

**Steates v Johnson**

2020 NY Slip Op 33950(U)

February 5, 2020

Supreme Court, Oneida County

Docket Number: EFCA2018-002812

Judge: Bernadette T. Clark

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This opinion is uncorrected and not selected for official publication.

At a term of Supreme Court of the State of New York held in and for the County of Oneida at the Oneida County Courthouse, 200 Elizabeth Street, Utica, New York on the 15<sup>th</sup> day of January, 2020.

**PRESENT: HONORABLE BERNADETTE T. CLARK**  
Justice Presiding

**STATE OF NEW YORK**  
**SUPREME COURT      COUNTY OF ONEIDA**

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**RICHARD STEATES,**

**Plaintiff,**

**-vs-**

**DECISION AND ORDER**  
**Index No.: EFCA2018-002812**  
**RJI No.: 32-19-0132**

**JUDY A. JOHNSON,**

**Defendants.**

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**APPEARANCES:    Gustave J. DeTraglia, Esq.**  
*Attorney for Plaintiff, Richard Steates*  
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**David Longieretta, Esq.**  
*Attorney for Defendant, Judy A. Johnson*  
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*Clark, J.*

### **Procedural History**

Each party has moved this Court for Summary Judgment; the first Motion was brought by Defendant, Judy Johnson, seeking Summary Judgment dismissing the Plaintiff's cause of action for Unjust Enrichment dated September 27, 2019. Plaintiff has opposed Defendant's Motion and has filed a Cross-Motion for Summary Judgment dated October 24, 2019. Oral argument was held on January 15, 2020 and the Court reserved decision.

The Court is familiar with this matter as it has been the subject of prior Motions to Amend Pleadings and for a Motion to Dismiss Plaintiff's cause of action for Unjust Enrichment. In addition, counsel have appeared in Chambers on numerous occasions to discuss the matter and explore settlement. Unfortunately, the parties could not come to an agreement.

### **Factual Background**

The parties in this matter are brother and sister who jointly purchased a house and real property in Clinton, New York, in 2013. Each party contributed money in order to purchase the property as well as for the purpose of making improvements, for property upkeep, and paying taxes. In 2018, the parties sold the property and paid all outstanding debts at the closing. After the closing, the parties could not agree as how to distribute the proceeds of the sale. As a result, the money was placed in escrow. When the parties could not resolve the issue regarding the distribution of the proceeds, the Plaintiff brought a Cause of Action that did not precisely state the theory for which Plaintiff sought damages. Thereafter, the Plaintiff Amended the Complaint and alleged two causes of action. First, claiming all of the proceeds of the "partition action", of the sale of the real property which are being held in escrow; second, for a cause of action for

Unjust Enrichment, alleging that Defendant wrongfully benefitted from Plaintiff providing funds for, among other things, the purchase of the real property, money paid for property taxes, and for upkeep of the property.

Defendant now moves for Summary Judgment on the second cause of action, Unjust Enrichment. It is well established that, “[s]ummary judgment is drastic relief, as it denies one party the opportunity to go to trial. Thus, Summary Judgment should only be granted when there is no triable issue of fact. *Andre v. Pomeroy*, 35 N.Y. 2d 361 (1974). The proponent of a Summary Judgment Motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering evidence in admissible form to demonstrate the absence of any material issues of fact. Once the movant has demonstrated a *prima facie* showing of entitlement of Summary Judgment, the burden shifts to the party opposing of the Motion to produce evidentiary proof in admissible form sufficient to establish the existence of the material issues of fact which require a trial of the action. *Zuckerman v. New York*, 49 N.Y. 2d 557 (1980).

Defendant argues that the purchase of the house in question was a joint venture that the parties entered into and held joint title. Both parties were on the mortgage indebtedness. Defendant states that each party invested money to purchase the house and that each of them made various additional expenditures from the time of purchase in 2013, until its sale in 2018. Defendant swears in her Affidavit dated October 3, 2019, the following: (1) Plaintiff paid \$38,000.00 down at closing and that Defendant paid \$23,000.00; (2) that she and Plaintiff split taxes on a 50/50 basis until the house was sold; (3) that she made all of the mortgage payments; (4) that she made all of the insurance payments; (5) that a retaining wall had to be repaired and that she paid for it; (6) that a new deck was installed and was paid for equally by both parties; (7)

that Plaintiff purchased and paid for a shed which was sold with the house; (8) that a wood pellet stove needed to be replaced and that she paid for it; (9) that Defendant paid for the removal of an old pool fence and for the installation of a new one in order to be codes compliant; and (10) that Defendant paid for the repairs to the pump house, water pump and pool pump.

When the house was sold and the mortgage and closing expenses were paid, there was \$37,000.00 remaining that the parties agree is being held in escrow. The Defendant argues that all monies paid by Plaintiff went to purchase the house, to improve it, or for tax payments. Further, Defendant states that she also contributed monies to the purchase, upkeep, taxes and all mortgage payments, to the benefit of the property. However, Defendant argues strenuously that she has not retained any of the monies or property paid for by the Plaintiff. Defendant states that the house and all of the improvements to the property were sold by the parties. Thus, Defendant alleges that Plaintiff failed to make a *prima facie* case for Unjust Enrichment because a necessary element of that cause of action is that it would be inequitable for Defendant to retain Plaintiff's property.

Plaintiff alleges that he contributed money for the purchase of a house, but the monies were only a loan to Defendant which he expected to be paid back. However, there are no written agreements to this effect and the house and mortgage were in the names of both parties. Plaintiff argues that Defendant made false representations regarding how the house would be used, but that Defendant benefitted solely by using the house for a place for her to live. Therefore, Plaintiff claims that Defendant should be liable to Plaintiff for rent. Plaintiff also seeks damages for monies he contributed towards the purchase, upkeep and improvements to the house, as he argues he should be compensated for the money he put into the house. Plaintiff claims that

“[t]he fundamental purpose of compensatory damages is to have the wrongdoer make the victim whole and the measure must be fair and just compensation commensurate with the loss or injury... and the goal is to restore the injured party to the extent possible...” Plaintiff’s counsel’s Memorandum of Law, p. 1.

A cause of action for Unjust Enrichment requires a showing that, “... (1) the defendant was enriched, (2) at the expense of the plaintiff, and (3) that it would be inequitable to permit the defendant to *retain that which is claimed by the plaintiff*, emphasis added. *Clifford R. Gray, Inc. V. LeChase Construction Services*, 31 A.D.3d 983 (App. Div. 3<sup>rd</sup> Dept. 2006). “The essence of such a cause of action is that one party is in possession of money or property that rightly belongs to another.” *Id* at 988, citing *Paramount Film Distr. Corp. v. State of New York*, 30 N.Y.2d 415, 421, 334. The Plaintiff in *Clifford* alleged a cause of action in Unjust Enrichment based upon the claim that the Defendant benefitted from receiving information from Plaintiff and then not abiding to an unenforceable, oral contract between the parties. Like the instant case, there was no enforceable contract, but Plaintiff argued equity required damages under a theory of Unjust Enrichment. The Court in *Clifford* denied Plaintiff’s Summary Judgment Motion and granted Defendants, holding that,

**“The essence of such a cause of action [Unjust Enrichment] is that one party is *in possession of money or property that rightly belongs to another*. Here, plaintiffs submissions on the parties’ competing motions for summary judgment make only conclusory allegations that defendant benefitted from plaintiffs involvement in the bid formulation process, and plaintiff asserts no facts suggesting that defendant is *in possession of money or property belonging to plaintiff’s*. Thus, there is no issue of fact requiring a trial on this cause of action.” (emphasis added) (see *Paramount Film Distrib. Corp. v State of New York*, 30 NY2d 415, 421 [1972]).**

In the matter before the Court, Plaintiff does not refute the claims of the Defendant regarding each of the parties specific contributions of money for the purchase and upkeep of the house. Plaintiff argues that Defendant was Unjustly Enriched as she had use of the house without having to pay rent and that equity and good conscious requires that Defendant make Plaintiff whole. Plaintiff's Memorandum of Law, p. 1. In support of his claim, Plaintiff's counsel cites the Matter of *Mandarian Trading Ltd. V. Wildenstein*, 16 N.Y.3d 173 (2011), which held, "[t]he essential inquiry in any action for Unjust Enrichment ... is whether it is against equity and good conscience to permit the Defendant to retain what is sought to be recovered". *Id* at 182. In *Mandarian*, the Court dismissed the Unjust Enrichment claim on grounds unrelated to the matter before the Court, however, the holding supports the Defendant's Summary Judgment Motion as there is no allegation that Defendant is retaining any property of the Plaintiff. While Plaintiff makes accusations regarding allegedly false or fraudulent statements that he says Defendant made to induce him to purchase the house together, those claims alone do not support the elements for Unjust Enrichment. Defendant claims there is no proof that Defendant has any property belonging to Plaintiff that she refuses to return. In fact, Plaintiff does not contradict the fact statements contained in Defendant's papers that the monies advanced by Plaintiff went for legitimate expenses related to the house. For instance, on page 4 of the Plaintiff's Attorney Affidavit, it states, in reference to the Defendant, "...she took all of the cash monies advanced by Plaintiff, some of which were for the house, taxes and lawyer's fees. Check number 1516 for \$4,900.00 was for a shed for the property which Defendant already acknowledged that she would allow the Plaintiff to be reimbursed for." Plaintiff's statement corroborates Defendant's factual claims that Plaintiff paid money for the upkeep of the house as well as to pay taxes. In addition,

Plaintiff has not established a viable claim for rent. Plaintiff has not produced any proof of a written lease or even an oral agreement for Defendant to pay rent to Plaintiff. Moreover, Plaintiff has not disputed that, while she was living on the property, Defendant paid the mortgage payments, half of the taxes, the utilities and contributed to the upkeep of the property. Certainly, there are no allegations that Defendant used these funds for anything other than expenses for their property. Since Plaintiff cannot prove Defendant has wrongfully retained money or property belonging to the Plaintiff, Defendant's Motion for Summary Judgment on the second cause of action is granted and Plaintiff's Summary Judgment Motion is denied.

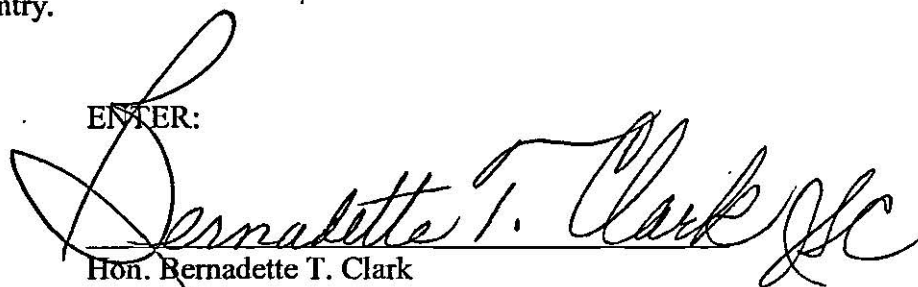
NOW, therefore, in accordance with the above decision, it is hereby

**ORDERED** that Defendant's Motion for Summary Judgment on the second cause of action is hereby **GRANTED**; and it is further

**ORDERED** that Plaintiff's Summary Judgment Motion is hereby **DENIED**.

**This shall constitute the Decision and Order.** The original Decision and Order is returned to the attorney for the Defendant. All other papers are being delivered by the Court to the County Clerk for filing. The signing of this Decision, Order does not constitute entry or filing under CLR Rule 2200. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

Dated February 5th, 2020  
Utica, New York

ENTER:  
  
Hon. Bernadette T. Clark  
Justice of the Supreme Court