STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

[Filed: August 29, 2018]

ROBERT MICHAEL PAROSKIE,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. KC-2017-0585**
	:	
LINDA A. RHAULT,	:	
Defendant.	:	

DECISION

MCGUIRL, J. Defendant Linda A. Rhault (Defendant) seeks summary judgement in the above-entitled matter. Defendant asserts that there are no genuine issues of material fact, and that she is entitled to judgment as a matter of law. Plaintiff Robert Michael Paroskie (Plaintiff) objects to Defendant's motion arguing that there are genuine issues of material fact for trial. In the alternative, and in response to Defendant's motion, Plaintiff also filed a Cross-Motion for Summary Judgment against Defendant contending that there are no genuine issues of material fact, and that he is entitled to judgment as a matter of law.

I

Facts and Travel

The underlying claim stems from a romantic relationship between Plaintiff and Defendant. Plaintiff and Defendant were involved romantically for some time between October 2001 and February 2009—approximately seven (7) years—when Defendant ended the relationship.

Plaintiff filed the underlying action against Defendant on May 31, 2017, alleging that Defendant falsely represented to Plaintiff that his life would be enhanced and secure if he

remained with Defendant as a companion partner and that, but for this representation, Plaintiff would not have devoted his time, energy and expertise to Defendant.[1] Plaintiff also alleges that he provided financial advice[2] to Defendant at her behest that will someday result in a substantial positive tax impact for the Defendant and, therefore, it is now inequitable for the Defendant to retain the benefit without conferring the value of the lifetime security promised to the Plaintiff. As a result, Plaintiff's three-count Complaint alleges (1) fraud; (2) negligent misrepresentation; and (3) unjust enrichment against Defendant.

The Court held a hearing on the dueling Motions for Summary Judgment on November 27, 2017, to entertain oral arguments and ascertain the positions of the parties on the issues now

[1] The crux of Plaintiff's argument rests on the fact that Defendant and Plaintiff were committed to each other romantically to be in a long-term relationship, and later Defendant ended that relationship. (Pl.'s Aff. 2.) Plaintiff points to the fact that he, among other things, stayed with Defendant overnight up to four nights a week, presented Defendant with gifts of jewelry, lodging, and meals, prepared dinners for the Defendant and her family, tutored Defendant's children, and assisted with kitchen renovations at Defendant's home as evidence of his committed relationship with Defendant. *Id.* at 4-5. Plaintiff attests that he "relied upon [Defendant's] continuing representations and acts of a committed relationship" when he performed the aforementioned acts. Plaintiff claims that, but for these representations of commitment from Defendant, he would not have devoted his time to her. *Id.* at 5-6.

[2] Plaintiff attests, in pertinent part that:

> "Contemporaneously, [Defendant] requested my assistance with a family trust granted by her grandmother . . . with the family history that her mother . . . had been estranged from [the grandmother] to the point that [the grandmother] did not support [Defendant's mother] financially. . . . [Defendant's grandmother] had put her wealth into a trust that would eventually benefit [Defendant]. [Defendant's mother], being upset with [the grandmother], signed a document that would incur substantial taxes to the heirs of [the grandmother's] trust. [Defendant] informed me that the trust currently had 16 million dollars in assets and solicited my advice on how to remedy that matter. I advised [Defendant] on certain actions to take, that she followed, including [filing a] request for a tax ruling from the IRS. [Defendant] later told me that the IRS had ruled favorably that would preclude substantial taxes [on the trust]." (Pl.'s Aff. 2-3.)

before the Court. At the conclusion of the hearing, this Court indicated that it did not find any basis for Plaintiff's claims of fraud and negligent misrepresentation but sought more information concerning the Plaintiff's claim for unjust enrichment.

The Court scheduled a second hearing meant to address the issue of unjust enrichment as it pertains to this case. In the meantime, Defendant filed a supplemental memorandum addressing the issue of unjust enrichment with regard to her Motion for Summary Judgment and Plaintiff filed a supplemental affidavit in response. The Court held a second hearing on February 26, 2018 to determine the parties' positions on the issue of unjust enrichment only. At the conclusion of the hearing, the Court reserved on the instant motions.

II

Standard of Review

When deciding a motion for summary judgment, the trial justice must keep in mind that it "'is a drastic remedy and should be cautiously applied.'" *Steinberg v. State*, 427 A.2d 338, 339-40 (R.I. 1981) (quoting *Ardente v. Horan*, 117 R.I. 254, 366 A.2d 162, 164 (1976)). When ruling on a motion for summary judgment, the preliminary question before the court is "whether there is a genuine issue as to any material fact which must be resolved." *R.I. Hospital Trust Nat'l Bank v. Boiteau*, 119 R.I. 64, 376 A.2d 323 (1977); *O'Connor v. McKanna*, 116 R.I. 627, 359 A.2d 350 (1976). However, "[i]f an examination of the pleadings, affidavits, admissions, answers to interrogatories, and other similar matters, viewed in the light most favorable to the opposing party, reveals no such issue, then the suit is ripe for summary judgment." *R.I. Hospital Trust Nat'l Bank*, 119 R.I. at 66, 376 A.2d at 324; *Harold W. Merrill Post. No. 16 Am. Legion v. Heirs-at-Law Next-of-Kin and Devisees of Smith*, 116 R.I. 646, 360 A.2d 110 (1976).

In the face of summary judgment, the party opposing summary judgment cannot rest on mere allegations of pleadings alone but must submit specific, competent evidence. The party who opposes the motion "carries the burden of proving by competent evidence the existence of a disputed material issue of fact and cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions." *Accent Store Design, Inc. v. Marathon House, Inc.*, 674 A.2d 1223, 1225 (R.I. 1996); *see also McAdam v. Grzelczyk*, 911 A.2d 255, 259 (R.I. 2006). It is not sufficient "simply [to] show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, Rule 56 "requires the nonmoving party to go beyond the [unverified] pleadings" and present some type of evidentiary material in support of its position. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). "Although inferences may be drawn from underlying facts contained in material before the trial court, neither vague allegations and conclusory statements, nor assertions of inferences not based on underlying facts will suffice." *First Nat'l Bank of Boston v. Slade*, 379 Mass. 243, 246, 399 N.E.2d 1047, 1050 (Mass. 1979).

In the instant Motion, the non-movants must set forth specific facts showing that there is a genuine issue of material fact for trial.[3] They bear "the burden of producing specific facts sufficient to deflect the swing of the summary judgment scythe." *Mulvihill v. Top-Flight Golf Co.*, 335 F.3d 15, 19 (1st Cir. 2003). Rule 56 mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial; in such a situation, there can be no genuine issue as to

[3] An issue is "genuine" if the pertinent evidence is such that a rational fact finder could resolve the issue in favor of either party, and a fact is "material" if it has the capacity to sway the outcome of the litigation under the applicable law. *Nat'l Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995).

any material fact, since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial. *Celotex Corp.*, 477 U.S. at 317 (alteration in original).

III

Analysis

A

Fraud

"To establish a *prima facie* fraud claim, 'the plaintiff must prove that the defendant made a false representation intending thereby to induce [the] plaintiff to rely thereon and that the plaintiff justifiably relied thereon to his or her damage.'" *McNulty v. Chip*, 116 A.3d 173, 182–83 (R.I. 2015) (quoting *Parker v. Byrne*, 996 A.2d 627, 634 (R.I. 2010)). However, '"the general rule is that mere unfulfilled promises to do a particular thing in the future do not constitute fraud in and of themselves."' *Cote v. Aiello*, 148 A.3d 537, 548 (R.I. 2016) (quoting 37 Am. Jur. 2d *Fraud and Deceit* § 87 at 122 (2013)).

"Deceit or fraudulent representation is a tort action, and requires some degree of culpability on the misrepresentor's part." *Francis v. Am. Bankers Life Assur. Co. of Fla.*, 861 A.2d 1040, 1046 (R.I. 2004) (citing Prosser & Keeton, *The Law of Torts* § 105 at 728 (5th ed. 1984). "To recover on this claim, plaintiff had the burden of proving that defendant 'in making the statement at issue, knew it to be false and intended to deceive, thereby inducing [plaintiff] to rely on the statements to [her] detriment.'" *Francis*, 861 A.2d at 1046 (quoting *Katz v. Prete*, 459 A.2d 81, 84 (R.I. 1983)). Likewise, a *prima facie* case of negligent misrepresentation requires that plaintiff "establish the following elements: '(1) a misrepresentation of a material fact; (2) the representor must either know of the misrepresentation, must make the

misrepresentation without knowledge as to its truth or falsity or must make the representation under circumstances in which he ought to have known of its falsity; (3) the representor must intend the representation to induce another to act on it; and (4) injury must result to the party acting in justifiable reliance on the misrepresentation.'" *Id.* at 1046 (quoting *Zarrella v. Minnesota Mut. Life Ins. Co.*, 824 A.2d 1249, 1257 (R. I. 2003) (quoting *Mallette v. Children's Friend and Service*, 661 A.2d 67, 69 (R.I. 1995))).

When assessing allegations regarding fraud, the Court's judgment is particularly tempered, and the Court finds it appropriate to hold the Defendant to a heightened pleading standard. Super. R. Civ. P. 9(b). Indeed, where the allegations of a complaint contain averments of fraud or mistake, courts have followed Rule 9(b)'s particularity requirements. *See Powers v. Boston Cooper Corp.*, 926 F.2d 109, 111 (1st Cir. 1991). Although Rule 9(b) "does not require the pleadings of detailed evidentiary matter, but it does require identification of circumstances constituting fraud." *Town of Hooksett Sch. Dist. v. W.R. Grace & Co.*, 617 F. Supp. 126 (D.N.H. 1984) (citing *Trussell v. U.S. Underwriters, Ltd.*, 228 F. Supp. 757, 774 (D.C. Colo. 1964) (granting motion for more definite statement where plaintiff's complaint alleged insufficient particulars or circumstances in connection with fraud count)). Rule 9(b) provides: "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally." Super. R. Civ. P. 9(b).

"What constitutes sufficient particularity necessarily depends upon the nature of the case and should always be determined in the light of the purpose of the rule to give fair notice to the adverse party and to enable him to prepare his responsive pleading." *Women's Dev. Corp. v. City of Cent. Falls*, 764 A.2d 151, 161 (R.I. 2001) (quoting 1 Robert B. Kent et al., *Rhode Island*

Civil and Appellate Procedure § 9:2 (West 2006)); *see also Feinstein v. Resolution Trust Corp.*, 942 F.2d 34, 43 (1st Cir. 1991). Although neither the text of the rule, nor opinions of our Supreme Court, explicitly set forth the degree of particularity required, the First Circuit, when applying Rule 9(b), requires a pleader to specify the time, place, and content of the alleged false or fraudulent representations. *Feinstein*, 942 F.2d at 42-43 (citing *New England Data Servs., Inc. v. Becher*, 829 F.2d 286, 291-92 (1st Cir. 1987)); *see also Powers*, 926 F.2d at 111. Additionally, when faced with claims sounding in fraud, the First Circuit has found that "allegations based on 'information and belief' . . . do not satisfy the particularity requirement unless the complaint sets forth the facts on which the belief is founded." *New England Data Servs., Inc., 829 F.2d at 288 (citing Wayne Inv., Inc. v. Gulf Oil Corp.*, 739 F.2d 11, 13 (1st Cir. 1984)). Further, the pleading of supporting facts is necessary "even when the fraud relates to matters peculiarly within the knowledge of the opposing party." *Wayne Inv., Inc.*, 739 F.2d at 14.

Here, based on the evidence presented—including Defendant's admissions and Plaintiff's affidavits—it appears that Plaintiff has failed to satisfy any of the elements of fraud. Plaintiff has seemingly provided no evidence beyond the fact that he was involved romantically with the Defendant and during their relationship performed common relationship duties (*i.e.*, interacting with Defendant's children and spending quality time with Defendant). In fact, during the hearing held on November 27, 2017, Plaintiff made no attempt to argue in favor of his claim for fraud. There is virtually no mention of his fraud claim and as a result, the Court ultimately found the facts alleged confirmed "a long, loving and mutual beneficial relationship to [both Plaintiff and Defendant] that ended" and ultimately Plaintiff could not "make [Defendant] stay in a relationship if [she did] not wish to stay in a relationship." (Tr. 13-14, Nov. 27, 2017) (Tr. I.)

There is no evidence to show that any false or misleading statements were made[4] or that the Defendant knew she was making any false or misleading statements. All that has been shown is that Plaintiff and Defendant were romantically involved and that said relationship ended. It should go without saying that there is no cause of action in Rhode Island for ending a personal, romantic relationship. Therefore, Defendant's Motion for Summary Judgment as to fraud is granted.

B

Negligent Misrepresentation

To establish a *prima facie* damages claim in a fraud case, the plaintiff must prove that the defendant "made a false representation intending thereby to induce plaintiff to rely thereon" and that the plaintiff justifiably relied thereon to his or her damage. *Cliftex Clothing Co. v. DiSanto,* 88 R.I. 338, 344, 148 A.2d 273, 275 (1959); *accord LaFazia v. Howe*, 575 A.2d 182, 185 (R.I. 1990). A misrepresentation is '"any manifestation by words or other conduct by one person to another that, under the circumstances, amounts to an assertion not in accordance with the facts."' *Halpert v. Rosenthal,* 107 R.I. 406, 413, 267 A.2d 730, 734 (1970) (quoting Restatement (First) *Contracts* § 470 at 890-91 (1932)). The "justifiable reliance" element requires a plaintiff to show that "he was induced to act because of his reliance upon the alleged false representation." *E. Providence Loan Co. v. Ernest*, 103 R.I. 259, 236 A.2d 639, 642 (1968).

[4] Neither the Complaint nor any other material presented by the Plaintiff alleges that Defendant promised to remain in a *permanent* relationship with Plaintiff. Rather, the Complaint merely alleges that "Defendant falsely represented to Plaintiff's [sic] that his life would be enhanced and secure *if* he remained with her as a companion partner." (Compl. ¶ 26) (emphasis added). Furthermore, in his Answers to Interrogatories, Plaintiff admits that "[t]he subject of living with Defendant for 'the rest of her or [his] life' was never mentioned." (Pl.'s Answer Interrog. 4a.) It is clear then that Defendant never made any representation regarding the permanency of their relationship.

At the November 27, 2017 hearing, the Court ultimately found the following with respect to Plaintiff's claims for fraud and negligent misrepresentation:

> "THE COURT: I just went through your Request for Admissions [and] these are basically the same facts you put in your Complaint. [T]he question on this whole issue is: [these admitted facts] confirm[] a long, loving and mutual beneficial relationship to each other that ended. I don't know what cause of action you have against this person. You cannot make somebody stay in a relationship if they do not wish to stay in a relationship. . . .
>
> " . . . I [don't] see any negligent misrepresentation, I don't see any fraud here, you had a relationship that ended. Usually the definition of a relationship you are talking about caulking the bathroom tile and helping her son with the homework . . . you are not going to be reimbursed for those kinds of things. She did things for you. . . .
>
> "I don't [think] negligent misrepresentation and fraud is supported by any facts, including the admissions, even if every one of them was admitted. . . .
>
> "All the information you have here . . . it's just that, they are facts. You had a good relationship for "x" period of time, and you did things for each other and it ended. And I can't help that. I don't think that gives you any cause of action against her that she did not want to continue that relationship with you.
>
> "If you were in Family Court it might be different. You didn't make any argument with regard to common law marriage. It would be different if you were in Family Court, but you are not in Family Court. You have to have some cause of action and some reason to be able to go forward against her, and I don't see that you have." (Tr. I at 13-15, 18, 20-21.)

It is clear that Plaintiff is unable to prove that Defendant made any representations as to the permanency of the relationship. If anything, the Defendant only represented that she would be in a "long-term" relationship with the Plaintiff. Plaintiff insists that he detrimentally relied on the notion that he would be in a relationship with Defendant for the foreseeable future, but has

given no evidence to prove this allegation.[5] As this is the case, Defendant's Motion as to negligent misrepresentation is granted.

C

Unjust Enrichment

"The doctrine of unjust enrichment is equitable in its nature, and generally it is applied to permit a recovery where one person has received a benefit from another and the retention thereof would be unjust under some legal principle recognized in equity." *R.I. Hosp. Trust Co. vs. Rhode Island Covering Co.*, 96 R.I. 178, 190 A.2d 219 (1963). "It is well established that '[r]ecovery for unjust enrichment is predicated upon the equitable principle that one shall not be permitted to enrich himself at the expense of another by receiving property or benefits without making compensation for them.'" *Cote*, 148 A.3d at 550 (quoting *South County Post & Beam, Inc. v. McMahon*, 116 A.3d 204, 213 (R.I. 2015)) (internal quotations omitted). "Under Rhode Island law, unjust enrichment is not simply a remedy in contract and tort but can stand alone as a cause of action in its own right." *Dellagrotta v. Dellagrotta*, 873 A.2d 101, 113 (R.I. 2005) (citing *Toupin v. Laverdiere*, 729 A.2d 1286 (R.I. 1999)).

To recover for unjust enrichment, a claimant must prove: "(1) that he or she conferred a benefit upon the party from whom relief is sought; (2) that the recipient appreciated the benefit; and (3) that the recipient accepted the benefit under such circumstances 'that it would be inequitable for [the recipient] to retain the benefit without paying the value thereof.'" *Dellagrotta*, 873 A.2d at 113 (quoting *Bouchard v. Price*, 694 A.2d 670, 673 (R.I. 1997)). The focus of the three-part analysis is whether the defendant has derived some benefit from the

[5] Plaintiff has merely provided the Court with statements that he helped Defendant's children with their homework, that the Defendant trusted him with financial advice, and that Defendant trusted Plaintiff with estate planning. It would not seem that any of these allegations would go beyond the regular duties of a romantic partner to amount to detrimental reliance.

plaintiff's services and would be unjustly enriched without making fair compensation. *Nat'l Chain Co. v. Campbell*, 487 A.2d 132 (R.I. 1985).

As to Plaintiff's claim for unjust enrichment, it appears that the only fact in dispute is whether the Plaintiff actually gave Defendant advice, which Defendant took and used to her benefit. Plaintiff asserts that he devoted his "time, skill, and expertise that benefited the Defendant to my detriment" and is therefore entitled to compensation for said benefit. Specifically, Plaintiff avers that Defendant "requested [his] assistance with a family trust" that was purportedly worth sixteen million dollars. (Pl.'s Supp. Aff.) Plaintiff insists that he advised the defendant "on certain actions to take" with regard to this trust, and encouraged the Defendant to file "a request for a tax ruling from the IRS." (Pl.'s Supp. Aff.) Plaintiff avers that, per this advice, the IRS ruled in Defendant's favor in a manner "that would preclude substantial taxes" in the future. (Pl.'s Supp. Aff.) Plaintiff argues that he "would not have researched and recommend the tax advice for a [sixteen] million dollar estate but for [the Defendant's] representations . . . for [their] long-term relationship commitment." (Pl.'s Supp. Aff.) It should be noted, however, that Plaintiff submitted no evidence beyond his Affidavit of said research regarding this particular tax issue.

Conversely, Defendant contends that Plaintiff did not, in fact, confer any benefit onto her with regard to the trust in question because she never sought any advice from the Plaintiff regarding the trust. Additionally, Defendant contends that Plaintiff's claim for unjust enrichment is based solely upon alleged uninformed advice he gave to the Defendant, having never read or reviewed the trust or any financial statements. Defendant submits her own affidavit, the

Affidavit of Sally and David Mulhern,[6] as well as a letter from the IRS regarding the trust at issue in order to show that any action taken with respect to the trust was not because of any advice given by the Plaintiff to the Defendant.

In her own affidavit, Defendant attests that she "never asked the Plaintiff to provide [her] with any tax advice or help in resolving any family tax issues or any financial help, as the trusts were all managed by [her] father, his legal counsel and/or the trust departments of major banking institutions. . . ." (Rhault Aff. ¶ 4.) In fact, Defendant maintains that she "did not know any specific details or issues concerning" the trust and, therefore, "could not have informed the Plaintiff of this issue" in the first place. (Rhault Aff. ¶ 8.) Defendant further attests that "if the Plaintiff provided any taxation suggestions, [she] did not convey them to [her] parents or the financial advisors." (Rhault Aff. ¶ 5.)

In their affidavit, Sally and David Mulhern attest that any action taken with regard to the trust "was exclusively based on [their] professional judgment and recommendations" to Defendant's family and was "not influenced in any way by any third party, including but not limited to. . . Mr. Paroskie." (Mulhern Aff. ¶ 22.) Defendant essentially argues, with the support of these affidavits, that Plaintiff's understanding of the trust and his role with respect to that trust was erroneous, and that Plaintiff ultimately had nothing to do with it. As this is the case, Defendant contends that Plaintiff conferred no benefit onto the Defendant that would entitle him to just compensation.

At the outset of this litigation, Plaintiff argued that Defendant failed to answer certain requests for admissions submitted by Plaintiff.[7] Essentially, Plaintiff sent a Request for

[6] Sally and David Mulhern attest that they provided legal representation to the Defendant's parents in connection with their trust and estate matters.

[7] Examples of Plaintiff's requests for admissions include the following:

Admissions to the Defendant and the Defendant answered by mail rather than through the electronic filing system. Plaintiff argues that because the answers were not filed electronically and because Plaintiff never opened the answers sent via mail, Defendant missed the thirty-day window to respond and thus, under Rule 36, those admissions must be deemed admitted.[8]

> "76. During the summer or early fall of 2002, Defendant requested advice from Plaintiff regarding a trust granted by her grandmother . . .
>
> "82. During the summer or early fall of 2002, Plaintiff advised Defendant to search for the [trust] document, including searches at various registries of deeds.
>
> "83. During the summer or early fall of 2002, Plaintiff advised Defendant that if the document was found that it should be determined whether it contained any basis for modification or invalidation.
>
> "84. During the summer or early fall of 2002, Plaintiff advised Defendant that if any basis for modification or invalidation of the document was found that would reduce taxes on the trust beneficiaries, then the family should request a ruling from the Internal Revenue Service regarding a reduction in taxes.
>
> "85. During the summer or early fall of 2002, Plaintiff advised defendant that time was of the essence . . ." (Pl.'s First Set Req. for Admis. 6-7.)

[8] Super. R. Civ. P. 36 states, in pertinent part:

> **"(a) Request for Admission.** A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request * * *
>
> "Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty (30) days after service of the request, or within such shorter or longer time as the court may allow, * * * If objection is made, the reasons therefor shall be stated. The answer shall specifically deny

Because Plaintiff is *pro se*, it is unclear whether he was included in the electronic filing system to receive electronically filed responses. (Tr. 2, Feb. 26, 2018) (Tr. II). It appears that Plaintiff is, in fact, listed in the system but is not identified as an authorized server. *Id.* However, after hearing much discussion and viewing the facts in a light most favorable to the Plaintiff, this Court deems all admissions pertaining to the actions taken by Plaintiff with respect to the trust admitted.

Plaintiff argues that he is entitled to relief on his unjust enrichment claim given admissions by the Defendant. However, after review of the admissions, and taking them as true, it appears Plaintiff has still failed to prove any element of unjust enrichment. At most, the admissions show that Plaintiff had some vague knowledge about some kind of trust and that Plaintiff recommended that Defendant seek some kind of tax relief from the IRS pertaining to this trust. The admissions fail to show that Plaintiff gave any specific advice that Defendant could reasonably rely on; that Plaintiff was qualified to give such advice; and that Plaintiff suffered some detriment as a result of giving such advice. Plaintiff has not shown that any formal agreement between the parties existed, but has merely exhibited that Plaintiff gave some kind of informal advice to Defendant. The admissions also fail to specify what benefit, if any, Plaintiff received by following this purported advice. Therefore, even taking all requests for

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> the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter." Super. R. Civ. P. 36(a) (emphasis added).
>
> "Regarding the effect of a party's admission or failure to deny a request for admission, Rule 36(b) further states that "[a]ny matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission." Super. R. Civ. P. 36(b).

admissions as true, Plaintiff has still failed to prove he has any cause of action under an unjust enrichment theory.

Plaintiff also provided a number of affidavits[9] in support of his claims, but supplied this Court with no specific evidence of this purported tax advice or any evidence to show Defendant took such advice to her advantage. It should be noted that the numerous Affidavits submitted by the Plaintiff go no further than attesting that Plaintiff "advised [Defendant] on certain actions to take, that she followed, including a request for a tax ruling from the IRS." (Pl.'s Aff. 3.) The affidavits give no specific information as to the advice given and makes no mention of the steps Defendant took to follow such advice. Plaintiff's attestations are vague, at best.

At the February 26, 2018 hearing, Plaintiff also made no further clarifications as to the advice he gave to Defendant or the benefit she appreciated as a result of such advice. Essentially, Plaintiff insists that he had some knowledge of some trust existing at some point and recommended that Defendant make efforts to find that trust. Plaintiff notes,

> "[Defendant] didn't put her family estate in my hands. [Defendant] said, 'We have a situation. We have a document that's been lost, and that document is going to cause us problems with estate taxes on what [Defendant] calls her grandmother's trust, what would you do with it? Give me your advice.' So I gave [Defendant] my advice. I said, 'You find that document and you work very hard. . . . You find that document, scrutinize it, see if there's any basis for appealing to the IRS on this document that will change it from a bad tax situation to a good tax situation. . . .' So I lit the fire under her." (Tr. II at 6, 8) (emphasis added).

The Court addressed Plaintiff a number of times in order to clarify exactly what benefit he claimed to have conferred onto the Defendant. The Court found as follows:

[9] After review of the documents submitted by the Plaintiff, it appears that Plaintiff has submitted a number of affidavits that essentially allege the same set of facts in the same manner. It would appear that Plaintiff has resubmitted the same affidavit a number of times, only changing the heading for each. Each affidavit seems to be a cut-and-paste version of any prior affidavit and brings forth no new evidence.

> "THE COURT: [S]o you're saying that [Defendant] asked your opinion and you told her she should find the document and lit a fire underneath her, is that basically what you told her?
>
> PLAINTIFF: Yeah.
>
> THE COURT: And that's the benefit you gave her?
>
> PLAINTIFF: And the benefit is worth 40 million, maybe 80 million dollars in the estate—in the situation.
>
> THE COURT: But you didn't tell [Defendant] to do anything. You told her to find a document and light a fire, that's the advice you gave her.
>
> PLAINTIFF: And attack it.
>
> THE COURT: And attack it. Okay. But you didn't know what you were attacking, because you didn't have [any trust documents]. . . . I want to know what you think you did to confer a benefit. You told her to find a document, you lit a fire underneath her and you told her to attack it, is that basically it?
>
> PLAINTIFF: That's it."[10] (Tr. II at 9-10.)

Even if we accept the Plaintiff's attestations and testimony as fact—if we accept Plaintiff's claims as true—Plaintiff has nonetheless failed to successfully prove any element of unjust enrichment. Plaintiff is unable to recall—through affidavit or otherwise—precisely what advice he gave to Defendant. Besides advising the Defendant to find an unidentified document and "light[ing] a fire" under the Defendant, Plaintiff has established no set of facts in which he

[10] The Court had a number of exchanges similar in substance to this throughout the hearing. For example, the Court and Plaintiff discussed the alleged benefit Plaintiff conferred unto Defendant and arrived at the following conclusion:

> "THE COURT: What you're saying, the benefit that you gave them, you lit a fire under them, you told them they should hire an expert, they should attack it—find it, first of all, and do all that. That's the benefit—that is the benefit you gave them?
>
> PLAINTIFF: Yes. That's the benefit." (Tr. II at 13.)

conferred a benefit unto the Defendant and that Defendant accepted that benefit such that "it would be inequitable for [her] to retain the benefit without paying the value thereof." *Bouchard*, 694 A.2d at 673.

It should also be noted that at this hearing, it was established that Plaintiff was in no way qualified to give Defendant sophisticated estate tax advice. Plaintiff admits his expertise and education did not qualify him as a tax specialist. It was understood that Plaintiff was neither an accountant, a lawyer, nor a financial advisor fit to give Defendant tax advice. In fact, Plaintiff admits that a portion of his advice to Defendant included him encouraging her to hire experts to resolve this tax issue.

> "THE COURT: You know the tax law that applies to multi million [sic] dollar estates and trusts that was passed from generations, do you know that law?
>
> PLAINTIFF: No, I don't, so you hire an expert . . . to get into that, after someone lights the fire to get you going. . . .
>
> THE COURT: All right. That's your opinion. What you're saying, the benefit that you gave them, you lit a fire under them, you told them they should hire an expert, they should attack it—find it, first of all, and do all that. That's the benefit—that is the benefit you gave them?
>
> PLAINTIFF: Yes. That's the benefit." (Tr. II at 12-13.)

Plaintiff admits that he was unqualified to give the Defendant advice as to this particular tax issue and, understanding that at the time encouraged her to hire actual experts. Plaintiff goes no further to explain exactly what benefit Defendant appreciated as a result of his advice. Interestingly, the particular issue surrounding this trust, according to Defendant's trust and estate attorney, is "very arcane [in] nature, rarely encountered even by specialized trust and estate attorneys." (Mulhern Aff. ¶ 20.) This would suggest even further that Plaintiff simply was not qualified to advise the Defendant on any aspect regarding the trust.

Finally, it is also important to note that Defendant had no managerial control over the trust in question and did not have any decision making authority over the trust. Rather, Defendant and her family have had legal representation in connection with their trust and estate matters since 2004. *Id.* ¶ 4. As it has been established above, any decision regarding the trust was made at the recommendation of the family's trust and estate attorneys. *Id.* ¶¶ 21, 22. No decisions with respect to the trust were made in any way by the Defendant. As such, any tax benefit the Plaintiff alleges the Defendant may receive from said trust—a benefit that has not yet been realized—is not due to any action taken by the Plaintiff. Rather, such benefit would be a result of the advice given by the trust and estate experts employed by Defendant and her family.

Rule 56 mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case after adequate time for discovery and upon motion. *Celotex Corp.*, 477 U.S. at 317. As such, Plaintiff is obligated to present this Court with some set of facts that would form the basis of a claim for unjust enrichment. Plaintiff has not done. Despite having an obligation to prove the existence of a disputed material issue of fact, Plaintiff has failed to provide much beyond mere allegations or legal conclusions and opinions with regard to his argument for unjust enrichment. *See Accent Store Design, Inc.*, 674 A.2d at 1225. Although Plaintiff attests that he advised the Defendant on certain actions to take with regard to a certain family trust and estate taxes, he has provided no specific facts to show that he did so and that the Defendant followed such advice, nor has he provided evidence that such advice led to any benefit on the Defendant. Plaintiff has gone no further than to allege that he "lit the fire" under Defendant and encouraged her to do something—albeit nothing specific—with the family trust.

And though it is not this Court's duty to weigh the credibility of evidence at this summary judgment stage, it should be emphasized that Plaintiff's affidavit—the only evidence submitted by the Plaintiff—does not even go so far as to allege exactly what benefit Defendant enjoyed as a result of such advice and what detriment Plaintiff suffered in giving the advice. *See DeMaio v. Ciccone*, 59 A.3d 125 (R.I. 2013). Rather, Plaintiff merely attests that he generally gave Defendant some kind of estate tax advice and such advice may, one day, result in a preclusion of "substantial taxes" for the Defendant. (Pl.'s Supp. Aff.) Even more, at the hearing held on February 26, 2018, Plaintiff was unable to articulate what benefit he conferred onto the Defendant. Plaintiff merely repeated the fact that he told Defendant to "find a [tax] document, [that he] lit a fire underneath [the Defendant] and [that he] told [Defendant] to attack" the tax issue she was facing. That is all that was presented to this Court. There is simply no evidence to show that Defendant enriched herself as a result of Plaintiff's advice and there is certainly no evidence to show that such a benefit was had at the expense of the Plaintiff. *See Cote*, 148 A.3d at 550.

On the other hand, Defendant has provided affidavits which state precisely the opposite of Plaintiff's contentions. Defendant has gone beyond mere legal conclusions in showing that no benefit was conferred from the Plaintiff to the Defendant. While Defendant has met her affirmative burden, Plaintiff has failed to form any basis for an unjust enrichment cause of action and has not demonstrated that any genuine issues of material fact remain. As such, Summary Judgment for the Defendant is appropriate.

IV

Conclusion

For the aforementioned reasons, Defendant's Motion for Summary Judgment is granted and Plaintiff's Motion for Summary Judgment is denied. Prevailing counsel shall prepare the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Robert Michael Paroskie v. Linda A. Rhault
CASE NO:	KC-2017-0585
COURT:	Kent County Superior Court
DATE DECISION FILED:	August 29, 2018
JUSTICE/MAGISTRATE:	McGuirl, J.

ATTORNEYS:

For Plaintiff:	Robert M. Paroskie, *pro se*
For Defendant:	Steven J. Hirsch, Esq.