STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

[FILED: July 11, 2019]

MAL A. SALVADORE,	:	
Plaintiff,	:	
	:	
vs.	:	**C.A. No. WC 2010-0437**
	:	
DAVID C. LAROCHE, BRIAN LAROCHE,	:	
STEPHEN LAROCHE, RANDI C. LAROCHE,	:	
WILDFLOWER CORPORATION,	:	
WILDFLOWER STONY FORT, LLC,	:	
DAVID C. LAROCHE d/b/a WILDFLOWER	:	
CORPORATION, DAVID C. LAROCHE d/b/a	:	
WILDFLOWER STONY FORT, LLC,	:	
BRIAN LAROCHE d/b/a WILDFLOWER	:	
CORPORATION, BRIAN LAROCHE d/b/a	:	
WILDFLOWER STONY FORT, LLC,	:	
STEPHEN LAROCHE d/b/a	:	
WILDFLOWER CORPORATION and	:	
STEPHEN LAROCHE d/b/a	:	
WILDFLOWER STONY FORT, LLC,	:	
Defendants.	:	

DECISION

K. RODGERS, J. The gravamen of the instant action before the Court is the erstwhile attorney-client relationship between Plaintiff Mal A. Salvadore (Plaintiff or Salvadore) and the late David F. LaRoche (David F.[1]). David F. signed a promissory note (the Note) by which he agreed to pay off the outstanding legal fees owed to Plaintiff for services rendered on his behalf. However, before any payments were made on the Note, David F. passed away. Plaintiff now seeks to collect the fees previously owed by David F. by imposing a constructive upon the assets of certain

[1] As five members of the LaRoche family are involved in this matter, each will be referred to by his or her first name and, where needed, by first name and middle initial. No disrespect is intended.

corporations of which David F.'s three sons, defendants David C., Brian and Stephen, are the sole shareholders, or alternatively declaring that such corporations are the alter ego of the Plaintiff's now-deceased client.

This case was tried without a jury. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-13 and 8-2-14(a). For the reasons set forth herein, judgment shall enter in favor of Defendants on all counts.

I

Findings of Fact

Upon assessing the credibility of the witnesses and weighing all evidence presented, including undisputed facts and exhibits submitted by the parties, this Court makes the following findings of fact.

A

David F.'s Indebtedness to Plaintiff

Plaintiff is a resident of South Kingstown and an attorney duly licensed to practice law within the State of Rhode Island. *See* Joint Statement of Undisputed Facts and Undisputed Exhibits at 1, ¶¶ 1-2. Plaintiff first became acquainted with David F. in January of 1991 and provided him with legal counsel for nearly a decade thereafter, which included at least two involuntary bankruptcy proceedings, the first lasting from 1991 through 1996, and the second from 1997 through 1999. Following this legal representation, David F. was indebted to Plaintiff in the sum of approximately $160,000.00, which had not been paid through either bankruptcy estate or from David F. personally.

In an effort to collect the outstanding legal fees, Plaintiff had periodic conversations with David F. to suggest a payment arrangement. During the mid- to late-summer of 2001, Plaintiff and David F. agreed that the remaining unpaid balance due would be reduced by $20,000.00, from

$160,000.00 to $140,000.00. In October of 2001, while David F. was incarcerated at the Adult Correctional Institutions (ACI),[2] Plaintiff presented David F. with a promissory note for the payment of the agreed upon $140,000.00. Shortly thereafter, Plaintiff received the Note in the mail from David F., purporting to be David F.'s signature thereon and dated October 10, 2001.[3] *See* Joint Ex. 1. By its express terms, the Note reflects the principal sum of $140,000.00; an annual interest rate of 7%; interest-only payments for five years beginning on October 10, 2002 and due annually thereafter; and the entire principal and all interest due to be paid in full on October 10, 2006. *Id.* The Note further provides for payment of the entire balance, including principal and interest, at the option of the holder of the Note without presentment, notice or demand upon any of the following events: default in the payment or performance of any obligation under the Note; death; or any manner of dissolution, liquidation, insolvency, or bankruptcy filed by or commenced against David F. *See id.*

The maturity date of the Note, October 10, 2006, came and went with no payments thereon ever having been made. Every couple of months thereafter, Plaintiff would discuss payment on the Note with David F. to no avail. Plaintiff testified to a specific conversation with David F. in the late spring or summer of 2008 wherein they met at Plaintiff's residence in South Kingstown for nearly an hour and later traveled together to view a parcel of real estate in North Kingstown.[4] During that visit, David F. suggested that Plaintiff purchase the North Kingstown real estate for $800,000.00 to $900,000.00. Although Plaintiff indicated an interest in purchasing the real estate

[2] No evidence was offered regarding the reason for or dates of David F.'s incarceration.

[3] The Note is not executed by a witness where indicated. *See* Joint Ex. 1. The authenticity of David F.'s signature, however, does not appear to be contested. Rather, the parties generally reserved their rights to challenge the admissibility of the Note. *See* Joint Statement of Undisputed Facts and Undisputed Exhibits at 2, ¶ 1.

[4] The parcel that was viewed was identified as the real estate that was eventually purchased by or at that time owned by Wildflower Stony Fort, LLC.

if the price were fair and the amount due on the Note was deducted from the purchase price, Plaintiff ultimately declined because he believed the price exceeded the property's fair market value. At no time did David F. make Plaintiff aware that he did not own that real estate.

Sometime in 2008, Plaintiff learned that David F. was terminally ill. During David F.'s period of grave illness, Plaintiff made a personal decision not to take any action against David F. to collect on the matured Note. David F. passed away on February 26, 2009. *See* Joint Statement of Undisputed Facts and Undisputed Exhibits at 2, ¶ 9-A.

Following the death of David F., Plaintiff contacted defendant David C., the oldest son of David F. and his ex-wife, defendant Randi, to resolve the debt owed by his father. After several informal exchanges of unfulfilled promises, which included real estate referrals over time from David C. to Plaintiff's law practice, Plaintiff sent a letter to Randi. Plaintiff did not receive a response from Randi, nor did he recoup any legal fees owed to him.

B

Wildflower Corporation

In an effort to trace David F.'s money to the named defendants in the instant action, Plaintiff offered evidence on the funding and operations of three corporations,[5] defendant Wildflower Corporation (Wildflower Corp.), defendant Wildflower Stony Fort, LLC (Wildflower Stony Fort), and Wildflower Gilbert Stuart, LLC (Wildflower Gilbert Stuart).

[5] Plaintiff also offered evidence on Wildflower Corporation "II," for which there was some evidence that Articles of Incorporation were filed with the Rhode Island Office of the Secretary of State on July 9, 2001. *See* Exs. 26, 30. There is no clear evidence offered which demonstrates that Wildflower Corporation "II" was a different entity than Wildflower Corp., which was formed in 1996, or was a reinstatement of Wildflower Corp. This lack of evidence, however, is immaterial to the ultimate findings herein.

In 1993, defendants David C., Brian and Stephen each received monetary transfers from Rock Realty, Inc. (Rock Realty) at a time when they were all minors. No credible evidence was offered to demonstrate who served as an officer, director or agent of Rock Realty, or who directed or authorized the transfer of funds to David C., Brian and Stephen. In March of 1996, Wildflower Corp. was formed, of which defendant Randi, David F.'s then-wife, served as President. At or about that same time, Wildflower Corp. began to enter into a series of real estate transactions which, at times, required each of the LaRoche children to provide capital towards those transactions. Specifically, in 1996, Wildflower Corp. purchased a lot in North Kingstown designated as Assessor's Plat 22, Lot 23 from Andrea Davia and Susan Davia (collectively, the Davias) for approximately $110,000.00. In order to purchase the lot from the Davias, David C., Brian and Stephen each contributed $17,333.00 to Wildflower Corp.

Shortly thereafter, in June of 1996, Wildflower Corp. acquired a condominium in Quechee, Vermont (Ridge 1C) for $112,500.00. In order to make the purchase of Ridge 1C, Wildflower Corp. utilized capital that was transferred from the LaRoche sons in the amount of $32,500.00 each. In addition to the funds contributed by the LaRoche sons, David F. loaned Wildflower Corp. $5,500.00 for the purchase of Ridge 1C and was subsequently repaid by Wildflower Corp. In December of 1996, Wildflower Corp. sold the Ridge 1C condominium for $123,386.00 and purchased another Quechee, Vermont condominium (Coach Road 5A) for approximately $150,000.00. In order to purchase Coach Road 5A, Wildflower Corp. again utilized capital from the LaRoche children as well as funds received by Wildflower Corp. from the sale of Ridge 1C. Shortly thereafter, Coach Road 5A was sold, and the net proceeds were placed in escrow.

By roughly 1997, when Randi and David F. were in the midst of divorcing, Randi voluntarily ceased serving as the President, Secretary, Treasurer and Director of Wildflower Corp.

Before her tenure came to an end, the mortgage to the Davias was satisfied in full. Randi's involvement in Wildflower Corp. was minimal as there was little in the way of day-to-day activity of the corporation. Nonetheless, Randi acknowledged executing the 1997 annual report, signing the paperwork relative to the two Quechee condominiums, and ensuring that the mortgage was paid.

From at least 1999[6] until 2006, David C., who was born in 1979, served as the President of Wildflower Corp. Annual reports for 2002 and 2003 reveal that David C. also served as Vice-President, Secretary and Treasurer of Wildflower Corp. *See* Exs. 32, 33. The annual reports state that the character of the business conducted by Wildflower Corp. is "the purchase, sale, and development of real estate and other investments." *Id.* The three LaRoche sons were the sole shareholders of Wildflower Corp., although neither Brian nor Stephen were active in its corporate affairs. The annual reports and tax returns of Wildflower Corp. were not routinely filed, thus leading, at various times, to the corporate charter being revoked and the corporation later being reinstated.

In his capacity as President of Wildflower Corp. and as the only individual with signatory authority, David C. executed several mortgage deeds and security agreements, all of which were secured by the North Kingstown property purchased from the Davias. Among those transactions were the following: a Mortgage and Security Agreement dated January 13, 2003, for the payment of the principal sum of $110,000.00 to Ned Stevens Advertising, Inc. (Ned Stevens Advertising), *see* Ex. 6; a Mortgage Deed dated July 9, 2004, securing the payment of the principal sum of $80,000.00 to Andrew H. Berg (Berg), *see* Ex. 8; a Mortgage Deed dated November 4, 2004,

[6] No evidence was offered identifying who served as officers or directors of Wildflower Corp. in the general time period between Randi's departure sometime around 1997 and the 1999 tax returns executed by David C. as President. *See* Exs. 35, 38.

securing the payment of the principal sum of $15,000.00 to James P. Howe (Howe), *see* Ex. 10; a Mortgage Deed dated December 2, 2005, securing the payment of the principal sum of $85,000.00 to Berg, *see* Ex. 9; and a Mortgage and Security Agreement dated May 2, 2006, for the payment of the principal sum of $32,840.62 to David M. Ryan (Ryan), *see* Ex. 11. Although without details on how all the sums borrowed by Wildflower Corp. were used, David C. did acknowledge that at least some of the funds obtained through the aforementioned mortgages may have been used to secure David F.'s bail, to pay for David F.'s legal fees and/or sums needed to retain counsel, and to keep David F. from living on the streets.

As a licensed real estate agent with Gammons Realty, David C. marketed the North Kingstown property that Wildflower Corp. had acquired from the Davias. David C. negotiated the sale and entered into a purchase and sales agreement with Jeffrey H. Parker and Margaret E. Petruny-Parker (the Parkers) for $400,000.00. *See* Ex. 23. By Warranty Deed dated May 17, 2006, Wildflower Corp. sold its interest in that property to the Parkers. *See* Ex. 12. From the proceeds of that sale, all the outstanding debts and mortgages were paid in full. *See* Ex. 23. Additionally, $56,238.38 was due to Wildflower Corp. from the proceeds of the sale. *Id.* Those funds were placed into escrow with Russell R. Sicard, Esq., in order to satisfy any amounts due upon the filing of the required tax returns and annual reports. *See* Ex. 24. Upon confirmation from the Division of Taxation and the Office of the Secretary of State that all taxes had been satisfied and that Wildflower Corp. was in good standing, *see* Exs. 25-26, the escrow agent disbursed funds to Wildflower Corp. on June 5, 2006, in the amount of $65,914.55.[7] *See* Ex. 27.

[7] On cross-examination, David C. vaguely recalled that the difference in the sum disbursed to Wildflower Corp., as compared to the escrow amount, was based upon a lesser amount due on the Ned Stevens Advertising mortgage that was paid from the sale proceeds.

Wildflower Corp. did not acquire or have an interest in any other assets after the deposit of the escrow funds in June of 2006 from the sale of the real estate to the Parkers, nor did it have any further business activity thereafter.

C

Wildflower Stony Fort, LLC & Wildflower Gilbert Stuart, LLC

On or about December 30, 2001, David F. negotiated and entered into a Purchase and Sales Agreement to purchase approximately 222 acres of land in North Kingstown for a total purchase price of $220,000.00. Ex. 13. The 222 acres were comprised of four parcels, one parcel being owned by one group[8] and three parcels being owned by an offshoot of that group[9] (collectively, the Sellers). *Id.* at Exs. A-B. The proposed closing date for the 222 acres was April 15, 2002. *Id*. The Purchase and Sales Agreement required a deposit of $11,000.00 to be paid within seventy-two hours from the Sellers' acceptance.

On April 22, 2002, David F. and the Sellers executed an Amendment to Purchase and Sales Agreement, which extended the closing date by two months. *See* Ex. 14. The Amendment to Purchase and Sales Agreement required an additional deposit of $10,000.00, plus interest of $2,170.00 and pro-rata taxes in the amount of $711.60, for a total additional amount due of $12,881.60. *Id*.

[8] The Purchase and Sales Agreement identifies North Kingstown's Assessors Plat 5, Lot 1 as being owned by Ann C. Picerne, Frank A. Ronci, Matthew T. Marcello, Jr., Anthony C. Marcello, Joseph A. Brian, Ronald R.S. Picerne and Robert E. DeBlois, Trustees of the Ronald R.S. [sic] Trust dated December 24, 1987. *See* Ex. 13, at Exs. A-B.

[9] The Purchase and Sales Agreement identifies North Kingstown's Assessors Plat 6, Lots 1 and 3 and Plat 11, Lot 1 as being owned by Matthew T. Marcello, Jr., as Trustee for Ann C. Picerne, Matthew T. Marcello, Jr., Anthony C. Marcello, Joseph A. Brian, Ronald R.S. Picerne and Robert E. DeBlois, Trustees of the Ronald R.S. [sic] Trust dated December 24, 1987. *See* Ex. 13, at Exs. A-B.

David C. did not participate in the negotiations for the Purchase and Sales Agreement or the Amendment thereto, nor did he or Wildflower Corp. pay the deposits or other expenses due under the terms of either agreement. David F., on the other hand, not only orchestrated the purchase of the 222 acres, but also negotiated the immediate sale of one parcel, Assessor's Plat 5, Lot 1, to Walter Barnes. There was no credible evidence offered to demonstrate that David F. himself paid the deposits and other expenses due under the terms of the Purchase and Sales Agreement and the Amendment thereto, or whether another person or entity paid those amounts on behalf of David F.

On June 21, 2002, David C., Brian and Stephen formed two limited liability companies, Wildflower Gilbert Stuart and Wildflower Stony Fort. *See* Exs. 50-51. The principal place of business of each of the limited liability companies is listed in the respective Operating Agreements as the Newport residence of David F. *Id.* The purpose of forming those entities was to separately purchase the real estate comprising the 222 acres that was owned by the two groups of Sellers. Wildflower Gilbert Stuart purchased Assessor's Plat 5, Lot 1 and, on the same day, sold that real estate to Walter Barnes. Wildflower Stony Fort purchased Assessor's Plat 6, Lots 1 and 3 and Assessor's Plat 11, Lot 1 (collectively, the Stony Fort property). The funds used by Wildflower Gilbert Stuart and Wildflower Stony Fort to purchase those parcels was largely provided by the proceeds from the immediate sale of Assessor's Plat 5, Lot 1 to Walter Barnes.

Ultimately, the Stony Fort property that Wildflower Stony Fort had purchased was conveyed to David C. individually sometime prior to the filing of this suit in 2010. No credible evidence was offered concerning the fair market value or the development potential of the Stony Fort property.

II

Presentation of Witnesses

At trial, Plaintiff presented five witnesses in their case-in-chief: two non-party witnesses, Andrew Berg and Nathaniel Baker; and three parties, David C., Randi, and Plaintiff. Defendants did not offer any additional witnesses.

A

Andrew Berg

Berg testified concerning business transactions he had with Wildflower Corp. Specifically, Berg was the grantee of two mortgages to the Wildflower Corp. Berg first loaned funds to Wildflower Corp. on July 9, 2004 in the amount of $80,000.00; the second loan was made on December 2, 2005, in the amount of $85,000.00. Each of the Berg mortgages was secured by the real estate that Wildflower Corp. had purchased from the Davias.

Berg could not recall when he was repaid by Wildflower Corp.; however, he testified that both mortgages were paid off in full. Berg also testified that he vaguely recalled negotiating the first loan with David F., and that he would also have had some dealings with David C. at that time.

Berg presented as a credible witness and this Court has no reason to doubt the veracity of his testimony.

B

Nathaniel Baker

Nathaniel Baker (Baker) is an investor of loans and mortgages. Baker had business dealings with David F. for over thirty years. Baker testified that David F. approached Baker for loans on two occasions in the amounts of $110,000.00 and $55,000.00. Those loans were made to Wildflower Corp. by a corporation in which Baker is a principal, Ned Stevens Advertising. Each

loan was secured by a mortgage on the real estate that Wildflower Corp. purchased from the Davias. Baker did not have any negotiations with David C. in advance of making these loans to Wildflower Corp., but it was David C. who delivered payments on the mortgages to Baker.

Like Berg, Baker offered credible testimony that this Court has no reason to disbelieve.

C

David C. LaRoche

David C. testified as an adverse witness. In many respects he was without specific recall of the details of transactions dating back eight to twenty-one years prior to his trial testimony. Starting with the earliest transactions at issue, David C. testified that he was familiar with Rock Realty; however, he had no specific knowledge of any principals, shareholders or officers of Rock Realty. He also testified that he was unaware that in 1993, Rock Realty transferred funds to him and his two brothers.

David C. did not recall when Wildflower Corp. was formed or when he became an officer of that corporation. He did recall that there were times that it became necessary to reinstate the corporate charter in order for Wildflower Corp. to be able to borrow funds and/or sell property. David C. did not recall that a new, separate Wildflower Corp. was formed in 2001. He testified that he executed multiple years' worth of tax returns at the same time in order to bring Wildflower Corp. into good standing, and that his father was not involved in the efforts to reinstate the corporate charter.

David C. testified that he and his two brothers provided financial assistance to their father to post bail on his behalf and thereafter during a period in which David F. was destitute and faced mounting legal fees. David C. acknowledged the various loans and mortgages from Ned Stevens Advertising, Ryan, Berg, and Howe that Wildflower Corp. had entered into in order to provide

such financial assistance to David F., pay real estate taxes and/or make payments on existing mortgages. David C. was involved in negotiating and securing the loans from Ryan, Berg and Howe, and was involved in making the payments due to Ned Stevens Advertising under the mortgages granted to it to secure the loans that David F. had negotiated.

With the documentary evidence to assist, *see* Exs. 23-27, 32, David C. acknowledged the sale of Wildflower Corp.'s only asset, the North Kingstown real estate, to the Parkers in May of 2006, the need to again reinstate the corporate charter to effectuate that sale, and the pay-off of the numerous mortgages from the proceeds of that sale. He could not recall the manner in which any of the proceeds from the sale of real estate to the Parkers was distributed to him and his brothers, the sole shareholders of Wildflower Corp. He acknowledged that some of those funds may have been given to his father.

With regard to the formation of Wildflower Gilbert Stuart and Wildflower Stony Fort, which occurred in 2002 at the time when Wildflower Corp.'s only asset was the North Kingstown real estate and before Wildflower Corp. had entered into any loan agreements with Ned Stevens Advertising, Ryan, Berg or Howe, David C. testified that each entity was formed in order to purchase the respective parcels from each of the two groups of Sellers of the combined 222 acres. He also testified that David F.'s interest in the Purchase and Sales Agreement and amendments thereto for property ultimately sold to Walter Barnes and the Stony Fort property was assigned "some way or another" to Wildflower Gilbert Stuart and Wildflower Stony Fort. No further inquiries were made concerning that assignment. David C. testified that his father offered ideas to him and his brothers about what could be done with the Stony Fort property, namely, that the property could be used for farming, could be subdivided, or a single-family home could be built thereon.

This Court largely accepts the testimony of David C. as being credible. It is reasonable for this Defendant and adverse witness to have lapses in recollection in the details of transactions occurring as far back as twenty-one years before his trial testimony, at a time when he was a minor. It is equally reasonable that the details of transactions as recent as eight years before his trial testimony would not be readily recalled, particularly during a time in which he observed his father incarcerated, destitute and facing many legal issues, and ultimately passing away not too long thereafter.

D

Randi LaRoche

Randi also had lapses in recollection of the matters in which she was involved, which dated back to the time of her divorce from David F. in or about 1997. With the assistance of documents used to refresh her recollection but not marked as full exhibits, Randi identified the various real estate transactions Wildflower Corp. entered into and the manner in which such transactions were funded. She offered no testimony, nor was she asked, who funded Rock Realty, who directed funds to be transferred from Rock Realty to her sons, and who or how it decided to form Wildflower Corp. She was clear in her testimony that she opted to remove herself from Wildflower Corp. at a time when she was going through a divorce with David F., because she did not want anything to do with any business dealings in which David F. was involved. There was no further explanation sought or offered concerning what business dealings Randi was referencing.

Like David C., Randi testified as an adverse witness. By its very nature, an adverse witness generally does not voluntarily offer testimony. Randi was true to form, and understandably so. Her lack of interest in being before this Court to discuss matters allegedly arising from the actions of her ex-husband of many years was palpable. However, she was neither disrespectful nor

evasive. She offered limited testimony on matters which she could recall, and which were largely confirmed through documents shown to her or introduced as full exhibits. This Court accepts Randi's testimony as truthful.

E

Mal A. Salvadore

Plaintiff testified to the manner in which David F.'s legal fees accrued and that the Note was executed in October of 2001. Plaintiff offered no explanation why it took over two years from the conclusion of Plaintiff's representation of David F. in his second bankruptcy to secure a payment plan with David F. for the hefty legal fees that were outstanding, aside from the vague reference to having conversations "every couple of months." There was also no explanation offered why Plaintiff did not demand payment in full upon David F.'s default on October 10, 2002, the first date of the interest-only payment that was due, or due any of the four years thereafter under the terms of the Note. Similarly, there was no evidence offered to explain why Plaintiff did not default David F. when all principal and interest on the Note was to be paid in full on October 10, 2006.

Plaintiff's testimony was fast-forwarded to the spring or summer of 2008 to a time when Plaintiff and David F. viewed the Stony Fort property together. On direct examination, Plaintiff testified that David F. was seeking to measure Plaintiff's interest in purchasing the Stony Fort property, that David F. never told him that David F. did not own the property, and that Plaintiff ultimately determined that David F.'s asking price was beyond the fair market value for the property and therefore did not pursue the offer. Plaintiff also testified that David F. acknowledged that he owed Plaintiff money, stated that he had strong earning ability, and that Plaintiff would be paid from the future earnings and/or sale or development of the Stony Fort property, which he

"controlled." The timing of this statement, however, was not made clear in Plaintiff's testimony. Either that statement was made at the time Plaintiff and David F. viewed the property in the late spring or summer of 2008, or the statement was made during one of the several meetings Plaintiff had with David F. up until a month or two before he passed away, meetings that Plaintiff revealed in response to being asked what other efforts were made to collect on the Note. Finally, Plaintiff testified that roughly six months before David F. died, when Plaintiff had learned that David F. was gravely ill, he decided that he would not take any action against him.

This Court recognizes that Plaintiff was both compassionate and decent in foregoing any action against David F. during his illness. However, Plaintiff's testimony outlined above is inherently inconsistent. First, if the conversation in which David F. revealed his "control" over the Stony Fort property took place at the time they viewed the property together in the late spring or summer of 2008, then any acknowledgment by David F. of his so-called "control" over the Stony Fort property is contrary to Plaintiff's suggestion that David F. was deliberately obscuring his lack of ownership in the Stony Fort property. In other words, a person hiding a lack of ownership interest in something would not be inclined to reveal his "control" over the same as such a statement may call into question the lack of ownership that was intended to be concealed. Additionally, this Court finds it much too convenient that David F. expressly phrased his interest in the Stony Fort property in a legal manner that would sustain Plaintiff's theory that the alter ego doctrine applies.

On the other hand, if the conversation took place during one of the several meetings Plaintiff had with David F. up until a month or two before his passing in February of 2009, then David F.'s statement that he had strong earning ability is wholly contrary to his grave illness. Additionally, the fact that Plaintiff had several meetings with David F. in the month or two before

his passing in an effort to collect on the Note contradicts Plaintiff's statement that he decided not to take any action in the six months prior to David F.'s death.

This Court discounts the veracity of Plaintiff's testimony as it relates to this alleged conversation with David F. concerning his control over the Stony Fort property and that the proceeds from the sale or development of that property would be used to pay the debt owed to Plaintiff.

III

Standard of Review

In a non-jury trial, the standard of review is governed by Rule 52(a) of the Superior Court Rules of Civil Procedure, which provides that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon." Super. R. Civ. P. 52(a). In a non-jury trial, "'the trial justice sits as a trier of fact as well as of law.'" *Parella v. Montalbano*, 899 A.2d 1226, 1239 (R.I. 2006) (quoting *Hood v. Hawkins*, 478 A.2d 181, 184 (R.I. 1984)). "'Consequently, he [or she] weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences.'" *Id.* (quoting *Hood*, 478 A.2d at 184). It is well established that "assigning credibility to witnesses presented at trial is the function of the trial justice, who has the advantage of seeing and hearing the witnesses testify in court." *McBurney v. Roszkowski*, 875 A.2d 428, 436 (R.I. 2005) (citations omitted). The trial justice may also "'draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations.'" *DeSimone Elec., Inc. v. CMG, Inc.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walton v. Baird*, 433 A.2d 963, 964 (R.I. 1981)).

"When rendering a decision in a non-jury trial, a trial justice 'need not engage in extensive

analysis and discussion of all the evidence. Even brief findings and conclusions are sufficient if they address and resolve the controlling and essential factual issues in the case.'" *Parella*, 899 A.2d at 1239 (quoting *Donnelly v. Cowsill*, 716 A.2d 742, 747 (R.I. 1998) (citation omitted)). The trial justice need not "'categorically accept or reject each piece of evidence in his [or her] decision for [the Supreme] Court to uphold it because implicit in the trial justices [sic] decision are sufficient findings of fact to support his [or her] rulings.'" *Notarantonio v. Notarantonio*, 941 A.2d 138, 147 (R.I. 2008) (quoting *Narragansett Elec. Co. v. Carbone*, 898 A.2d 87, 102 (R.I. 2006)).

IV

Analysis

Plaintiff's First Amended Verified Complaint asserts five counts, the majority of which are focused on the formation and/or capitalization of the various Wildflower entities. Specifically, Count I alleges unjust enrichment as to the assets of Rock Realty used to form Wildflower Corp.; Count II alleges fraud as to the capitalization of Wildflower Corp.; Count III alleges unjust enrichment in the formation and/or capitalization of Wildflower Stony Fort; Count IV alleges fraud or fraudulent transfer in the formation and/or capitalization of Wildflower Stony Fort; and Count V alleges unjust enrichment due to forbearance. As to each count, Plaintiff argues that he is entitled to the equitable remedy of a constructive trust on all the assets of Wildflower Corp. and Wildflower Stony Fort. Plaintiff also argued at trial that the doctrine of alter ego applies which would allow him to reach the assets of the corporate defendants to satisfy the debts of David F. under the terms of the Note.

In response, defendants maintain, *inter alia*, that the statute of limitations on fraudulent transfers bars recovery, that the Plaintiff was required to name the Estate of David F. Laroche[10] as a defendant, and that the Note procured while David F. was incarcerated is invalid.

A

Unjust Enrichment

Before addressing the layers of legal theories proffered by Plaintiff, this Court must focus on the causes of action set forth in Plaintiff's Amended Complaint.

Counts I, III and V each allege unjust enrichment. "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 (citing *Bouchard v. Price*, 694 A.2d 670, 673 (R.I. 1997)).

Unquestionably, Plaintiff conferred a benefit upon David F. vis-à-vis legal services that were not paid for; David F. appreciated the benefit of such legal services; and indeed, if David F. were alive, it would be inequitable for David F. to retain the benefit without paying the value thereof. However, David F. is *not* a named defendant. None of the individual or corporate defendants were provided any benefit from Plaintiff nor was any such benefit appreciated by any of them. It would be inequitable to require any Defendant to pay for something for which none of

[10] There was no evidence that an Estate of David F. Laroche was ever probated.

them received any value or benefit. Simply put, there is no evidence that any corporate or individual Defendant was unjustly enriched as a result of the legal services provided to David F. for which he remained indebted to Plaintiff.

B

Fraudulent Transfers

Plaintiff's remaining counts allege fraud and/or fraudulent transfer in the capitalization and formation of Wildflower Corp. and Wildflower Stony Fort. Inartfully drafted, the Amended Complaint seems to allege that fraudulent transfers took place in 1993 when Rock Realty transferred funds to David C., Brian and Stephen (*see* Am. Compl. ¶¶ 22, 41-42), and in 2002 when David F. transferred funds to Wildflower Stony Fort to purchase the Stony Fort property. *See id.* ¶¶ 45-46, 50-51.

If it is common law fraud that Plaintiff alleges, he "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." *Women's Development Corp. v. City of Central Falls*, 764 A.2d 151, 160 (R.I. 2001) (quoting ***Travers v. Spidell***, 682 A.2d 471, 472-73 (R.I. 1996)). If it is a fraudulent transfer under the Uniform Fraudulent Transfer Act, codified at Title 6, Chapter 16 of the Rhode Island General Laws, Plaintiff must show that a transfer was made by a debtor with an actual intent to hinder, delay, or defraud the creditor. *See* G.L. 1956 § 6-16-4(a)(1). A cause of action with respect to a fraudulent transfer is barred unless the action is brought within four years after the debtor makes the transfer or, if later, within one year after the creditor discovered or could reasonably have discovered the transfer. Sec. 6-16-9(a); see also *Supreme Bakery, Inc. v. Bagley*, 742 A.2d 1202, 1204 (R.I. 2000).

Both counts for fraud and/or fraudulent transfer fail. First, as to the transfer from Rock Realty in 1993 to David C., Brian and Stephen, any cause of action is time barred under § 6-16-9(a). Further, Plaintiff was not a creditor of David F. at the time of said transfers and therefore cannot establish the intent to hinder, delay or defraud him. Sec. 6-16-4(a)(1). Additionally, Plaintiff cannot prove any common law fraud as there was no representation made to Plaintiff at that time that was false and upon which Plaintiff relied to his detriment. *See Women's Development Corp.*, 764 A.2d at 160.

Plaintiff's allegations regarding Wildflower Stony Fort suffer the same fate. Plaintiff's evidence comes woefully short in establishing that David F. made any transfer of funds to Wildflower Stony Fort or to anyone else for the purpose of purchasing the Stony Fort property, or that David F. did so with any intent to hinder, delay or defraud Plaintiff. Sec. 6-16-4(a)(1). Likewise, there was no representation made to Plaintiff when Wildflower Stony Fort was formed or when the Stony Fort property was purchased that was false, or that Plaintiff relied upon to his detriment. *See Women's Development Corp.*, 764 A.2d at 160. Finally, that transaction, too, is beyond the four-year statute of limitations, as it took place in 2002. Even if this Court were to accept as true Plaintiff's recitation of his conversation with David F. regarding his "control" over the Stony Fort property—which this Court rejects—that conversation took place either in the late spring or summer of 2008 or within a month or two prior to David F.'s death in February of 2009, when Plaintiff reasonably could have discovered the fraudulent transfer he alleges to have taken place. Accordingly, the additional one-year savings provision also does not salvage Plaintiff's cause of action as this civil action was not filed until June 22, 2010. See § 6-16-9(a).

C

The Remedy of Imposing a Constructive Trust

Beyond failing to satisfy the elements of each cause of action asserted in his Amended Complaint, Plaintiff fails to prove he is entitled to a constructive trust upon the assets of Wildflower Corp. and Wildflower Stony Fort, or even the assets of any individual defendant.

"[A] constructive trust is a relationship imposed by operation of law as a remedy to redress a wrong or prevent an unjust enrichment. It is not a trust in which the trustee is to have duties of administration lasting for a period of time but rather a passive temporary trust in which the trustee's sole duty is to transfer the title and possession of the property to the beneficiary," nor is it "within the statute of frauds." *Simpson v. Dailey*, 496 A.2d 126, 128 (R.I. 1985). "It is well settled that '[t]he underlying principle of a constructive trust is the equitable prevention of unjust enrichment of one party at the expense of another in situations in which legal title to property was obtained by fraud or in violation of a fiduciary or confidential relationship.'" *Dellagrotta*, 873 A.2d at 111 (quoting *Renaud v. Ewart*, 712 A.2d 884, 885 (R.I. 1998) (mem.)).

"In order to convince the court that the imposition of a constructive trust is warranted, a plaintiff is required to show by clear and convincing evidence (1) that a fiduciary duty existed between the parties and (2) that either a breach of a promise or an act involving fraud occurred as a result of that relationship." *Manchester v. Pereira*, 926 A.2d 1005, 1013 (R.I. 2007) (citing *Renaud*, 712 A.2d at 885; *Cahill v. Antonelli*, 120 R.I. 879, 882-83, 390 A.2d 936, 938 (1978)). When considering the existence of a fiduciary relationship between the parties, a variety of factors may be considered, including, but not limited to, "the reliance of one party upon the other, the relationship of the parties prior to the incidents complained of, the relative business capacities or

lack thereof between the parties, and the readiness of one party to follow the other's guidance in complicated transactions." *Simpson*, 496 A.2d at 129.

Even if Plaintiff were able to sustain his burden of proving all the elements of any cause of action in his Amended Complaint, the requested remedy must be denied as there is no fiduciary relationship between Plaintiff and any of the defendants. There was no relationship that Plaintiff had with David C., Brian or Stephen, individually or in their capacities as shareholders of Wildflower Corp. or Wildflower Stony Fort, nor was there any fiduciary relationship between Plaintiff and either Wildflower entity. There was also no evidence that there was any relationship that Plaintiff had with his deceased client's ex-wife, Randi. As the first of the required elements needed to establish a constructive trust has not been satisfied, Plaintiff's request to impose a constructive trust on the assets of any or all of the individual and corporate defendants must be denied.

D

The Doctrine of Alter Ego

Although not expressly stated in Plaintiff's Amended Complaint, Plaintiff's argument at trial in support of the relief requested requests seeks to have this Court apply the doctrine of alter ego. *See* Pl.'s Post-Trial Mem. at 12-13, 15-16; Pl.'s Post-Trial Reply Mem. at 3-4. Specifically, Plaintiff asserts that Wildflower Corp., Wildflower Gilbert Stuart and Wildflower Stony Fort were David F.'s alter ego, that such corporations were formed, operated and managed by David F. in a manner that was fraudulent as to Plaintiff, and that David F. controlled the real estate owned by Wildflower Stony Fort, which he confirmed would be used to satisfy the amounts due to Plaintiff under the Note. Pl.'s Post-Trial Mem. at 15-16. According to Plaintiff's theory, then, if the

Wildflower entities are the alter ego of David F., then those corporations are liable to Plaintiff for the debts of David F. under the Note.

"The alter ego doctrine permits creditors of a corporation to reach the assets of the individual or individuals that control the corporation." *Heflin v. Koszela*, 774 A.2d 25, 30 (R.I. 2001) (citing *McFarland v. Brier*, 769 A.2d 605, 613-14 (R.I. 2001)). "The [alter ego] doctrine also 'permits[s] creditors of an individual shareholder to reach the assets of the corporation when the requirements of the doctrine are satisfied.'" *Id.* (quoting *Transamerica Cash Reserve, Inc. v. Dixie Power and Water, Inc.*, 789 P.2d 24, 26 (Utah 1990)). In *Heflin*, the court made clear that,

> "[t]o invoke the equitable alter ego doctrine, 'there must be a concurrence of two circumstances: (1) there must be such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact, the alter ego of one or a few individuals; and (2) the observance of the corporate form would sanction a fraud, promote injustice, or an inequitable result would follow.'" *Id.* (quoting *Transamerica*, 789 P.2d at 26).

To satisfy the second prong of the alter ego test, "'it must be shown that the corporation itself played a role in the inequitable conduct at issue.'" *Id.* (quoting *Transamerica*, 789 P.2d at 26). The second prong "is addressed to the conscience of the court." *Id.* (quoting *Transamerica*, 789 P.2d at 26).

1

Unity of Interest and Ownership

The evidence before this Court provides little support for Plaintiff's theory that the defendant Wildflower corporations were David F.'s alter ego. David F. had no ownership interest in defendant Wildflower Corp. or Wildflower Stony Fort. *See id.*; *cf. McFarland*, 769 A.2d at 613-14 (concluding that alter ego doctrine applied where defendant wholly owned corporate defendant). To the contrary, his three sons had ownership interests in those two entities. There

was no evidence that David F. was employed by either entity. *See McFarland*, 769 A.2d at 614 (defendant was one of two employees of corporate defendant). David F. was also not an officer of either entity.

Additionally, there was no credible evidence introduced at trial that David F. was the funding source of Wildflower Corp. or Wildflower Stony Fort. *See id.* Plaintiff's reliance on the original money transfers from Rock Realty to David C., Brian and Stephen in 1993, at a time when they were minors, and the subsequent formation of Wildflower Corp. in 1996 does not demonstrate that David F. was the funding source or controlled the operation of Wildflower Corp. or Wildflower Stony Fort. There was no evidence whatsoever that demonstrated that David F. was the driving force behind the transfer of funds from Rock Realty to the LaRoche children in 1993. The only credible evidence offered concerning the funding of Wildflower Corp. was the testimony of Randi, who confirmed generally the influx of capital and the purchase of properties by Wildflower Corp.[11] Likewise, the only credible evidence of the funding of Wildflower Stony Fort was the testimony of David C., who testified that the funds used by Wildflower Stony Fort to purchase the Stony Fort property, was the proceeds from Walter Barnes' immediate purchase of Plat 5, Lot 1 from Wildflower Gilbert Stuart. Plaintiff's contention that David F. was the funding source of any of the Wildflower entities is mere conjecture and is unsupported by the evidence.

David F.'s purported control over the Wildflower entities also fails for want of credible evidence. While David C. offered clear and credible testimony that Wildflower Corp. entered into several loan agreements for the purpose of having capital to assist his father in dealing with legal

[11] Notably, Plaintiff did not introduce as a full exhibit the document used to refresh Randi's recollection concerning the specific amounts contributed by each of her sons into Wildflower Corp. for the purchase of certain properties. That exhibit, marked as Exhibit 2 for identification only, was not authenticated in any event and would not have been admitted into evidence.

issues at a time when David F. was destitute, such evidence alone does not satisfy this Court that David F. exercised control over Wildflower Corp. such that Wildflower Corp. was the alter ego of David F. Children providing financial assistance to a parent in need, or a parent providing financial assistance to a child in need, does not render the former to be in control over the latter. The same holds true if the financial assistance is provided from or to a corporate entity.

This Court is also unpersuaded that David F. exercised such control over Wildflower Stony Fort to warrant a finding that he was the alter ego of that entity. While David F. was unquestionably the negotiator and the point person between the various parties involved in the purchase of real estate from two different groups of Sellers, the immediate sale of one parcel, and the retention of the remaining three parcels, there is no evidence that David F. benefitted in any way from those transactions or otherwise controlled Wildflower Gilbert Stuart or Wildflower Stony Fort. There was unrebutted evidence that David F.'s interest in the Purchase and Sales Agreement and amendments thereto were somehow assigned to Wildflower Gilbert Stuart and Wildflower Stony Fort. This Court will not leap to the conclusion that Plaintiff urges that such activities warrant a finding of control over a corporate entity.

Moreover, as discussed in Section II.E, *supra*, this Court does not accept as true the testimony of Plaintiff that David F. expressly stated he had control over the Stony Fort property or that the proceeds from the sale or development of such property would be used to satisfy his obligations under the Note.

Finally, this Court finds the lack of corporate formalities as some evidence that the individual Defendants had *de minimus* involvement in Wildflower Corp. to be unavailing. *See* Pl.'s Post-Trial Mem. at 4-8, 15. Unquestionably, there was a lapse in corporate filings on behalf of Wildflower Corp. from 1999 until 2002, at a time when there was also a lack in corporate

activity. Then, on December 27, 2002, David C., in his capacity as President of Wildflower Corp., made significant strides in addressing those corporate filings by executing annual reports for 2002 and 2003, *see* Exs. 32-33, federal tax returns for 1999-2001, *see* Exs. 35-37, and Rhode Island tax returns for 1999-2001. *See* Exs. 38-40. The corporate charter of Wildflower Corp. was reinstated as of January 8, 2003, and it was a corporation in good standing as of January 9, 2003. *See* Exs. 29, 30. Thereafter, Wildflower Corp. entered into mortgage agreements and ultimately sold the real estate it had purchased in 1996 from the Davias, with the corporate authority to do so. *See* Exs. 25-26. David C. also had marketed the North Kingstown property and negotiated the sale to the Parkers. David C. was indeed involved in the corporate affairs of Wildflower Corp. at the times when there was corporate activity, and his failure to follow all corporate reporting obligations during the time of inactivity does not diminish his corporate role as Plaintiff suggests.

For all these reasons, this Court rejects Plaintiff's argument that David F. had such a unity of interest and ownership in Wildflower Corp. and/or Wildflower Stony Fort such that either or both corporations were the alter ego of David F.

2

The Corporations' Role in the Inequitable Conduct

Even if this Court were satisfied that Plaintiff had sustained his burden of proving that David F. had a unity of interest and ownership in Wildflower Corp. and/or Wildflower Stony Fort, Plaintiff has failed to satisfy the second prong of the alter ego analysis. Plaintiff contends that the Wildflower entities were formed, operated and managed by David F. in a manner that was fraudulent to Plaintiff. First, with regard to Wildflower Corp., that was incorporated in 1996 at a time when Plaintiff served as David F.'s bankruptcy attorney, well before the debt owed by David F. to Plaintiff had accrued and the obligation under the Note had arisen. Wildflower Corp. had

one asset—the North Kingstown property purchased from the Davias in 1996—until the sale of that asset in 2006. Contrary to Plaintiff's assertion, *see* Pl.'s Post-Trial Reply Mem. at 3-4, Plaintiff was *not* a creditor of Wildflower Corp., and Wildflower Corp. did not have any dealings with Plaintiff. There is simply no evidence that Wildflower Corp. had played a role in any inequitable conduct directed to Plaintiff or for which Plaintiff alleges he has suffered. The observance of Wildflower Corp. as a corporate entity, to the extent it even still exists as such,[12] would in no way sanction a fraud or promote injustice, nor would an inequitable result follow.

As to Wildflower Stony Fort, that was incorporated in July 2002, several months before the first interest-only payment was due under the terms of the Note. Its only asset, the real property identified as Plat 6, Lots 1 and 3 and Plat 11, Lot 1, was purchased with proceeds from the immediate sale of property from Wildflower Gilbert Stuart to Walter Barnes. Whether David F. had the authority to negotiate the sale of the Stony Fort property to Plaintiff when they visited the property together in late spring or summer of 2008 aside,[13] of particular note, Plaintiff *rejected* the offer to purchase that property. This is not a case wherein the marketability or value of the property is alleged to be fraudulent because it was Plaintiff who elected not to engage in further negotiations to purchase that land. Thus, like Wildflower Corp., there is no evidence that Wildflower Stony Fort had played a role in any inequitable conduct directed to Plaintiff or for which Plaintiff alleges he has suffered, and the observance of Wildflower Stony Fort as a corporate entity, to the extent it

[12] There was no evidence introduced that demonstrates that Wildflower Corp. is a corporation in good standing. David C. did testify, however, that there had been no corporate activity since Wildflower Corp. sold the North Kingstown property to the Davias and paid off all its obligations under the various mortgages.

[13] This Court does not find that even this offer to sell the property demonstrated David F.'s control over the Stony Fort property to warrant a finding that Wildflower Stony Fort was the alter ego of David F.

even still exists as such,[14] would in no way sanction a fraud or promote injustice, nor would an inequitable result follow.

* * *

Apart from the specific counts in Plaintiff's Amended Complaint, Plaintiff's overarching theory at trial was that the Wildflower entities were the alter ego of David F., thus rendering him a creditor and/or entitling him to the imposition of a constructive trust over the assets of the corporations.[15] For all the reasons discussed, this Court finds that Plaintiff has failed to sustain his burden of proving that the doctrine of alter ego applies in this case. Accordingly, the imposition of a constructive trust upon the assets of any corporate or individual defendant remains unsupported and must be denied.

V

Conclusion

The underlying debt owed by the deceased David F. to Plaintiff for legal services rendered has morphed into numerous counts and additional legal theories directed toward multiple individuals and corporate entities. For all of the foregoing reasons, this Court finds that Plaintiff has failed to sustain his burden of proving any of the five causes of action for unjust enrichment,

[14] There was no evidence introduced that demonstrates that Wildflower Stony Fort, LLC, is a corporation in good standing. David C. did testify, however, that there had been no corporate activity since Plat 6, Lots 1 and 3 and Plat 11, Lot 1 were conveyed to him in his individual capacity.

[15] Even if this Court did find that the alter ego doctrine applies, the imposition of a constructive trust would still fail inasmuch as there was no fiduciary duty existing between the parties. *See Manchester*, 926 A.2d at 1013. The relationship at issue between David F. and Plaintiff was nothing more than a debtor-creditor relationship. Plaintiff offers no legal support by which a Rhode Island court would be required to elevate a debtor-creditor relationship to that of fiduciaries. If either Wildflower entity were the alter ego of David F.—which this Court expressly rejects—then it, too, would have a mere debtor-creditor relationship with Plaintiff for which no fiduciary duties are owed.

fraud and/or fraudulent transfer; that the claims for fraudulent transfer are time-barred; that Plaintiff is not entitled to the imposition of a constructive trust upon the assets of any defendant; and that neither corporate defendant is or was the alter ego of David F. Accordingly, judgment shall enter for defendants on all counts.

Counsel for defendants shall prepare and submit an Order and Judgment consistent with this Decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Mal A. Salvadore v. David C. LaRoche, et al.
CASE NO:	WC 2010-0437
COURT:	Washington County Superior Court
DATE DECISION FILED:	July 11, 2019
JUSTICE/MAGISTRATE:	K. Rodgers, J.

ATTORNEYS:

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