the Store. I do not believe Chetan's testimony. The terms of the contemporaneous documents that Chetan signed, the clear inference of knowledge that Vinod could not own a legal interest in the Store that the terms of those documents justifies, Aerenson's credible testimony that he explained the law to Chetan, and Chetan's propensity to lie all help convince me that Chetan knew from the start why Vinod could not have an interest in the Store.

The purchase price for Millsboro Liquors was $500,000 — $250,000 for the Store and $250,000 for the Land. Much of that purchase price was paid from the proceeds of two small business loans from Wilmington Trust, one for $200,000 and one for $130,000. The manner in which the financing was structured was, in Aerenson's words, "a little intertwined."[5] Vinod was the primary applicant for both loans and both were obtained on the strength of his credit, though each of Vinod, Chetan, and Dimple were responsible for

[4] PX 3. Chetan made similar statements in connection with an application for a Lottery Sales Retailer's License. *See* PX 6.
[5] Tr. at 10.

the repayment of each loan. Both loans were secured by mortgages on the Land. The $200,000 loan was secured by a "First Mortgage" and the $130,000 loan was secured by a "Second Mortgage." The loans were also secured by a security interest in the assets of Dimple as well as by other real property owned by Vinod, including a townhouse that Vinod operated as a rental property (the "Townhouse").

As part of the loan application, Vinod signed certain documents as an officer on behalf of Dimple. The bank also sent correspondence to Dimple at Vinod's personal residence. By the time of the closing, however, the bank understood that Chetan was the sole owner of Dimple and that Vinod was buying only the Land, as it wrote a letter to that effect to Aerenson clarifying that understanding sometime before the closing.[6]

The closing on both the Land and the Store happened simultaneously on August 6, 2001. Chetan brought $60,000 of his personal funds to the closing. Vinod brought $120,000. Because Chetan was investing substantially less than Vinod, Aerenson's understanding of the transaction was that it was intended that Chetan would be responsible for paying the $200,000 first mortgage and Vinod would be responsible for paying the smaller $130,000 second mortgage. If that had been done, each would have ended up paying about $250,000, the nominal price of each of the Store and the Land. In fact, in his affidavit submitted to the ABCC, Chetan told a story consistent with that assumption, stating,

> In have an arrangement with Vinod Patel who is purchasing the real estate on which [the Store] is located whereby I will be using

[6] See PX 12 (reflecting Wilmington Trust's understanding that "Chetan J. Patel solely owns Dimple, Inc. and that Vinod Patel is buying the real estate"); *see also* Tr. at 164 (same).

> $200,000 of financing from Wilmington Trust and pay [sic] that mortgage, and Vinod Patel will be using $150,000 of financing from Wilmington Trust and paying that mortgage. Even though the mortgage commitment states the $200,000 is for the real estate and the $150,000 is for the business, Vinod Patel and I, with the bank's approval, are using the funds as stated above.[7]

In addition to the total $500,000 purchase price, Chetan and Vinod also paid a number of miscellaneous expenses related to the closing and the start of Dimple's operations, including closing costs on both mortgages, attorneys' fees for Aerenson's services, and various licensing fees. Vinod also invested $30,000 to initially fund Dimple's Check Cashing Business. That $30,000 was placed into an account from which Dimple would cash payroll and other checks for the Store's customers in exchange for a commission. The total initial investment by Chetan was $70,742.08. Vinod's total initial investment was $157,310.00. The total difference between the investments of the two was $86,567.92.

At the closing, Chetan signed the First Lease, though Chetan claims unconvincingly that he did not know at the time of the closing that he was signing a lease. According to Chetan, the First Lease was one of a number of documents passed to him at closing that were simply "flipped over" to the signature page and he simply signed where he was told to sign without question.[8]

The First Lease was for a ten year term, expiring in August 2011. It provided for monthly rental payments of $3,500 for the first five years and $4,000 for the next five. The First Lease was a "triple net lease" in that it required Dimple to pay all costs associated with

[7] PX 3.
[8] Tr. at 197.

the Land, including utilities, insurance, property taxes, etc. Thus, Vinod would collect, under the Lease, a full $3,500 a month net of all expenses.

C. Chetan And Vinod Ignore The First Lease

Chetan and Vinod never performed according to the First Lease. Vinod never asked Chetan to pay $3,500 a month in rent, and neither Chetan nor Dimple ever paid that amount. Rather, Dimple made the regular monthly payments on both Mortgages by way of automatic deductions from Dimple's checking account. Dimple also made additional bi-weekly "principal only" payments on both mortgages. By mid-2004, Dimple had paid off all of the $130,000 Second Mortgage and had paid off half ($100,000) of the $200,000 First Mortgage. Also, between August 2002 and September 2003, Chetan made various payments by cash and check to Vinod totaling $87,129 (the "Equalizing Payments"). Those payments were purportedly to reimburse Vinod for his larger initial investment at closing. Vinod does not dispute receiving and accepting those payments. Included in that $87,129 was $30,000 for the reimbursement of Vinod's contribution to the Check Cashing Business.

During this time, Chetan also claims that he and Vinod were sharing equally in the commissions from the Check Cashing Business (the "Check Cashing Commissions").[9] Chetan claims that the total amount from the "Check Cashing Account" paid to Vinod from 2001 to 2005 was $38,013.50.[10] All of that was supposedly paid in cash.

[9] Chetan also testified generally at trial to the effect that he was sharing with Vinod the revenue Dimple earned from selling lottery tickets and that Vinod was taking cash for his share of the lottery earnings. But Chetan did not seek to, nor therefore did he, prove the amount of those payments.

[10] This figure represents $30,513.50 in check cashing commissions from 2001 to 2004 plus a final one-time cash payment from Chetan to Vinod in March 2005 of $7,500. Vinod claims that all of the $30,513.50 given to him from 2001 to 2004 was given as reimbursement for the cost of

Both Vinod and Chetan explained that their business relationship operated on a "mutual understanding." Their explanations of that mutual understanding, however, were very different. As Vinod explained:

> In the beginning we have very good relation. So the beginning he say I'm not making enough money. But once — whatever the mortgage is coming, so it's not the exact amount — the rent. But once we have the good relation, I said that's fine. . . . I don't have problems. And he pay my mortgage and his mortgage. My mortgage go to the rent and his payment go to his mortgage.

Chetan's version is that they never intended a landlord tenant relationship or that any rent would ever be paid. According to Chetan, Vinod led him to believe that they would be equal partners is all aspects of Millsboro Liquors.[11]

But it is also undisputed that Chetan deducted substantial amounts on each of Dimple's tax returns in the relevant years for rent.

Throughout the early years of Vinod and Chetan's business relationship, Vinod was actively involved, at least to some degree, in the day to day operation of the Store, though the parties dispute the precise extent of Vinod's involvement. Chetan claims that Vinod regularly came to the Store to look after its affairs and that Vinod would even operate the Store's cash register from time to time. Chetan claimed that Vinod largely managed the Store's inventory and to a large part oversaw the Store's entire operation. Chetan's story has some support in the record in that for the first few years of Dimple's existence, Vinod's

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inventory Vinod brought to the Store from his other liquor stores. He also disputes having received the $7,500 cash payment in March 2005.

[11] *See, e.g.*, Tr. at 204 (reflecting Chetan's testimony is response to the question, "what did [Vinod] tell you about the property and the store, about the ownership:" "We are partners. We come in and we are going to join together as a partner.").

name appeared on Dimple's checks and Vinod regularly wrote and signed checks to the Store's suppliers. Moreover, Vinod admitted that he regularly brought inventory from his two other liquor stores in order to stock the Store's shelves. When he did so, Chetan claims that he reimbursed Vinod "from his pocket" for the cost of that inventory.[12]

Vinod contends that his involvement in the operations of the store was largely paternalistic and that he was merely fulfilling his promise to teach Chetan how to run a liquor store successfully. In 2001, Chetan had no experience running a business and it is undisputed that he relied to a large extent on Vinod's expertise.[13] Vinod believably contends that his involvement in the day to day operations of the Store declined gradually as Chetan learned to run the business himself. In this regard, it is telling that Chetan did not introduce in evidence any checks that he contends were signed by Vinod after February 2002, and that by 2004, Vinod's name no longer appeared on the checks at all. Moreover, Chetan's records of payments to Vinod reimbursing him for inventory he brought to the Store do not reflect any such payments after August 2002.

In mid-2004, Vinod decided to sell his Townhouse, which served as additional security for the First Mortgage, which had not yet been completely paid off. The proceeds from that sale were about $100,000, the same amount that was still owing on the First Mortgage. The bank required that all of the proceeds from the sale of the Townhouse be applied to pay off the rest of the First Mortgage.

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[12] *See* DX 23.

[13] *See* Tr. at 192 ("Vinod was handling everything. I put 100 percent trust on him, because he is a master of the liquor store.").

Notwithstanding that Dimple had already paid off all of the Second Mortgage and half of the First Mortgage as well as given Vinod more than $87,000 in Equalizing Payments, Vinod sought reimbursement for the $100,000 from Chetan and the two agreed to a two year payment plan at 5% interest, under which Chetan would pay Vinod about $4,400 a month. Most of those payments were made by check either from Dimple's account, from Chetan's personal checking account, or from the checking accounts of various of Chetan's family members. Many of those checks bear the indication that they were payments of "rent" to Vinod. Others indicate that they were "monthly mortgage payments." In a few instances, Chetan initially wrote "rent" on the memo line of the checks and then gave them to Vinod. After those checks were paid and returned to Chetan for his records, and sometime either before or during this litigation, Chetan crossed out the word "rent" and wrote "property mortgage payment." Chetan's proffered explanation for the fact that he altered the checks is that he initially wrote "rent" at Vinod's insistence but then altered the checks for his own record keeping purposes immediately upon receiving them in his bank statements.

D. Chetan And Vinod's Mutual Understanding Breaks Down

Sometime in late 2004, Chetan began to pressure Vinod to add his name to the title of Land and told Vinod that he would make Vinod an equal stockholder in Dimple. Chetan knew that on paper, he was the sole owner of the Store and Vinod was the sole owner of the Land. Chetan began to feel insecure about that because he was beginning to lose trust in Vinod. In Chetan's words, by the end of 2004, Chetan had realized that "Vinod was no

good."[14] He therefore wanted the 50-50% partnership that he thought existed "officially legal on paper 50-50."[15]

Vinod resisted, citing the liquor laws and sought to persuade Chetan to allow their current arrangement to continue to run smoothly. Chetan admits that by this time, he understood it was illegal for Vinod to own an interest in the Store.

Chetan and Vinod had a number of discussions on this point around this time. Chetan secretly made an audio recording of one of these discussions. The language spoken in the recording is Gujarati, the parties' native language. It has been translated into English but remains very hard to follow or make sense of. During this discussion, Vinod admitted, "I am not the sole owner of this property, it also belongs to you and the you don [sic] not own the business solely, it also belongs to me . . . . We have become equal partner, we are equal, you are in the store and I am in the business."[16] In this same conversation, Chetan acknowledged that, "if you think in a proper way . . . I am just a tenant."[17]

In January 2005, Chetan and Vinod executed a Second Lease under disputed circumstances. Chetan claims that Vinod prepared the Second Lease without consulting Chetan and instructed Chetan to sign it, telling him that it was the same as a deed to the Land. Vinod claims more persuasively that the Second Lease was prepared and entered into at Chetan's request in order to give Chetan more long-term security as owner of the Store, as the term for the Second Lease was twenty years, essentially extending the term of the

[14] Tr. at 301-02.
[15] DX 19.
[16] DX 20.
[17] *Id.*

First Lease by nearly 15 years. The Second Lease provided for monthly rental payments of $4,200 for the first five years, $4,500 for the next five years, and $4,800 for the last ten. Chetan testified that he understood the $4,200 monthly rent payments replaced his obligation to make the $4,400 installment payments that he and Vinod had previously agreed to.

Chetan made the $4,200 rent payments under the Second Lease in January and February 2005. In March, he gave Vinod a check for $7,000 but then ceased making payments of any kind to Vinod. After attempts to informally resolve the dispute between the two failed, Vinod brought an action against Dimple in the Justice of the Peace Court for summary possession of the Land for non-payment of rent. Vinod also brought an action in Superior Court seeking recovery of rental payments under the Second Lease. Chetan counterclaimed seeking an equitable interest in the Land and the case was removed to this court.

On August 3, 2005, the Justice of the Peace Court issued a written opinion granting Vinod possession of the Land. Chetan appealed that ruling and a three judge panel stayed all proceedings pending the outcome of this litigation, which the Superior Court sent here. The three judge panel ordered Dimple to make $4,200 monthly rental payments into an escrow account.

In early 2006, the ABCC launched an investigation into the ownership of the Store and the relationship between Chetan and Vinod. Chetan, on behalf of Dimple, pled guilty to the charges of failing to disclose to the ABCC any and all persons who hold an ownership interest in Dimple, which constitutes a false statement to the ABCC, and for allowing Vinod

to operate on behalf of its license without permission from the ABCC. Vinod pled guilty to having a financial interest in more than two liquor stores and for failing to disclose to the ABCC his financial involvement in a third liquor store. In October 2006, the ABCC ordered Dimple to pay a fine of $5,833 and suspended its liquor license (forcing the Store to close) for 30 days. The ABCC ordered Vinod, through two of his corporations, to pay a $15,000 fine and suspended the licenses for his two liquor stores for a period of 45 days during the important holiday shopping season. Vinod received the harsher of the punishments because he paid a larger fine and had both of his businesses interrupted for a period that exceeded the closing period for the Store.

As a final factual matter, it is also important to note that, by all accounts, the Store has been a successful business venture for Chetan and has performed very well since he bought it in 2001. In fact, while the store has more than doubled in value since that time, the value of the Land has increased far less drastically. Aerenson testified that, today, the Land is likely worth about $350,000, while the Store itself is worth more like $600,000 to $800,000. Chetan did not dispute that testimony.

III. Analysis

This case, as I see it, requires me to answer two questions: (1) whether Chetan is entitled to an equitable ownership interest in the Land; and, if not, (2) what amount is owing to Vinod under the Second Lease, given that he has received no payments of any kind since March 2005.

Before proceeding with an analysis of those questions, I pause to elaborate on a point I have already alluded to, which is that both parties' testimony suffers from serious

credibility problems. To that point, Vinod's testimony that he never considered himself anything other than a landlord to Dimple is unbelievable in light of the large sums of money he collected from Chetan and his expectation that Dimple was directly and primarily responsible for both Mortgages. Vinod never collected rent from Chetan and when Vinod had to make a $100,000 Mortgage payment after the sale of the Townhouse, he expected Chetan to pay him back that entire amount.

Chetan, for his part, admitted, in this litigation, that he altered some of the very documents that he introduced into evidence in the case, and contradicted his own testimony on a number of occasions. For example, though Chetan initially claimed that he essentially had no ambition and never wanted to be anything other than casino supervisor,[18] in the next breath, could not stress enough his "desire to do something in [his] life."[19] His protestations of commercial and financial innocence were entirely unconvincing. I am convinced he understood the illegality of his partnership with Vinod from the get-go.

A. Chetan Is Not Entitled To An Equitable Ownership Interest In The Land

Chetan claims he is entitled to an equitable ownership interest in the Land. He does not well articulate his doctrinal basis for that claim. Chetan's complaint against Vinod asserts counts for fraud in the inducement and unjust enrichment, but Chetan's post-trial briefs are almost entirely devoid of any legal citation of any kind. Rather, Chetan views his case as involving a simple factual premise, which is that notwithstanding the manner in which the parties structured their relationship on paper, their behavior in the period

[18] Tr. at 183 ("Look man, I'm satisfied, man. I don't have desire to become a millionaire.").
[19] Tr. at 222.

following the August 2001 closing shows that they intended to operate Millsboro Liquors as equal partners, and that they intended that each would own an equal interest in both the Land and the Store.

I begin my analysis by acknowledging that there is a substantial amount of evidence in the record to support that proposition. That evidence includes Vinod's extensive early participation in the management of the Store and his sharing in aspects of the Store's profits, such as its check cashing commissions, which Vinod received regularly in cash. Although Vinod denies receiving cash payments of this type, and claims that any cash he received from the check cashing account was to reimburse him for bringing inventory to the Store, I do not believe that testimony as Chetan kept meticulous records of the check cashing commissions the Store earned and Vinod's signature appears in those records several times, confirming his receipt of exactly one-half of the commissions. Indeed, Vinod even admitted that Chetan's version of the original deal was correct in a conversation that Chetan surreptitiously tape recorded. In that conversation, Vinod told Chetan in no uncertain terms, "I am not the sole owner of this property . . . we are equal, you are in the store and I am in the business."[20] When Chetan asked, "[b]ut in the property have I [sic] 50% right"? Vinod responded, "Yes of course."[21]

That arrangement, of course, was illegal, because Vinod was not allowed to own an interest in the Store. For that reason, Chetan claims he should remain the 100% owner of Dimple and the Store and Vinod does not — and cannot — contend otherwise. At the same

[20] DX 20.
[21] *Id.*

time, however, Chetan contends he is entitled to joint ownership of the Land. He claims that such a remedy is required in order to prevent Vinod from being unjustly enriched through the participation in a business arrangement that he knew was illegal and to compensate Chetan for Vinod's overreaching in seeking payments from Chetan far in excess of those called for under the Leases that Vinod is now trying to enforce.

But while Chetan's claims are premised on what he claims was the original intent of the parties, his desired remedy does not effectuate that intent. In other words, while Chetan claims that this was supposed to be a 50-50% deal, his desired remedy would give him more than 50% of Millsboro Liquors, in contravention of what Chetan claims was the original deal. Put bluntly, Chetan is trying to convert his complicity in an illegal scheme into a windfall at his co-conspirator's expense.

Of course, Chetan's claim for an equitable ownership interest in the Land is also premised on a contrary factual proposition, which is that Chetan, unlike Vinod, did not know that the arrangement Chetan contends existed was illegal. But I simply do not believe that convenient assertion. Chetan knew that the Land was being titled solely in Vinod's name and that he was the sole stockholder of Dimple, which owned the Store. He even signed a sworn affidavit to that effect. Chetan also knew that that arrangement was different from a true 50-50% partnership in Millsboro Liquors. It simply defies reason to believe that Chetan did not at least suspect some illicit purpose for executing papers that contradict his alleged oral understanding of the deal.

To this point, I also do not believe Chetan's contention that he thought the Land was titled solely in Vinod's name because he thought that was how the bank wanted it set up.

That testimony contradicted Aerenson's disinterested testimony — which I credit — that Aerenson told Chetan the liquor laws prevented Vinod from owning another liquor store. Moreover, Chetan signed an affidavit stating that Vinod had no interest in Dimple for the purpose of getting a liquor license, not a loan from the bank. Chetan therefore knew that it was the ABCC that cared about the ownership structure of Millsboro Liquors, not the bank. And even if Chetan did think that it was the bank that wanted Vinod to be the sole owner of the Land, I fail to see how the fact that Chetan was willing to deceive the bank rather than the ABCC helps Chetan at all in this regard.

Chetan's contention that the parties intended the two Leases to have no legal effect at all also does not draw support from the record. If that were so, why would Chetan and Vinod have bothered even to execute the Leases at all, much less two of them, on two separate occasions? Neither party contends that the Leases were ever shown to the ABCC or to anyone else, and therefore the only purpose they could possibly have served was to govern the relationship between the two of them.

It is clear that Chetan and Vinod's business relationship had a large degree of informality in it. That is not surprising. The two were friends before they went into business together and Millsboro Liquors was performing well. There was no need to go the file cabinet and pull out the legal documents. Vinod had no need to enforce the Leases because he was collecting more than what was owed under them anyway, and Chetan appears to have been happy to pay Vinod his due. Chetan owed his success as a liquor store proprietor to Vinod both as his teacher and, to a large extent, his financial backer, as Vinod

fronted much of the money in the deal and guaranteed loans that Chetan never could have gotten on the strength of his own credit.

But the Leases were executed and those acts are significant.[22] By entering into the Leases, Chetan and Vinod clearly intended that to the extent their informal arrangements could not be carried out, either because of problems with the ABCC or because internal problems in their own relationship made it unworkable (both of which situations ultimately transpired), the Leases would be binding as between the two of them. The Leases were their ready-made back-up plan, their legal justification, and the story they would assert if caught. To that point, even before Chetan's relationship with Vinod went sour, Chetan treated the Leases as the official documents that governed Dimple's right to occupy the Land, as Chetan accounted for the payments he made to Vinod during 2002-2005 as rent on Dimple's tax returns, and reaped the tax advantages of that treatment.

In this regard, the fact that Chetan entered into the Second Lease with Vinod in early 2005, after Chetan had already decided that "Vinod was no good,"[23] is important in determining that it should be enforced as written. By this time, Chetan felt that Vinod was taking advantage of him and that he could no longer trust Vinod to look out for his best interests. He was concerned for the future security of himself and his family. He

[22] Chetan's unbelievable contention that he did not read the First Lease before signing would not aid his cause even if I believed his testimony, which I do not. A party's failure to read a contract does not justify its avoidance. *Graham v. State Farm Mut. Auto Ins. Co.*, 565 A.2d 908, 913 (Del. 1989); *see also Pellaton v. The Bank of New York*, 592 A.2d 473, 477 (Del. 1991) ("It will not do for a man to enter into a contract, and when called upon to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written. But such is not the law. A contractor must stand by the words of his contract, and if he will not read what he signs, he alone is responsible for his omission.").

[23] Tr. at 301-02.

recognized that as a formal matter, he was merely a tenant at the Land and that when the First Lease expired, the future of the Store would be subject to Vinod's whim, as the Store's location was a key driver of its success, and Vinod could choose after 2011 not to renew the Lease. The current informal arrangement, with the First Lease as a backup, was no longer a satisfactory situation for Chetan. Chetan wanted to set up a formal 50-50% partnership in Millsboro Liquors to ensure that the Store could continue to operate indefinitely. Vinod could not do that, and Chetan even admits that by this time, he knew that it was illegal for Vinod to own an interest in the Store.[24] Chetan knowingly signed the Second Lease at a time when he was already very skeptical of both Vinod's intentions and actions. The Second Lease is therefore best viewed as a mutual reformation, through arms-length negotiations, of the original partnership deal that, as closely as possible, implements the initial arrangement, but within the confines of the law. Chetan's knowing entry into that revised arrangement precludes him from seeking to avoid it in equity now.[25]

Holding Chetan to the terms of the Lease that he signed in no way gives him the raw end of the deal, as Chetan does not dispute that the Store is worth far more than the Land. That is, even without the relief he seeks, Chetan still will end up with more than 50% of Millsboro Liquors on a dollar-for-dollar basis. Moreover, although it is regrettable that the both the personal and business relationship between Vinod and Chetan has soured, that

[24] Tr. at 221-23.

[25] I reject Chetan's contention that he signed the Second Lease based upon Vinod's assurances that it was just like signing a deed to the Land. That is simply an unbelievable claim, especially where Chetan not only signed the final signature page of the document, but also initialed the first page of the Second Lease, which bears the title, "Lease," and sets forth in plain, block format the monthly rental payments for each of the years of the Lease's term.

relationship has allowed Chetan to become a successful businessman in a desirable community, earning a comfortable six-figure paycheck.

Nor does this result grant Vinod a windfall. True, Vinod's investment in the Land will likely turn out to be a successful real estate venture, as the Land is now mortgage free and Vinod can expect earn about $50,000 annually in rent on Land he purchased for just five times that amount a few years ago. But Vinod took substantial risk in the transaction, far more than is expected of a typical real estate investor. Not only did Vinod engineer the entire transaction and acquire financing that would have been unavailable to Chetan on his own, but Vinod personally guaranteed Chetan's debts and put up the Land as well as other properties that he personally owned to stand as additional security. At the same time, Chetan was, to say the least, a high-maintenance tenant, as Vinod sacrificed substantial time and effort to teach Chetan the liquor store business and to help Chetan run the Store during the early years of the relationship.

As a final and alternative matter, I also deny Chetan the equitable relief he seeks under the doctrine of unclean hands. Put simply, the illegality of the business arrangement under which Chetan and Vinod operated for several years, and the lies Chetan told to the ABCC in order to put that operation into practice, put Chetan in an untenable position to ask this court for relief from the legal documents he indisputably executed. As stated, I did not believe Chetan's contention that he did not know that it was wrongful for him and Vinod to operate Millsboro Liquors as partners.

Admittedly, Vinod does not explicitly raise a defense of unclean hands. That is understandable, as he is arguably more directly responsible for the illegal conduct. He was

the one who avoided this State's statutory limitations on liquor store ownership, and as a result, he received stiffer penalties in connection with the ABCC proceedings in 2006. But the unclean hands doctrine is not about whose hands are dirtier,[26] and Chetan himself pled guilty in front of the ABCC. The unclean hands doctrine is therefore appropriately invoked in this case as it is designed primarily to protect courts of equity from being misused by a party who has not acted fairly and without fraud or deceit as to the controversy in issue.[27]

As a formal, legal matter, Chetan and Vinod set up their business relationship as landlord and tenant. Chetan seeks relief from that arrangement on grounds that the landlord-tenant relationship was a sham used to aid the parties in implementing an arrangement that involved a clear violation of this States liquor laws. But it is not the task of this court to aid parties in implementing schemes to avoid the law.[28] When parties enter into legal relationships in an effort to mask their illicit arrangements and to deceive

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[26] *Guadiosi v. Mellon*, 269 F.2d 873, 882 (3d Cir. 1959) ("The doctrine (of unclean hands) is confessedly derived from the unwillingness of a court, originally and still nominally one of conscience, to give its peculiar relief to a suitor who in the very controversy has so conducted himself as to shock the moral sensibilities of the judge. It has nothing to do with the rights or liabilities of the parties; indeed the defendant who invokes [it] need not be damaged, and the court may even raise it sua sponte.") (quoting *Art Metal Works v. Abraham & Strauss*, 70 F.2d 641, 646 (2d Cir. 1934) (L. Hand, J. dissenting)).

[27] *E.g.*, *Skoglund v. Ormand Industries, Inc.*, 372 A.2d 204, 213 (Del. Ch. 1976) ("The purpose of the clean hands maxim is to protect the court against misuse by one who, because of his conduct, has forfeited his right to have the court consider his claims, regardless of their merit."); *see also Gallagher v. Holcomb & Salter*, 1991 WL 158969, at *4 (Del. Ch. Aug 16, 1991) ("The equitable doctrine of unclean hands is not strictly a defense to which a litigant is legally entitled. Rather, it is a rule of public policy to protect the public and the court against misuse by persons who, because of their conduct, have forfeited the right to have their claims considered. The question raised by a plea of unclean hands is whether the plaintiff's conduct is so offensive to the integrity of the court that his claims should be denied, regardless of their merit.") (citations omitted).

[28] *See Morente v. Morente*, 2000 WL 264329, at *3 (Del. Ch. 2000) (explaining that "public resources should not be expended and the integrity of our courts should not be sullied in proceedings" that ask the court to sanction illicit behavior); *see also Neumeister v. Herzog*, 2007 WL 2162556, at *8 (Del. Ch. 2007).

regulatory authorities into allowing the parties to carry out their illicit business, they will be left to lie in the bed they have made. The landlord-tenant arrangement Chetan seeks to avoid is the very arrangement that he swore existed in a 2001 affidavit to the ABCC. The ABCC granted him his liquor license based upon that representation and he therefore must be left in that posture. To be frank, the parties are fortunate that they are still being allowed to operate their liquor stores. That, however, is a question for the ABCC, not this court.

As important, this court of equity has no proper role in helping Chetan secure an unfair windfall at Vinod's expense.[29] Vinod cannot claim an interest in the Store. Chetan knows that and has benefited by Vinod's re-acknowledgement of that to the ABCC because Vinod's disclaimer helped Chetan retain the right to continue running a licensed liquor Store. Chetan unfairly seeks to use this reality as a lever to extract a 75% solution to what he himself argues was a 50-50% deal. I refuse to grant him such an inequitable windfall. It would be more equitable for me to declare the deal to be 50-50% and require a liquidating sale of the Land and Store, shorn of any interests the ABCC would say Vinod and Chetan should never have jointly owned. Because it is the ABCC's role is to enforce the pertinent provisions of Title 4 of the Delaware Code, and not this court's, however, I avoid such a remedy but also refuse to act as Chetan's agent in seeking an inequitable share.

[29] *See Net Realty Holding Trust v. Franconia Properties, Inc.*, 544 F. Supp. 759, 768 & n.12 (E. D. Va. 1982) (explaining, in a lawsuit arising out of an illegal business arrangement, that the doctrine of unclean hands can operate to bar the plaintiff from equitable relief when that relief would grant the plaintiff a windfall gain).

B. Vinod's Monetary Remedy

Chetan ceased making payments of any kind to Vinod in March 2005. In this action, Vinod seeks recovery of back rent under the Second Lease, which Chetan, by court order, has been paying into an escrow account pending the outcome of this litigation. As of August 2007, the total amount owing under the Second Lease is $134,400. Since January 2005, the effective date of the Second Lease, Chetan has paid a total of only $15,400.[30] That leaves a difference of $119,000.

Vinod acknowledges, however, that to the extent Chetan made payments to Vinod during 2001 to 2004 that exceed what was owed under the First Lease, Vinod would be unjustly enriched if he were allowed to retain those payments.[31] Vinod admits therefore that any overpayments under the First Lease reduce the amount owing under the Second.[32]

Determining the total amount of those overpayments on the record before me, however, is a difficult task. Chetan did not seek to prove that amount at trial by any rational method or reliable evidence. As a result, I instructed each party to prepare an accounting of the payments each contends were made. Those accountings differ by about $27,000, leaving me to pore through a series of nearly-incomprehensible handwritten documents in order to determine which alleged payments can actually be confirmed by the trial record. Before discussing each of the disputed payments, however, I must address two primary areas of disagreement regarding what amounts were owed in the first place.

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[30] Vinod disputes receiving $7000 of that amount.

[31] *See* Letter to the court from Michael I. Silverman (April 27, 2007) (reflecting Vinod's admission that although the amount owing under the Second Lease as of April 2007 was more than $100,000, the total amount due to Vinod was only $78,231.75).

[32] *Id.*

Chetan and Vinod first clash over whether the Equalizing Payments intended to offset the differential in the initial investment of each at the time of closing were actually owed by Chetan to Vinod or not. Vinod contends that he never asked Chetan to make those payments and that Chetan made them voluntarily. Chetan does not appear to dispute that. But Chetan claims that those payments were intended to implement the informal 50-50% partnership and that if Chetan is not declared a part owner of the Land, those payments should be credited back to him. Moreover, Chetan points to Norman Aerenson's testimony that if the transaction had been implemented as Aerenson had believed it was intended — with Chetan paying the $200,000 First Mortgage plus $3,500 a month in rent to Vinod and Vinod paying the $130,000 Second Mortgage — Chetan would not have owed anything to Vinod.

But Chetan and Vinod did not implement the deal that way and Chetan is seeking to claim credit for payments he claims he made on Vinod's behalf on the $200,000 First Mortgage rather than the $130,000 Second Mortgage — the opposite of Aerenson's understanding of the deal. The fact that the difference in the size of those two Mortgages roughly equates to the differential investment at closing is highly suggestive of the fact that Chetan and Vinod expected that differential to be made up through the Equalizing Payments. The fact that Chetan made those payments of his accord without substantial prodding from Vinod further confirms that. Therefore I conclude that the Equalizing Payments were properly owed to Vinod and should not be credited back to Chetan.

Chetan claims that the total differential in the initial investment, not including the $30,000 Check Cashing Contribution was $57,129.[33] In reaching that figure, however, Chetan takes credit for certain of his miscellaneous expenses that I find were improperly included in determining his initial investment, including the cost of a computer system for the Store and various bank fees and licensing fees. After subtracting that amount from what he claims was his initial investment, I find that the differential of investment owing to Vinod is $65,709.50.

The parties next raise a number of arguments regarding the amounts Chetan allegedly paid Vinod as commissions from the Check Cashing Business. Vinod initially funded the Check Cashing Account with a $30,000 contribution around the time of the August 2001 closing. Chetan claims to have given Vinod $30,513.50 in Check Cashing Commissions from 2001 to 2004 plus a final $7,500 cash lump sum payment from the Check Cashing Account in March 2005, for a total of $38,013.50.

Vinod claims that any amounts given to him from the Check Cashing Account were reimbursements for inventory he delivered to the Store. For the reasons already stated, I do not believe that claim and find that Chetan did pay Vinod the $30,513.50 in Check Cashing Commissions on top of any amounts paid for inventory. Vinod's post-trial submissions also dispute the $7,500 lump sum payment claiming that "[Vinod] does not have any recollection of receiving a $7500 cash payment."[34] But Chetan testified to having made that payment at

[33] *See* DX 12 (reflecting Chetan's accounting of each side's initial investment in Millsboro Liquors).
[34] Letter to the court from Michael I. Silverman (April 27, 2007).

trial[35] and Vinod did not deny that testimony. Moreover, the record contains documentation purporting to bear Vinod's signature confirming receipt of that $7500.[36] Vinod has not challenged that documentation. Therefore, I find that the payment was made.

That said, the record does not reflect that Vinod intended to make a $30,000 interest-free loan when he initially funded the Check Cashing Account. Rather, the fact that Chetan and Vinod split the Check Cashing Commissions and treated those earnings differently than the earnings from the other aspects of the Store's operations — i.e., the sale of liquor — suggests that the parties intended the Commissions to serve as a return on Vinod's initial investment in the Check Cashing Business. The total $38,013.50 that Vinod received from the Check Cashing Account reflects a reasonable rate of return on that initial investment. Therefore, I do not credit Chetan with those payments.

Based on the foregoing analysis, the total amount Chetan owes to Vinod from August 2001 to now, August 2007, is $343,609.50. That figure is derived by adding the differential in Chetan and Vinod's initial investment ($65,709.50) to the total rent due under the First Lease ($143,500) and the total rent due under the Second Lease ($134,400).

Not including payments from the Check Cashing Account, which I determined should not be credited to Chetan, Chetan claims to have given Vinod a total of $297,145.47 during that same period. As of the time he stopped paying rent in April 2005, Chetan claims to have overpaid Vinod by some $75,335.97. Since he stopped paying rent over two years

[35] Tr. at 231-32.
[36] DX 23.

ago, he went from being in the black to owing Vinod some $46,464.03 under his calculation (assuming the Lease was enforceable).

Vinod disputes having received a number of payments included in Chetan's accounting. Vinod first points out what appears to be a clerical error regarding automatic mortgage payment deductions from Dimple's back accounts. The record does not confirm $901.05 of the alleged payments Chetan claims to have made. Therefore, I do not give him credit for that amount. Vinod next disputes receiving alleged cash payments in 2004 totaling $13,446. Vinod contends that he "does not have any recollection of receiving a $13,446 cash payment."[37] In support of his claim that that payment was made, Chetan points to a handwritten exhibit purporting to show the payments Chetan made to repay Vinod for the $100,000 Mortgage payment he made upon the sale of the Townhouse. That exhibit does not reflect a $13,446 cash payment having been made. I therefore do not credit Chetan with that amount.

Vinod's other quibbles with Chetan's accounting, however, lack merit. In his post-trial submissions, Vinod "disputes $7,000.00 included in [Chetan's] accounting for his personal Check No. 726 [dated March 12, 2005] as no copy has been provided . . . nor any bank statement evidencing that any such check cleared Chetan Patel's account."[38] Importantly, though, Vinod never denied, at trial, having received that $7,000 payment, despite testimony from Chetan about having made it.[39] Chetan's trial exhibits also include a

[37] Letter to the court from Michael I. Silverman (April 27, 2007).
[38] *Id.*
[39] Tr. at 227.

copy of the $7,000 check.[40] Vinod makes a similar contention regarding a $4,700 check included in Chetan's accounting for the year 2003. Chetan's handwritten records reflect his payment of $4,700 via check in 2003,[41] and Vinod neither denied receiving that check nor challenged the accuracy of Chetan's records via any evidence or sworn testimony. Therefore, I find that both of those check payments were made.

The total amount of payments documented in the record that Chetan has made to Vinod since the inception of their business relationship is $282,798.42. Because over that time Vinod was owed $343,609.50, a judgment in the amount of $60,811.08 in favor of Vinod against Chetan shall issue. The judgment shall be satisfied from the escrow account into which Chetan has been depositing his monthly rental payments. The rest of the payments Chetan made into the escrow account shall be returned to Chetan. To the extent that account has earned interest, Chetan and Vinod shall share in that interest in proportion to their respective shares of the principal amount deposited into the account. To the extent no interest has been paid, I exercise my discretion in these odd circumstances involving co-conspirators in an illegal scheme to deny pre-judgment interest to both sides.

As it is now mid-August, the money judgment in favor of Vinod includes rent for the month of August 2007 and Chetan and Dimple shall therefore be entitled, for now, to remain in possession of the Land.[42] The Second Lease remains valid and enforceable as

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[40] DX 726.
[41] DX 13.
[42] Although Vinod apparently seeks to enforce the Justice of the Peace Court's ruling that Vinod is entitled to summary possession of the Land due to Chetan's failure to pay rent beginning in April 2005, maintenance of the status quo for the time being is the correct outcome from both a legal and practical perspective. On appeal from the J.P Court's ruling, a three judge panel stayed those

between Dimple and Vinod. Chetan's and Dimple's right to possession of the Land from September 1, 2007 on is therefore subject to Dimple's obligations under the Second Lease, including its obligation to pay rent according to the Second Lease's terms.

IV. Conclusion

For the reasons stated, Chetan's claims are denied and judgment will be granted in favor of Vinod. Each side shall bear its own costs. The parties shall collaborate and submit an implementing order of final judgment within ten days.

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proceedings pending the outcome of this litigation. I take that as an indication of that Court's deference to this court's decision on how best to resolve this complicated equitable dispute. The lack of a final judgment undermines Vinod's continued resort to arguments based on giving collateral estoppel effect to the original J.P. Court ruling that was appealed. Moreover, as Chetan did substantially overpay under the First Lease, Chetan was still in the black on his rent payments to Vinod as of August 2005 when the J.P. Court's ruling was issued. As a practical matter, it simply makes no sense to upset the ordinary operation of Millsboro Liquors, which, it appears, will continue to be profitable for Chetan, thus generating funds to cover rent payments due to Vinod.