

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CORINA GERBER,	:	
Plaintiff	:	DOCKET NO. 12-01,463
	:	CIVIL ACTION – LAW
vs.	:	
	:	
NAYANA FLIPSE and HEATHER KRINER,	:	
Administrators of the Estate of Daniel Gerber, Deceased,	:	
Defendants	:	

O P I N I O N A N D O R D E R

This matter comes before the Court on Defendant’s request to strike lis pendens and also a motion for more specific pleadings. Essentially, Plaintiff seeks a constructive trust and money damages for an unjust enrichment claim. Plaintiff alleges that Defendants’ decedent promised her a ¼ interest in certain real estate located on Route 220 in Woodward Township, Lycoming County, Pennsylvania. The Complainant further alleges that decedent asked Plaintiff to run the Motel on the property on a day-to-day basis; Plaintiff further alleges that she did operate the Motel in this capacity until after decedent’s death.

Based upon the pleading, the ultimate goal for Plaintiff is to recover money damages and not an interest in the land itself. Under these circumstances, the Court believes it appropriate to STRIKE the lis pendens. *See McCahill v. Roberts*, 421 Pa. 233, 239, 219 A.2d 306, 309 (Pa. 1966). In affirming the cancellation of a lis pendens, our Supreme Court reasoned that, “it would be harsh and less than equitable to decree that the land must be removed from the market until the litigation is terminated. This is particularly so where as far as the record discloses the Plaintiffs can be fairly compensated for any determined rights. *Id.* Such is the situation in this case. It is inequitable to keep the lis pendens in place when the property can be sold in the market and

money damages provided to Plaintiff, if appropriate.

Further, it should be noted that our Superior Court has upheld the discretion of a trial court in striking a lis pendens when there was no writing which contained the signature of the property owners and which indicated their acceptance of an alleged agreement concerning real estate. *See Rosen v Rittenhouse Towers*, 482 A.2d 1113, 1117 (Pa. Super. Ct. 1984). Here, as in *Rosen*, it is most likely that Plaintiff's claim would be barred by the operation of the Statute of Frauds. Therefore, the Court STRIKES the lis pendens entered in the above-captioned matter.

As to the motion for more specific pleading, Plaintiff has not alleged the facts sufficient to satisfy the stating of a cause of action for unjust enrichment, as mandated by Pa. R.C.P. 1019(a). Defendants' motion for a more specific complaint is GRANTED. Plaintiff shall file an amended complaint which specifically sets forth whether the claim is based upon a written agreement or if the agreement is strictly oral; additionally, Plaintiff shall plead the details as to when the agreement was allegedly made, the duties that were required to be performed by Plaintiff, and the special damages that Plaintiff seeks to recover. *See* Pa. R.C.P. 1019(f) (requiring matters of time, place, and special damages to be specifically stated).

ORDER

AND NOW, this 22nd day of October, 2012, it is hereby ORDERED and DIRECTED that Plaintiff's lis pendens is STRICKEN. The index shall be marked to reflect the dismissal of the lis pendens. Further, it is hereby ORDERED and DIRECTED that Defendants' preliminary objection seeking a more specific pleading is GRANTED. Plaintiff shall file an Amended

Complaint within twenty (20) days, consistent with this Opinion.

BY THE COURT,

Date

Richard A. Gray, J.

RAG/kae

cc: Joseph F. Orso, III, Esq.
Charles A. Szybist, Esq.
L. Craig Harris, Esq.
Gary L. Weber, Esq.