

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RODNEY KOCH and KRISTY KOCH,	:	NO. 08 – 02,893
Plaintiffs	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
DAVID MCHENRY and KIMBERLY McHENRY :	:	
and DAVID STAHL and JOLENE STAHL,	:	
Defendants	:	
	:	
vs.	:	
	:	
CLARENCE D. KOCH, II, and GLORIA M.	:	
BUTZ, Executors of the Estate of	:	
Clarence D. Koch, Sr.,	:	
Additional Defendants	:	Motion for Judgment on the Pleadings

**OPINION AND ORDER**

Before the Court is Plaintiff’s Motion for Partial Judgment on the Pleadings, filed April 14, 2009. Argument on the motion was heard May 14, 2009.

In their Complaint, Plaintiffs contend they are the owners of a certain piece of real property, that the McHenry Defendants own a mobile home that is located on a portion of that property, that the McHenry Defendants are holdover tenants on an oral month-to-month lease, that the Stahl Defendants reside in the mobile home pursuant to a sub-lease from the McHenry Defendants, and that despite requests directed to both sets of defendants to remove themselves and the mobile home, defendants have refused to do so. Plaintiffs seek an order of ejectment, unpaid rents, and certain sums based on theories of unjust enrichment and quantum meruit. The McHenry Defendants contend, on the other hand, that they are in possession pursuant to an oral agreement for the sale of that portion of the property on which the mobile home is located, entered into with the since-deceased father of Plaintiff Rodney Koch in 1992, and that they made the monthly payments required under the agreement and are thus entitled to a transfer of the title to them. Defendants have filed a third-party complaint against the executors of the estate of Rodney Koch’s father, seeking to have the property conveyed to them pursuant to the

alleged oral agreement, or in the alternative, seek reimbursement for the improvements made to the property.

In the instant motion for partial judgment on the pleadings, Plaintiffs seek a judgment of possession based on their assertion of a right to possession as titled owner. Defendants argue that because they fulfilled the terms of the oral agreement, they are entitled to possession under a theory of constructive trust.

A constructive trust arises where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it.

Roberson v. Davis, 580 A.2d. 39 (Pa. Super. 1990). The statute of frauds prevents the application of the theory of constructive trust in the context of real estate transfers, however, in the absence of a confidential relationship between the parties. Makozy v. Makozy, 874 A.2d 1160 (Pa. Super. 2005). Therefore, as Defendants have not pled the existence of such a confidential relationship, Plaintiffs are entitled to a judgment of possession.

**ORDER**

AND NOW, this 22<sup>nd</sup> day of May 2009, for the foregoing reasons, Plaintiffs' Motion for Partial Judgment on the Pleadings is hereby GRANTED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Randall Sees, Esq.  
Howard Langdon, Esq.  
Gary Weber, Esq.  
Hon. Dudley Anderson