At a Special Term of the Supreme Court of the State of New York held in and for the Sixth Judicial District at the Chemung County Courthouse, Elmira, New York, on the 22nd day of DECEMBER, 2015.

PRESENT: HON. EUGENE D. FAUGHNAN
Justice Presiding

STATE OF NEW YORK
SUPREME COURT : CHEMUNG COUNTY

MARK BENJAMIN and PAULA TARANTELLI-BENJAMIN

Plaintiffs,

-vs-

LOUIS TRANTELLI and SHEILA TARANTELLI, jointly and severally

Defenadants.

DECISION AND ORDER

Index No. 2015-2462
RJI No. 2015-0772-M

COUNSEL FOR PLAINTIFFS:

COUGHLIN & GERHART LLP
By: Ryan L. McCarthy
401 E. State Street
Ithaca, NY 14850

COUNSEL FOR DEFENDANTS

MILLER MAYER LLP
By: Emily Rockett, Esq.
215 E. State Street
Ithaca, NY 14850

EUGENE D. FAUGHNAN, J.S.C.

This matter comes before the Court upon Mark Benjamin and Paula Tarantelli-Benjamin's ("Plaintiffs'") Order to Show Cause, signed by this Court on December 14, 2015, which enjoined and restrained Louis and Sheila Tarantelli ("Defendants") from prosecuting an eviction action in the Village of Horseheads.

The Court received Plaintiffs' Complaint and Attorney Affirmation (with exhibits) dated December 8, 2015. The Court received Defendants' Attorney Affirmation in Response (with exhibits) dated December 14, 2015. The Court also received Defendants' Answer and Counterclaim (with exhibits) dated December 30, 2015.

The Defendants are titled owners of a property located at 150 Monroe Drive in the Village of Horseheads, New York. Since sometime in 2008, Plaintiffs[1] have resided at 150 Monroe Drive and paid rent of $500 per month until sometime in 2013[2]. Plaintiffs allege that they have made various repairs and improvements to the property since taking up residence at the Monroe Drive property. Plaintiffs allege that such repairs and improvements were made with the consent of Defendants. Defendants became hostile to Plaintiffs' continued occupation of the property and commenced an eviction action in the Village of Horseheads.

Plaintiffs submitted an Order to Show Cause seeking to restrain the Defendants from proceeding with the eviction action, and commenced an action seeking the establishment of a constructive trust.

A preliminary injunction constitutes "drastic relief" (*Troy Sand & Gravel Co., Inc. v. Town of Nassau*, 101 AD3d 1505, 1509 [3rd Dept. 2012]; *see Cooper v. Board of White Sands Condominium*, 89 AD3d 669 [3rd Dept. 2011]) and, the granting or denial is ordinarily a decision within the trial court's discretion, nonetheless the party seeking such relief "must demonstrate a

---

[1]Plaintiff Paula Tarantelli-Benjamin is the daughter of Defendants.

[2]Defendants allege that no rents have been paid.

probability of success on the merits, danger of irreparable injury in the absence of an injunction and a balance of the equities in its favor" *Nobu Next Door, LLC v. Fine Arts Hous., Inc.*, 4 NY3d 839, 840 (2005); *see Doe v. Axelrod*, 73 NY2d 748, 750 (1988); *Moore v. Ruback's Grove Campers' Assn., Inc.*, 85 AD3d 1220, 1221 (3rd Dept. 2011).

With regard to the probability of success on the merits:

> [i]t is not for the Court to determine finally the merits of an action upon a motion for preliminary injunction; rather, the purpose of the interlocutory relief is to preserve the status quo until a decision is reached on the merits. (*see, Incorporated Vil. of Babylon v. John Anthony's Water Café*, 137 AD2d 791, 525 N.Y.S.2d 341 [2d Dept 1988]). A showing of likelihood of success on the merits required before a preliminary injunction may be properly issued must not be equated with the showing of a certainty of success (*Id.*). Furthermore, provided that the elements required for the issuance of a preliminary injunction are demonstrated in the plaintiff's papers, the presentation by the defendant of evidence sufficient to raise an issue of fact as to any such elements shall not in itself be grounds for denial of the motion (CPLR 6312[c]).

Olympic Ice Cream Co., Inc. v. Sussman, 47 Misc3d 1224(A), _____ (Sup. Ct. Queens County 2015).

Plaintiffs are making a claim for constructive trust. The elements of a constructive trust are a confidential relationship, a promise, a transfer in reliance on that promise and unjust enrichment *see Sharp v. Kosmalski*, 40 NY2d 119, 121(1976); *Leire v. Anderson-Leire*, 22 AD3d 944, 945 (3rd Dept. 2005).

Plaintiffs point to the parent/child relationship as satisfying the requirement of a confidential relationship. Plaintiffs argue that they were promised an ownership interest in the property in return for making necessary repairs and improvements; and that they reasonably relied on that representation in expending money for those repairs and improvements. They also are alleging that significant improvements and repairs were made on the subject property at their expense. They argue that this gives rise to an equitable interest in the property and to hold otherwise would represent an unjust enrichment of the Defendants.

The Defendants argue that Plaintiffs were merely licensees and that there was never any agreement by which Plaintiffs would obtain an ownership interest in the property. In addition, they have continued to pay expenses related to the property including property taxes, mortgage payments and utilities. Defendants also claim that the repairs and improvements were not all made with their consent and approval. Finally, they deny Plaintiffs' assertion that rent has been paid during Plaintiffs' tenancy.

"As a constructive trust is an equitable remedy, courts do not rigidly apply the elements but use them as flexible guidelines". *Moak v. Raynor*, 28 AD3d 900, 902 (3rd Dept. 2006); *see also Henness v. Hunt*, 272 AD2d 756, 757 (3rd Dept. 2000); *Booth v. Booth*, 178 AD2d 712, 713 (3rd Dept. 1991). "In this flexible spirit, the promise need not be express, but may be implied based on the circumstances of the relationship and the nature of the transaction" *Moak,* 28 AD3d at 902; *see also Sharp v. Kosmalski, supra* at 122; *Johnson v. Lih*, 216 AD2d 821, 823 (3rd Dept. 1995); *Hornett v. Leather*, 145 AD2d 814, 815 (3rd Dept. 1988), *lv denied* 74 NY2d 603 (1989).

At this early stage in the litigation, the Court finds that the Plaintiffs have produced some evidence for establishing an equitable trust. The Plaintiffs allege a confidential relationship and a promise that they would have an equitable interest in the property. The also allege that they made transfers in reliance upon that promise, by expending funds to make necessary repairs and improvements, and Plaintiffs argue that to deny them an equitable interest in the property would result in an unjust enrichment to the Defendants. The Court is not convinced that Plaintiffs have shown a likelihood of success on the merits with regard to unjust enrichment. The Court is not concluding, at this point, that Plaintiffs' will not establish unjust enrichment, simply that at this point, they have not shown enough to constitute a **likelihood** of success. The Defendant owners are not unjustly enriched, because they are seeking to retain and recover **their own** property, and Plaintiffs have not yet proven any equitable ownership interest. Further, many of the improvements undertaken by the Plaintiffs were actually to their benefit. *Marini v. Lombardo,* 79 AD3d 932 (2nd Dept. 2010), *lv. denied* 17 NY3d 705 (2011). Ultimate resolution of the unjust enrichment would be made after a trial, but at this point, Plaintiffs have not shown their likelihood of success on that element.

In addition, for Petitioners to show irreparable harm, they must show that they have no other remedy available at law if the action is not enjoined. *McNeary v. Niagara Mohawk Power Corp.*, 286 AD2d 522 (3rd Dept. 2001). In considering the question of irreparable harm, the Court must examine the claim being made in connection with the temporary relief being sought. Specifically, if the Plaintiff cannot show likelihood of success on the merits which would entitle them to a possessory interest in the property, restraining an eviction proceeding would inappropriate. Put another way, even if the Plaintiffs establish an equitable trust, that does not mean that they have a right to stay, or possess, the property. It simply means they have an ownership interest. The ultimate relief they seek (imposition of an equitable trust) does not necessarily mean that they have a right to stay in the property, over the objection of the Defendants. The equitable trust would provide them protection against transfer of the property by the Defendants. *See e.g. Soran v. Addeo,* 2011 NYMiscLEXIS 607 (Sup. Ct. New York County 2011). The Court has received nothing that would support the conclusion that Plaintiffs do not have a remedy at law if they are dispossessed of the property. Their equitable interest in the property, if any, can be compensated with monetary damages and that interest can be protected with the filing of a *lis pendens*. *See Letizia v. Flaherty,* 207AD2d 567 (3rd Dept. 1994). Plaintiffs have not shown that they would suffer irreparable harm in the absence of a preliminary injunction since money damages would be sufficient to compensate them. *Kurlandski v. Kim,* 111 AD3d 676 (2nd Dept. 2013). Therefore, the Court finds that Plaintiff has not shown irreparable harm warranting the continuation of the stay of the eviction proceeding.

Finally, in balancing the equities, the Court continues to be mindful of the fact that Defendants are the titled owners who have paid the mortgage, property taxes and utilities for the subject property. Although the Plaintiffs allege expenditures for repairs and improvements, they are unable to provide any basis for the Court to conclude that this results in anything other than a potential financial interest which will be litigated in the future.

Therefore, the Court **vacates** its prior temporary stay on eviction proceedings in the Village of Horseheads.

IT IS SO ORDERED.

This constitutes the Decision and Order of the Court.

Dated: January 21, 2016
Elmira, New York

HON. EUGENE D. FAUGHNAN
Supreme Court Justice