IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WILLIAM MILLER,	:	NO. 14 – 02,628
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
MARION MILLER,	:	
Defendant	:	Motion for Summary Judgment

OPINION AND ORDER

Before the court is Defendant's Motion for Summary Judgment, filed March 5, 2015. Argument was heard April 14, 2015.

According to his Complaint, as supplemented by his deposition transcript, attached to the motion for summary judgment, in 2003 Plaintiff purchased from his aunt a property he had previously owned[1] and instructed her to put the deed in Plaintiff's brother's name. The property was a vacant parcel of land. Plaintiff gave his brother $10,000 with which to build a cabin on the property, and Plaintiff's brother, David Miller, built the cabin. Plaintiff and his brother and their families used the cabin over the years, and Plaintiff paid the real estate taxes and electric bills for the property. In 2010, Plaintiff had a carport/garage constructed on the property (by American Steel Carports, Inc.) and he then used that building to store certain items of personal property, such as snowmobiles and a lawn mower. David Miller died in June 2014, and Plaintiff has now filed the instant suit, seeking through a count for "conversion", the return of the carport/garage and the personal property stored therein, as well as, through a count for "unjust enrichment", the return of the sums expended for the

[1] It has not been made clear when Plaintiff no longer owned the property but that date is not necessary to the court's determination.

construction of the cabin, the electric bills, the real estate taxes and, inexplicably, the well drilled on the property while Plaintiff owned the property before the property was owned by his aunt. Defendant is named as the defendant to this matter as she was David Miller's wife, and her name is on the deed with David Miller.

In her motion for summary judgment, Defendant contends Plaintiff cannot make out any of his claims. The court agrees.

To establish conversion, one must show (in circumstances such as those presented herein) the unreasonable withholding of possession from one who has the right to it. Martin v. National Surety Corporation, 262 A.2d 672 (Pa. 1970). While Plaintiff may be able to show that he has the right to possession of the items of personal property stored in the carport/garage, in light of his deposition testimony that he never asked Defendant to return the items, he cannot show that she has unreasonably withheld them.[2]

With respect to the claim for unjust enrichment, Plaintiff testified that he made the expenditures with the understanding that at some future time, his brother would transfer the deed into joint names, that is, naming William Miller and David Miller as joint owners.[3] Accepting this testimony as true, the court sees how Defendant's current refusal to follow through with that understanding might support at least part of the claim. Plaintiff admitted, however, that in 2008 or 2009, he asked his brother about the deed transfer and was told that the deed

[2] Whether the carport/garage could be disassembled without damaging the real estate was not the subject of evidence. It thus cannot at this point be definitely classified as personal property. Whether it is personal property, subject to the claim for conversion, or a real estate fixture, and therefore subject to the claim for unjust enrichment, is of no moment, however, as both claims cannot succeed, as explained further i*nfra*.

[3] The expenditure for the well was made while Plaintiff owned the property prior to his aunt owning the property (it was not clear whether anyone else owned the property in the interim). It is thus impossible that Plaintiff made

named David and Marion Miller as owners, and that it "didn't matter". Plaintiff did nothing thereafter to have his brother transfer the deed into Plaintiff's name as well. Since that time, therefore, any expenditures made by Plaintiff could *not* have been made with the alleged understanding that the property would eventually be put into joint names, and thus, any enrichment of Defendant cannot be found to be unjust.[4] With respect to the expenditures made prior to David Miller's revelation in 2008 or 2009, the four-year statute of limitations prevents the claim. *See* Bendar v. Marino, 646 A.2d 573 (Pa. Super. 1994).

ORDER

AND NOW, this day of April 2015, for the foregoing reasons, Defendant's motion for summary judgment is hereby granted.[5]

BY THE COURT,

Dudley N. Anderson, Judge

cc: Mary Kilhus, Esq.
William Carlucci, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

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that expenditure with the understanding that the property would be placed in joint names with his brother at some time in the future, and Plaintiff did not directly so testify.

[4] The court has not even considered yet whether Defendant's retention of the property as improved would be unjust, in light of Plaintiff's use of such over the years.

[5] Counsel are nevertheless encouraged to arrange for transfer to Plaintiff of the items of personal property agreed by the parties to belong to Plaintiff.