

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA**

JAMES HARRIS and OLIVIA HARRIS,	:	
Plaintiffs	:	NO. CV-21-0148
	:	
vs.	:	
	:	
LORETTA KRINER, TERESA SHULER,	:	
and SARAH KRINER,	:	CIVIL ACTION –
Defendants	:	Preliminary Objections

OPINION AND ORDER

Before the Court are Defendants’ six Preliminary Objections to Plaintiffs’ Complaint. For the reasons set forth below, Defendants’ second and fifth preliminary objections are sustained and the remainder are overruled.

I. Factual Background

It is important, first, to establish the relationship between the parties to this action. Defendant, Loretta Kriner [hereinafter “Kriner”] is the mother of Plaintiff, James Harris. Plaintiffs are husband and wife. As alleged in the Complaint, when Kriner’s husband¹ died, Plaintiffs assisted Kriner with miscellaneous tasks around her house. At Kriner’s continuous requests, and after Kriner’s promise to deed her home to them, Plaintiffs’ sold their home and moved in with Kriner in August of 2017.

From September 2017 through March 2018, with Kriner’s consent, Plaintiffs used the proceeds from the sale of their home to build an addition to Kriner’s home to be used as their living quarters. The cost of the addition totaled \$91,438.36. In April 2020, without Plaintiffs’ knowledge, Kriner deeded her home to Defendants, Teresa Shuler and Sarah Kriner, in consideration of \$1.00.

¹ Plaintiff, James Harris’ stepfather.

Defendant Shuler ordered the Plaintiffs to vacate the premises in September of 2020, which they did the following month. Plaintiffs now allege that the sale of their home and the building of the additional to Kriner's home were done on the reliance of Kriner's promise that she would deed the home to Plaintiffs.

II. Procedural Background

This action was initiated by Complaint filed on February 23, 2021. The Complaint contains four Counts, including Promissory Estoppel, Unjust Enrichment, and Fraudulent Transfer. Defendants filed their six preliminary objections on March 25, 2021. Those preliminary objections included demurrers to Counts II, III, and IV and failure to conform to law or a rule of court. The parties have briefed the issues and argument was held May 6, 2021.

III. Discussion

Pursuant to the Rules of Civil Procedure, “[p]reliminary objections may be filed by any party to any pleading and are limited to the following grounds:

(2) failure of a pleading to conform to law or rule of court . . . ; [and]

(4) legal insufficiency of a pleading (demurrer)

Pa.R.C.P. 1028(a)(2) and (4).

Because Pennsylvania is a fact-pleading state, a complaint must “formulate the issues by summarizing those facts essential to support the Plaintiff’s claim as well as give the defendant notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Lerner v. Lerner*, 954 A.2d 1229, 1235 (Pa. Super. 2008). “When considering preliminary objections, all material facts set

forth in the challenged pleadings are admitted as true, as well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.” *Richmond v. McHale*, 35 A.3d 779, 783 (Pa. Super. 2012). Pursuant to the rules of civil procedure, the Court has the authority to allow the Plaintiff to file an amended complaint if the preliminary objections are sustained. Pa.R.C.P. 1028(e).

a. Objection 1 – Demurrer as to Count III

In Count III of their Complaint, Plaintiffs seek relief under the Pennsylvania Uniform Fraudulent Transfer Act [hereinafter “Act”] and in doing so allege that they are “effectively creditors of Defendant, Loretta M. Kriner, due to the improvements which they made to the property and the failure of Loretta M. Kriner, to transfer the property to them, when she had not intent [sic] to make the transfer.” *See Plaintiffs’ Complaint at Paragraph 32*. Defendants argue that the allegations set forth in the Complaint are insufficient because they do not establish Plaintiffs as “creditors” as defined in the Act.

The Act defines a “creditor” as a “person that has a claim” and defines “claim” as “a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, **equitable**, secured or unsecured.” 12 Pa.C.S.A. § 5101(b)

(emphasis added). It is clear that a “claim” under the Act can be an equitable one pursuant to this definition.

In Count I of their Complaint, based on promissory estoppel, Plaintiffs have pled an equitable claim and Defendants have not filed preliminary objections specifically relating to Count I. Based on the averments in the Complaint, the equitable claim regarding the property transfer would have arisen at the time the Plaintiffs moved into Defendant Kriner’s residence in reliance on her promise to transfer the property to them. As this equitable claim, as pled, would have arisen prior to the transfer occurring, the Plaintiffs have sufficiently pled that a claim existed prior to Defendant Kriner transferring the property to the other two Defendants. Therefore, Defendants’ first Preliminary Objection is overruled.

b. Objection 2 – Demurrer as to Count III

As stated above, Plaintiffs seek relief under the Fraudulent Transfer Act in Count III of their Complaint. In their Wherefore Clause, Plaintiffs ask for judgment in the amount of \$91,438.36. This amount represents the total cost of improvements to the property as alleged by Plaintiffs. Defendants argue that the Act specifically outlines several remedies available but that money damages is not one of them.

The Act provides that creditors may obtain the following relief:

- (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.
- (2) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law
- (3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
 - (i) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

- (ii) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
- (iii) any other relief the circumstances may require.

12 Pa.C.S.A. § 5107(a).

In response, Plaintiffs argue that they are entitled to money damages pursuant to Rule 5108 of the Act, which states that, “[t]o the extent a transfer is avoidable in an action by a creditor under section 5107(a)(1) (relating to remedies of creditor) . . . the creditor may recover judgment for the value of the asset transferred . . . or the amount necessary to satisfy the creditor's claim, whichever is less.” 12 Pa.C.S.A. § 5108(b)(1).

As stated in the analysis above, Plaintiffs’ claims under the Act are equitable in nature based on Defendant Kriner’s promise to transfer her property to them. Plaintiffs’ claim that arose at the time of the transfer of the real property is not pled to be the improvements made by Plaintiffs but rather, the entire property. Plaintiffs’ remedy would be voiding the transfer of the property or potentially the value of the entire property if voiding the transfer were no longer possible due to subsequent transfers to a good faith transferee for fair value. Therefore, Defendants’ second Preliminary Objection is sustained. Plaintiffs’ claim for the cost of improvements to the property, as set forth in their Wherefore Clause in Count III, is hereby stricken.

c. Objection 3 – Failure to Conform – Statute of Frauds

Next, Defendants argue that Plaintiffs’ Complaint should be dismissed because it is in violation of the Statute of Frauds. The Statute of Frauds requires that all transfers of real property be in writing. 33 P.S. § 1. Plaintiffs’ claims are all based on Defendant Kriner’s alleged promise to transfer her home to them.

However, Plaintiffs have not attached any writings to the Complaint evidencing his promise.

Although Plaintiffs failed to raise the issue, Defendants' preliminary objections based on statute of frauds is impermissible pursuant to the Rules of Civil Procedure. "Except as provided by subdivision (b),² all affirmative defenses including but not limited to the defense[] of . . . statute of frauds . . . **shall be pleaded in a responsive pleading under the heading 'New Matter.'**"

Pa.R.C.P. 1030(a) (emphasis added). See *also* Pa.R.C.P. 1028(a)(4), Note ("[t]he defense of the bar of a statute of frauds . . . can be asserted only in a separate responsive pleading as new matter . . .").

Even so, Defendants' argument fails. While Defendants' third preliminary objections generally attacks Plaintiffs' Complaint for a lack of a written agreement regarding Defendant Kriner's promise to transfer the property to Plaintiffs, the case of *Vacula v. Chapman* clearly establishes that the statute of frauds does not bar claims based on oral agreements related to real estate.

"The statute of frauds does not void those oral contracts relating to land which fail to comply with the Statute's formal requirements." *Vacula v. Chapman*, 230 A.3d 431, 436 (Pa. Super. 2020), *citing Fannin v. Cratty*, 480 A.2d 1056, 1059 (Pa. Super. 1984). "Pennsylvania courts have emphasized that the Statute is not designed to prevent the performance or enforcement of oral contracts that in fact **were** made." *Id.*, *citing Zuk v. Zuk*, 55 A.3d 102, 107 (Pa. Super, 2012) (emphasis in original). Specific performance may even be ordered when there is

² Regarding assumption of the risk, comparative negligence, and contributory negligence.

a showing of part performance of an oral contract.” *Hostetter v. Hoover*, 547 A.2d 1247, 1251 (Pa. Super. 1988).

In *Vacula*, Plaintiff and Defendant orally agreed to purchase a home together but agreed that only Defendant would be listed on the deed. *Vacula*, 230 A.2d at 433. In reliance on that agreement, Plaintiff gave money to Defendant to be put toward a down payment, closing costs, and other expenses associated with purchasing a home. *Id.* at 434. Eventually, the parties’ relationship broke down and Defendant evicted Plaintiff from the property. *Id.* Rather than specific performance of the oral agreement, Plaintiff sought recover of the money she paid on account of the purchase and other expenses she incurred including mortgage and utility payments. *Id.* at 437. The Superior Court held that the Statute of Frauds is not an impediment to her recovery of such damages because Defendant “realized benefits in the form of [Plaintiff’s] financial contributions to the purchase, maintenance, and improvement of the property . . . and that it would be unjust to allow him to retain those benefits without paying her for their value.” *Id.*

In the present case, Plaintiffs Complaint is based on unjust enrichment and promissory estoppel. Similar to *Vacula*, they seek to recover monies expended to build an addition to Defendant Kriner’s property, which she orally promised to transfer to them but failed to do so. Pursuant to *Vacula*, the Statute of Frauds is not a bar to Plaintiffs’ claims and, additionally, has no relevance to Plaintiffs’ promissory estoppel and unjust enrichment claims because they are not based on the existence of a contract. See *Id.* at 437. For all of these reasons, Defendants’ third Preliminary Objection is overruled.

d. Objection 4 – Demurrer as to Count II

The elements of unjust enrichment, on which Count II of Plaintiffs' Complaint is based, are "benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value." *Vacula*, 230 A.3d at 437. Defendants state that Plaintiffs fail to sufficiently allege that Defendant Kriner "appreciated a benefit or accepted/retained such benefit." *See Defendants' Preliminary Objections at Paragraph 32*. For this reason, Defendants argue, Count II should be dismissed.

Plaintiffs allege in their Complaint that they spent a large sum of money to construct an addition to Defendant Kriner's residence in reliance on her promise to deed the residence to them and that Defendant Kriner knowingly accepted the benefit of the addition, yet failed to convey her residence to them or reimburse them for the cost of the addition after she later transferred the property to the other two Defendants. *See Plaintiff's Complaint at Paragraphs 27-29*.

It is clear from the allegations in Plaintiffs' Complaint that the benefit of the home improvements was received by Defendant Kriner when they were completed. How Defendant Kriner disposed of the benefit is irrelevant in the determination of an unjust enrichment claim. Therefore, Defendants' fourth Preliminary Objection is overruled.

e. Objection 5 – Demurrer as to Counts II and IV

In Count II of their Complaint, Plaintiffs allege unjust enrichment as to Defendant Kriner and in Count IV, they allege unjust enrichment as to

Defendants, Sarah Kriner and Teresa Shuler. Defendants argue that the relief requested is not supported by Pennsylvania law. Plaintiffs request money damages in the amount of \$91,438.36, which was calculated based on the actual cost of building the addition to the property. *See Plaintiffs' Complaint at Paragraphs 10-14.* Defendants contend that the amount of damages in an unjust enrichment claim of this sort would be the increase in the value of the home rather than the actual expenditures.

It is well settled that the measure of damages in an unjust enrichment action is the value of the benefits conferred. *Gutteridge v. J3 Energy Group, Inc.*, 165 A.3d 908, 918 (Pa. Super. 2017). Here, the cost of the improvements may be evidenced towards the value of the benefits but it is not the value itself. This means that the value could be greater or lesser than the actual money expended to make the improvements. The measure of the value would be value of improvements at time of transfer of the property. Defendants' fifth Preliminary Objection is sustained. Plaintiffs shall have twenty (20) days from the date of this Order to file an Amended Complaint.

f. Objection 6 – Failure to Conform – Jury Trial

Finally, Defendants argue that Plaintiffs' demand for a jury trial is misplaced because their claims sound in both law and equity and, "[o]nce equity obtains jurisdiction, that jurisdiction continues until all issues raised have been determined." *See Defendants' Preliminary Objections at Paragraph 45.* However, pursuant to Rule 1038.3, the Court is permitted to submit Plaintiffs' equity claims to a jury for an advisory verdict. Pa.R.C.P. 1038.3 ("In any case in which there is a claim for equitable relief, the court on its own motion or upon the petition of any

party may submit to trial by jury any or all issues of fact arising from that claim. The advisory verdict of the jury shall be in the form of answers to specific questions and shall not be binding upon the court.”). Additionally, the Rule confirms Plaintiffs’ right to a jury on non-equity claims and the Court has the option to sever the equity and non-equity claims or hold one trial. The Court will defer this determination until the time of the pre-trial conference. Defendants’ sixth Preliminary Objection is overruled.

IV. Conclusion

For the reasons set forth above, Defendants’ first, third, fourth, and sixth Preliminary Objections are overruled. Defendants’ second and fifth Preliminary Objections are sustained.

ORDER

AND NOW, this 25th day of **May, 2021**, upon consideration of Defendants' Preliminary Objection and Plaintiffs' response thereto, for the reasons set forth above, Defendants' first, third, fourth, and sixth Preliminary Objections are **OVERRULED**. Defendants' second and fifth Preliminary Objections are **SUSTAINED**. Plaintiffs shall have twenty (20) days from the date of this Order to file an Amended Complaint as to Counts II and IV. Plaintiffs' request for the relief of the cost of improvements to the property in Count III is hereby **STRICKEN**.

BY THE COURT,

Hon. Ryan M. Tira, Judge

RMT/ads

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