

SEP 30 2025

SURROGATE COURT - STATE OF NEW YORK
SUFFOLK COUNTY

DOREEN A. QUINN
CHIEF CLERK

DECISION AND ORDER

PRESENT:

HON. VINCENT J. MESSINA, JR.
SURROGATE

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In the Matter of the Application of
Gary Anderson, Executor of the Estate
Of Patricia Mantia, as Creditor of the
Estate of

File #: 2019-4334/B

Petitioner's Attorney:

Farrell Fritz, P.C.
400 RXR Plaza, West Tower
Uniondale, NY 11556

Philip A. Mantia,

Respondent's Attorney:

Natale J. Tartamella, Esq.
732 Smithtown Bypass, Ste. 300
Smithtown, NY 11787

Deceased,

To Determine the Validity and
Enforceability of a Claim Pursuant to
SCPA 1809.

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In this contested SCPA 1802 proceeding, petitioner Gary Anderson, the executor of the estate of Patricia Mantia and son of the above captioned decedent, asserts that her estate has a claim against captioned decedent's estate in the amount of \$422,233, or the proceeds from the sale of a cooperative unit located in Hampton Bays, New York, that was sold shortly before Philip Mantia died. A trial was held before the court on April 15, 16 and 24, 2025. The parties agreed that the following issues be determined by the court: whether decedent's estate was unjustly enriched, whether a constructive trust should be imposed against the proceeds of the sale of the real property, and whether decedent had converted Patricia's property.

Trial

Based upon the testimony and exhibits entered into evidence, as well as the court's prior holdings, the court makes the following findings of fact. Philip A. Manita ("Philip") died on September 29, 2019, survived by his wife, Patricia A. Mantia

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("Pat"), who post-deceased him. On May 23, 2019, decedent executed two estate planning documents, his last will and testament and The Philip A. Mantia Irrevocable Trust Agreement. After a joint trial, decedent's will was admitted to probate, and the trust was deemed to be valid.

Pursuant to the terms of decedent's will, decedent disinherited his wife "to the fullest extent permitted by law" and directed that any portion of his estate given to his wife be given to a Supplemental Needs Trust for her benefit. Decedent made a specific bequest of his cooperative cottage in Hampton Bays, New York to his wife's son, Gary Anderson, granted his wife exclusive use and occupancy of his home in Port Jefferson for her lifetime, specifically bequeathed his automobile to his nephew, Augustus Mantia, and his paintings to his niece, Rosemay Casey. Decedent then left the residuary of his estate 50% to his niece Rosemary Casey, 25% to his nephew Augustus Mantia, and 25% to his niece Marie Elanie Swiderski.

Pursuant to the terms of The Philip A. Mantia Irrevocable Trust Agreement, upon Philip's death, Patricia was given the use and occupancy of Philip's Port Jefferson home, Gary Anderson was given the Hampton Bays cottage after Patricia's death, and the residuary of the trust was given 50% to his niece Rosemary Casey, 25% to his nephew Augustus Mantia, and 25% to his niece Marie Elaine Swiderski.

On May 23, 2019, Patricia executed the Patricia F. Mantia Irrevocable Trust which provided that upon her death, her assets are to be distributed to Philip's Trust, and if she survives Philip, that the assets of the trust are given to Gary Anderson.

Decedent, Philip Mantia, and Patricia Mantia were married for twenty-seven years. In 2008, the couple separated and sold their marital home. With the proceeds from this sale, each bought separate residences, Philip purchased a home for \$432,000.00 in Port Jefferson Station, New York, and Patricia purchased a condominium for \$462,800 in Patchogue, New York. In 2016, Patricia moved in with Philip at his home in Port Jefferson Station, sold her home in Patchogue for \$427,794.85, and the proceeds from this sale were used to purchase a cooperative cottage in Hampton Bays New York for \$367,800.00. Patricia and Philip held title of the cooperative share of the Hampton Bays cottage jointly. On September 19, 2019, Patricia and Philip sold the Hampton Bays

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cottage. At the time of the sale, both Patricia and Philip were living in a rehabilitation facility. On September 23, 2019, respondent, Rosemary Casey, decedent's niece and the preliminary executor of Philip's estate, deposited two checks totaling \$422,233.00 payable to Pat and Philip into a Chase bank account titled in Philip's name alone.

The court heard testimony from the following witnesses at the trial: petitioner, John Wilson, respondent, Lynn Casey, and Kenneth Halcom, Esq. Due to illness, the transcript of the deposition testimony of Natale Tartamella, Esq. was read into the record, on consent of the parties.

Mr. Tartamella represented Pat and Philip with the sale of their original property as well as the subsequent individual home purchases, and then again with respect to the Hampton Bays property. Philip did not contribute any money to purchase the Hampton Bays property, and the money for same came from Pat's account. Philip's name was added to the cooperative shares because at the time of purchase, the board needed to see financial statements and tax returns, which Philip had, and Pat did not. After the purchase of the Hampton Bays property, Pat and Philip lived together at the Port Jefferson property. John Wilson, Pat's son-in-law, acted as the selling agent in connection with the sale of the Hampton Bays property and when Pat and Philip spoke of the Hampton Bays cottage to Mr. Wilson, they referred to it as Pat's cottage.

Mr. Tartamella was involved in Pat and Philip's Medicaid planning with an attorney that he referred to them, Nicole Zuvich, Esq. Pursuant to their estate plan, Ms. Zuvich directed Mr. Tartamella to deed the Port Jefferson house into Philip's trust and the Hampton Bays cottage into Pat's trust. The Port Jefferson house was transferred into Philip's Trust, but the attorney for the Hampton Bays cooperative was going to charge \$4,000 to transfer the shares into Pat's trust. Pat and Philip did not want to pay the cooperative's attorney to draft a new deed, and they decided to sell the property instead.

Mr. Tartamella visited Pat and Philip on September 17, 2019, in rehabilitation facility where they were both staying, and brought the documents to be executed prior to the sale of the Hampton Bays cottage. Only Pat and Philip were present at this meeting. Mr. Tartamella did not have any discussion prior to the

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sale or after as to how the proceeds were to be disbursed, but it was his understanding that the proceeds of the Hampton Bays property were to go into Pat's trust. On September 19, 2019, after the sale, he returned to the rehabilitation facility and gave Pat and Philip the checks in an envelope. On that same day, he emailed attorney Zuvich to let her know that the closing had taken place and that the proceeds were deposited into Philip's Chase Bank account.

Lynn Casey, Rosemary Casey's daughter, testified that she was present in the rehabilitation facility on the day of that Tartamella dropped off the proceeds checks. Ms. Casey testified that she did not hear the conversation between Philip, Pat, and Mr. Tartamella, but that they spoke for about 10 minutes. Thereafter, Philip gave Rosemary what she believes were the checks, stating that decedent asked her to deposit them when she could. Ms. Casey testified that Pat was present, saw what was going on, but did not say anything.

Petitioner's counsel noted that Ms. Casey's testimony diverged from her deposition testimony wherein she stated that she did not see decedent hand anything to anyone. Petitioner's counsel further questioned whether Ms. Casey was present on the day of the real estate closing and a certified copy of the logbook from the rehabilitation facility for the date of September 19-21, 2019 was entered into evidence, which did not contain an entry for Ms. Casey.

Philip died shortly thereafter on September 29, 2019. On October 8, 2019, after Philip's death, Gary Anderson met with Mr. Tartamella, Ms. Zuvich and Lynn Casey, Philip's niece's daughter at Mr. Tartamella's office. At this meeting, Mr. Tartamella represented that he was attorney for Pat, Philip's estate and Rosemary Casey. Mr. Anderson's understanding was that those present agreed that the proceeds of the Hampton Bays sale should not have been deposited in the Chase Bank account, which was in Philip's name alone, and that Rosemary was supposed to transfer the money from Philip's account into Pat's account. Mr. Anderson's belief was that the entire proceeds of the Hampton Bays sale belong to his mother.

Rosemary Casey, Philip's niece, retained Mr. Tartamella to represent her after Philip's death. She was not present at the October 8, 2019 meeting at Mr. Tartamella's office, and formally

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engaged Mr. Tartamella about two weeks later when she signed a retainer agreement with him.

Kenneth Halcom, Esq., who represented Gary Anderson for a few weeks in the fall of 2019, wrote a letter to Tartamella wherein he stated that the sales proceeds which were deposited into decedent's account belonged to Pat. Mr. Halcom's understanding that the proceeds belong to Pat came from his discussions with Mr. Tartamella.

Relevant Law and Discussion

Unjust enrichment lies as a quasi-contract claim and contemplates an obligation imposed by equity to prevent injustice, in the absence of an actual agreement between the parties (see *Columbia Memorial Hospital v Hinds*, 38 NY3d 253). The doctrine of unjust enrichment is a narrow one, it is not a catchall cause of action to be used when others fail (see *Columbia Memorial Hospital v Hinds*, *id.*; *E.J. Brooks Company v Cambridge Security Seals*, 31 NY3d 441). An action for restitution based on unjust enrichment requires a showing by plaintiff that (1) the other party was enriched, (2) at plaintiff's expense, and (3) that it is against equity and good conscience to permit the other party to retain what is sought to be recovered (see *Columbia Memorial Hospital v Hinds*, *id.*; *E.J. Brooks Company v Cambridge Security Seals*, *id.*).

A conversion takes place when someone, intentionally and without authority, assumes or exercises control over personal property belonging to someone else, interfering with that person's right of possession (see *Colavito v New York Organ Donor Network, Inc.*, 8 NY3d 43; *Halvatzis v Perrone*, 199 AD3d 785). The key elements of conversion are (1) plaintiff's possessory right or interest in the property and (2) defendant's dominion over the property or interference with it in derogation of plaintiff's rights (see *Colavito v New York Organ Donor Network, Inc.*, *id.*; *Halvatzis v Perrone*, *id.*). Even where possession of property is originally lawful, a conversion occurs when the party refuses to return the property after a demand from a party entitled to possession of the property (see *Core Development Group LLC v Spaho*, 199 AD3d 447).

"A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title

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may not in good conscience retain the beneficial interest, equity converts him into a trustee" (*Beatty v Guggenheim Exploration Co.*, 225 NY 380, 386; see *Simonds v. Simonds*, 45 NY2d 233). Thus, a constructive trust is an equitable remedy, perhaps more different from an express trust than it is similar (*Simonds v. Simonds*, *id.* at 241). Generally, a constructive trust is an equitable remedy whose purpose is to prevent unjust enrichment (see *Sharp v. Kosmalski*, 40 NY2d 119), and will be erected whenever necessary to satisfy the demands of justice (see *Simonds v. Simonds*, *id.* at 241).

The party asserting a constructive trust has the burden of establishing by clear and convincing evidence (1) the existence of a confidential or fiduciary relationship, (2) a promise, express or implied (3) a transfer in reliance thereon, and (4) unjust enrichment (*Sharp v. Kosmalski*, *supra* at 121). These factors, while useful, are not rigidly applied (see *Simonds v. Simonds*, *id.* at 240). As noted in *Sharp*, even without an express promise, courts have imposed a constructive trust where a promise may be implied or inferred from the transaction itself (*Sharp v Kosmalski*, *id.* at 122).

The evidence adduced at trial clearly demonstrates that petitioner is entitled to at least one half of the proceeds of the sale of the Hampton Bays property, \$211,116.50. Philip and Pat were the named joint owners of the cooperative shares, the proceeds from the sale of these shares were deposited in Philip's account, however there was no evidence demonstrating that Pat had made a gift of her share of the proceeds to Philip, thus half of the proceeds of the sale were converted by Philip from Pat. The further question for the court is whether a constructive trust should be imposed over the remaining half of the proceeds of the sale, or whether Pat's estate is entitled such proceeds on the theory of unjust enrichment.

The court finds that the four prongs of the test for a constructive trust (the existence of a confidential relationship, an implied promise, a transfer in reliance thereon, and unjust enrichment) have been established by petitioner. Pat and Philip were in a confidential relationship, husband and wife, with Philip as the primary financial earner. The purchase of the Hampton Bays property was financed with the proceeds of the sale of Pat's Patchogue home, and Philip's name was added to the title of the Hampton Bays property solely to satisfy the financial requirements

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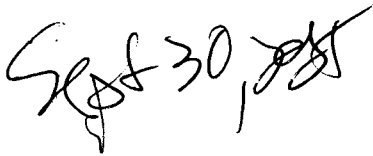
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of the cooperative board. Pat and Philip expressed to others that the cottage was Pat's alone, and Philip retained his Port Jefferson property in Port Jefferson in his own name. Thus the implied promise was that the transfer was effectuated for the purposes of qualifying with the cooperative board, not to convey the asset to Philip. This understanding that Pat and Philip had separate properties and that the proceeds from the Hampton Bays cottage belong to Pat is confirmed by their estate planning documents and was the understanding of their friends and their long-standing attorney, Mr. Tartamella. Thus, to allow Philip's estate to retain the proceeds is against equity and good conscience (see *Columbia Memorial Hospital v Hinds, supra*; *E.J. Brooks Company v Cambridge Security Seals, supra*) and would unjustly enrich Philip's estate.

Accordingly, it is

ORDERED that, the estate of Patrica Mantia has a valid claim in the amount of \$422,233, or the proceeds from the sale of a cooperative unit located in Hampton Bays, New York against the estate of Philip A. Mantia, plus interest in the amount of 3% per annum from September 23, 2019 until payment in full of said amount.

Dated:

Handwritten signature of Vincent J. Messina, Jr. in black ink, appearing as "Sept 30, 2019" with a stylized flourish.

Vincent J. Messina, Jr., SurrogateHandwritten signature of Vincent J. Messina, Jr. in black ink, appearing as a stylized "VJ" with a long vertical line extending downwards.