

DEBRA HANLEY,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 98-02,072
	:	
TERRY L. LEPLEY and	:	CIVIL ACTION – LAW
BARBARA KOHLER,	:	
	:	
Defendants	:	NON-JURY TRIAL

BARBARA A. KOHLER,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 98-01,754
	:	
DEBRA HANLEY,	:	CIVIL ACTION – LAW
	:	
Defendant	:	NON-JURY TRIAL

Date: May 26, 2000

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Hanley and Lepley lived together for six years, acquiring a house and vehicle. The property was not titled to Hanley. Money to purchase the house was loaned to the couple by Lepley’s parents. Both Hanley and Lepley made payments and repairs to the property. After the relationship ended, Hanley remained in the house; pursuant to a PFA, Lepley was excluded. Lepley subsequently entered into a relationship with Kohler; Kohler paid off a loan to Lepley’s parents which had been used to purchase the house in question. The parties filed claims against each other concerning their rights in the property. Hanley claimed entitlement to the property due to a resulting or constructive trust. Lepley and Kohler argued Hanley was not entitled to equitable relief due to unclean hands based upon Hanley’s failure to make payments or maintain the property and her alleged intentional damage to the property.

HELD: Lepley would be unjustly enriched if Hanley did not receive some benefit from the property; a constructive or resulting trust existed in favor of Hanley for ½ of the house and vehicle, but the value must be offset by rental payment owed by Hanley as well as her share of back taxes and loan payments owed and cost for property damage.

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OPINION AND ORDER

This is an adjudication entered on a non-jury trial of the two consolidated actions consolidated above. The issues raised at trial involve a dispute Debra Hanley (Plaintiff in #98-02,072 and Defendant in #98-01,754 and hereafter referred to as “Hanley”) had with Terry Lepley (one of the Defendants in #98-02,072, hereafter referred to as “Lepley”) and Barbara A. Kohler (the other Defendant in #98-01,754 and Plaintiff in #98-01,754, hereafter referred to as “Kohler”). Lepley and Hanley had lived together in a meretricious relationship beginning in 1992 and extending through 1998. Thereafter Lepley and Kohler entered into a similar relationship. The dispute centers primarily around the rights in a house initially occupied by Hanley and Lepley and subsequently acquired by Kohler. Hanley asserts that although the property was originally purchased in the name of Lepley and his parents that she furnished substantially all of the payments made on account of the purchase and is entitled to an ownership interest in the property under the doctrine of Resulting Trust. Hanley also asserts the same theory of ownership as would relate to an automobile that was acquired titled only in Lepley’s name. Both the home and the car were acquired during the time of the meretricious relationship. Kohler’s claim is based upon the assertion that after acquiring the home she attempted to evict Hanley as an occupant and Hanley’s refusal to leave entitles her to be paid the fair rental value of the property for the period of time Hanley remained in the property. Kohler also asserts a claim for damages occurring to the home during the time of Hanley’s wrongful possession. This Court finds that a resulting trust has been established in the

real estate in favor of Plaintiff Hanley; however, the Court further finds that Hanley wrongfully maintained possession of the realty and owes rent for a period of September 19, 1998 to December 1999 to Kohler/Lepley. The Court further finds that Kohler/Lepley has established that Hanley caused damage to the realty, which must be deducted from her equitable interest in the car, and realty.

Findings of Fact

1. Hanley and Lepley entered into a meretricious relationship and began living together in 1992, this continued until April 1998.
2. Hanley and Lepley agreed to and did share income, expenses and property and did co-mingle their funds.
3. Hanley and Lepley established several joint checking accounts during the time of their relationship including one at Williamsport National Bank.
4. A house on Cottage Avenue, Cogan Station, Lycoming Township, Lycoming County (House) was purchased on September 19, 1996, titled in the names of Lepley and his parents, George Lepley, Sr. and Patty Lepley; title was held as tenants in common. They paid \$5,000 for the house, which represented its then fair market value as it was then in poor condition.

5. Lepley's parents procured a personal loan in their own names to pay for the purchase of the House through their credit union ("House Loan"). Lepley's parents' names were on the title to the House in order to secure the loan and to assure the parents that the loan would be paid off by Lepley and Hanley. The loan was for \$6,000 and was used for the purchase plus \$300 in closing costs. The \$700 remaining was used to purchase material to repair the House. The payments due on the House Loan were \$118.81 monthly.

6. At the time of the House purchase, Lepley and Hanley resided together and both moved into the House.

7. Lepley and Hanley separated in April of 1998. Hanley remained in possession of the House.

8. George Lepley, Sr. and Patty Lepley conveyed their interest in the House to Kohler on July 9, 1988. Lepley joined in the deed of that date which placed the House in the name of Lepley and Kohler as joint tenants with right of survivorship. The deed recited a consideration of \$30,000, however, the actual consideration which was paid by Kohler to Lepley's parents was \$4,179.70. This was the amount of the balance due on the House Loan and the money was used to pay off the House Loan.

9. At the time the House was originally purchased, an agreement between Lepley, his parents and Hanley was that Hanley would be placed on the Deed as an owner when the House Loan was paid.

10. During the time that Lepley and Hanley resided together, repairs were made to the House; Lepley and Hanley each contributed to the funds and labor expended on the repairs. The repairs made the House more livable.

11. During the time that Lepley and Hanley resided together in the House, both provided funds for the payment of the House Loan. Hanley contributed most of the money for the repairs and House Loan payments.

12. After Lepley and Hanley separated in April 1998, Hanley obtained a Protection From Abuse Order against Lepley barring him from the House for a period of one year.

13. Kohler served Hanley with a Notice to Quit in July 1998.

14. Hanley did not pay any rent for the time that she occupied the real estate after the entry of the Protection Order. Hanley did pay the April and May 1998 loan payments.

15. The fair market rental value of the real estate during this time was \$120 per month, from 1998 through 1999.

16. Hanley owes rent for the period of time from September 1998 until Mid-December 1999.

17. Hanley did contribute substantial sums to the purchase of the house on Cottage Avenue and did devote considerable hours of her time to the repair and upkeep of the house.

18. Lepley did promise Hanley and her mother that Hanley's name would be put on the deed of the house when it was paid for.

19. Lepley and Hanley each received the benefit of the time and money contributed to the House by the other.

20. During most of the time Hanley and Lepley were together Hanley was the principal income producer for the couple.

21. The automobile subject to the instant suit was purchased from Lepley's father and was being paid for by Hanley for and on behalf of Hanley and Lepley, although the title was in Lepley's name alone.

22. Lepley's annual income from 1996 through 1998 approximated \$3,000 per year while Hanley's income in that same time period including all sources approximated \$10,000 per year.

23. The fair market value of the House in April of 1998 was at the most one-half of the fair market value testified to by James Carpenter, the Lycoming County appraiser who testified on behalf of Hanley; he placed the value at \$22,380 allocating \$6,540 to the building and \$15,840 to the land; he mistakenly testified the flood that affected the property occurred in late 1996 when in fact it had occurred on January 19, 1996.

24. The Court finds that the fair market value of the property from 1998 through the time of trial is \$11,000.

25. Hanley caused damage or allowed damage to occur to the House as to windows being broken, carpeting being damaged, walls being damaged and debris accumulating.

26. The repair expenses submitted by Kohler/Lepley are reasonable but exceed the damage caused by Hanley.

27. The parties agreed the car has a value of \$1500.

Discussion

An equitable constructive or resulting trust can be imposed in Pennsylvania where one party makes contributions to the purchase or upkeep of property to the extent it would be unjust for the party holding title to the property to keep it or dispose of it without contribution to the other party. Such trust is not subject to the statute of frauds. *Hornyak v. Sell*, 427 Pa.Super. 356, 629 A.2d 138. The intent of the parties is also based on the intent of the parties entering into the transaction. *Fenderson v. Fenderson*, 548 Pa. 670, 685 A.2d 600, appeal denied 698 A.2d 594. The testimony of Lepley's parents (George Lepley, Sr. and Patty Lepley) clearly established that their intent in acquiring the house was to provide Lepley and Hanley a home that was ultimately to be conveyed to them when it was paid for. George Lepley, Sr. testified most emphatically that the property was going to be conveyed to whomever re-paid the House Loan. Clearly Lepley's parents expected Lepley and Hanley to be the ones to re-pay the loan and as well they had advised both Lepley and Hanley that they were responsible to make those payments. Hanley and Lepley both undertook to do so prior to April 1998.

The fact that the agreement between Hanley, Lepley and Lepley's parents was oral does not bar Hanley from asserting a claim to the title to the real estate. Pursuant to *Nirmaier v. Hamilton*, 356 A.2d 788 (Pa. 1976), oral agreements creating trust relationships involving real property are

enforceable. *See also Kadel v. McMonigle*, 624 A.2d 1059 (Pa.Super. 1993); *Knauer v. Knauer*, 470 A.2d 553 (Pa.Super. 1983) (where part of wealth accumulated during cohabitation included profits from sale of real estate, trial court's division of the profits pursuant to parties (nol) promise did not violate statute of frauds); *cf: Roberson v. Davis*, 580 A.2d 39 (Pa.Super. 1990) (oral evidence allowed).

Debra Hanley's conduct does not bar her claim for a resulting trust. The clean hands doctrine is applicable when the court finds the party seeking relief is guilty of fraud, unconscionable conduct or bad faith *directly related to the matter at issue which injures the other party and affects the balance of equities between the parties*. The doctrine does not bar relief to a party "merely" because his conduct in general has been shown not to be blameless. *Equibank v. Adle, Inc.*, 595 A.2d 1284 (Pa.Super. 1991). In *Equibank*, lienholders/appellants argued that the bank/appellee had unclean hands for foregoing an opportunity to protect itself and reduce a mortgage by hundreds of thousands of dollars, but chose instead to discourage creditors from foreclosing on their liens and permitting the first mortgage indebtedness at issue to increase so they could claim the bulk of the proceeds from a liquidation. The court found there was insufficient evidence to establish the bank proceeded with unclean hands.

In *Shippensville-Elk Tp. V. Ladies Auxiliary*, 680 A.2d 923 (Pa.Cmwlth. 1996), a volunteer fire department sued the ladies auxiliary to obtain funds the auxiliary had collected. The ladies claimed the fire department's claim should be barred by the doctrine of unclean hands because the evidence in the record reflected instances of intimidation, threats and harassment, affecting the relationship between the parties because the auxiliary members had become fearful of the department members. The

court said that although the members of the auxiliary may have been frightened by the department's "purported" conduct, the equitable relationship between the parties was not affected to such extent that the auxiliary was placed at a disadvantage when it entered equity court. Thus, the doctrine of unclean hands was inapplicable. *Cf. Jacobs v. Holloran*, 710 A.2d 1098 (Pa. 1998), a personal injury motor vehicle case, where defendants sought dismissal of a case for inactivity (non-pros). The Court found that with regard to one of the defendants, she came before the court with unclean hands and would be denied equitable relief. The Court found that her dishonesty regarding the identity of the driver of the vehicle in the accident constituted bad faith, which was directly relevant to the delay in prosecution from which she sought relief. To allow a defendant to benefit from the delay which she in part created was inequitable and would not be permitted.

Instantly, the matter at issue is the creation of the resulting trust; Hanley's wrongful conduct occurred after her interest in the property arose and did not affect the balance of the equities between the parties when they entered the equity court.

In an ejectment action, damages and mesne profits may be recovered. *See Amoco Oil Co. v. Burns*, 408 A.2d 521 (Pa.Super. 1979). *See also Phillips v. Bailey*, 11 D.&C.3d (C.P. Chester County 1978). Here, that means recovery for the damage to the property to the extent Hanley cause it, as well as ½ the fair rental value and/or the rental value while wrongfully withholding. Hanley contends that the rental value of the property for the time she occupied it did not exceed \$100 per month. Kohler and Lepley contend it was \$350 per month. Conversely Hanley contends the property has a fair

market value of at least \$22,380 and counsel has argued that it could be significantly higher. Lepley/Kohler argue that the fair market value of the property is less than \$10,000. The parties arguments as to what the fair market rental value of the property is inconsistent with their positions concerning their contentions as to the fair market value of the property inasmuch as when the fair market value of the property increased the rental value should also increase.

Given the value for the House and its condition, including barely adequate plumbing and an unfinished master bedroom, the fair rental value is essentially the same as the House Loan payment, \$120 per month. The Court believes that the property's fair market value calculations should be based upon its true value as reflected by the 1996 purchase price of \$5,000 and that improvements as testified by the parties made to the home including cleaning out the flood debris that existed in September 1996 would raise the value of the home to \$10,000. The Court also believes that given the impact of the flood upon the value of the land and lots in the various properties significantly affected by the January 1996 flood that the land value was no doubt significantly depressed at the time of the purchase in September 1996 and that an additional \$1,000 of value should be added to the property on account of the fact that it was bought under depressed and distressed conditions. As a result the Court finds that the value of the property is \$11,000.

The parties agree that the value of the car in question is \$1,500.

As to all the witnesses who testified in this case the Court finds the testimony of George Lepley, Sr. and his wife, Patty, to be the most credible. In his testimony Mr. Lepley, Sr. indicated that the

payments on the mortgage were made for the most part directly to the credit union where the loan had been obtained and that he recalled occasionally Lepley or Hanley would bring payments to him but that he had instructed them that they should pay the credit union directly. He acknowledged that it was his consideration that “apparently” Lepley made the payments at the credit union. He acknowledged that he did not know who provided the source of the funds for the payments. Their testimony did establish, however, that while there were certainly some deficiencies in the property when Lepley moved out but overall it was in livable condition without broken windows with a usable sink and without debris, rodent, dirt or holes in the wall. In contrast when Kohler/Lepley regained possession of the property in December of 1999 the property condition had significantly deteriorated. Much of the debris left in the home could be attributed to intentional actions of Hanley. Other damages to the property could be attributed to Hanley even though perhaps caused by third persons but at least the occurred during her possession and at a time when she would have been responsible for preserving, maintaining and keeping up the property. Whether or not she would have any claim against third parties for those damages is not clear. It is clear that the water system supply had deteriorated between the time Lepley left and the time Kohler/Lepley regained possession, but whether this is attributed to some damage caused by Hanley or another during Hanley’s possession as opposed to a deterioration to the repairs to the water system that had initially been made when Lepley/Hanley took possession of the property has not been established by the testimony. Much of the damage, however, to the carpeting and walls that had been restored at one point to a presentable and

good condition cannot be explained except as being attributable to intentional or negligent conduct by Hanley during the period of time she occupied the House.

It is clear to this Court that based upon the doctrine of Resulting Trust as set forth above the legal effects and rights of the parties following the acquisition of the House by Lepley and his parents in 1996 was that Lepley and Hanley essentially stood in the position of being purchasers of the real estate from the owners, George Lepley, Sr. and Patty Lepley, his wife. In other words Lepley's parents stood as sellers under an agreement of sale in which Lepley/Hanley were buyers.¹ In this situation the equity in the real estate belonged to Lepley/Hanley and Lepley's parents had the right to payment of the purchase price, that is, in this case, the monthly loan payments in accordance with their agreement and would also be entitled to the rents of the property. Lepley's parents held legal title simply as security for payment of this purchase price. It is clear that where the purchaser has taken possession and defaults in that situation that the seller may enforce the security by bringing an action in ejectment. *See* Ladner footnote 1, *supra*. at page 39. It is also clear in this situation that the purchaser must bear losses to the property.

Lepley's parents made a valid conveyance of their rights to the House to Kohler. Kohler made an appropriate payment for the property through paying off the loan indebtedness of Lepley's parents. Kohler thus stood in the rights of being a seller. Because Hanley nor Lepley had continued to make payments and in fact it became apparent to this Court that Hanley had intentionally refused to so do, Hanley (and Lepley also under the rights he would have initially acquired in the property in 1996 as opposed to the rights of his parents which were assigned to Kohler) lost the right to remain in possession

¹ For legal effects of such an agreement *see* among others Ladner, *Conveyancing Pennsylvania* §610, page 36,

of the property. At that time Hanley would be entitled to assert a claim for the equity interest she had in the property. Kohler cannot be heard to say that since there was no written agreement nor Hanley's name appearing on the deed that Hanley's claim is defeated. Kohler obviously given her relationship to Lepley knew or had reason to know of

Hanley's interest in the property and that Hanley had been making payment of the mortgage and that since Lepley had moved out in April of 1998 the payments were not made for at least June and July. A proper inference from the testimony of Lepley's parents is that Kohler would have been so advised by them. It is also clear that Kohler knew there were unpaid taxes on the property and that these would have been Hanley's responsibility and also Kohler's testimony would barely imply that she knew that Hanley had been required to put insurance on the property and had not done so. The Court does agree that Hanley/Lepley failed in these obligations which were implied through their purchasing and possession of the property.

In addition, Kohler knew that Hanley was in possession of the property and would have been put on notice to make appropriate inquiry as to the nature of her claim even if she did not actually know or have other reason to know of Hanley's equitable rights.

Nevertheless, Kohler was certainly within her rights in demanding possession of the property from Hanley. Hanley made no effort to see that appropriate payments or protection of Kohler's interest in the property was made nor did she seek legal relief from the notice to vacate the premises that she received. There is some conflict in the testimony as to when this notice to leave the property was given to Hanley by Kohler, but it is clear that it would have occurred during the month of July 1998. A reasonable time for Hanley to have vacated under those circumstances and conditions or to make some other arrangement or to take legal action to protect her interest would have been thirty days. As a result Kohler is entitled to rental payments from Hanley commencing in September 1998 through December

1999 when Kohler obtained possession. This would be a period of 15- 1/2 months with a fair rental value of 120 months would mean that Hanley owes Kohler the sum of \$1,860 for rent.

Hanley is entitled to offset this claim by the amount of her equitable interest in the property. The property had a total value of \$11,000. The property was encumbered by the mean of the loan in the amount of \$4,179.70. the clear value of the property therefore would be \$6,820.30. Hanley's ½ interest in the property would be valued at \$3,410.15. Hanley, however, is not entitled to recover that amount from Kohler/Lepley.

In determining the amount that Hanley is entitled to recover from Kohler/Lepley the Court must recognize the unity of title that exists between Kohler and Lepley. Although action No. 98-01,754 is by only the name of Kohler, nevertheless the fact is that Kohler/Lepley own the title to the property as joint tenants with right of survivorship and are regarded as having unity of title and that the claim by Kohler is asserted on behalf of the property owners and accordingly, Hanley would have the right of setoff against the property owners.

In applying these principles, as well as the other responsibilities that Hanley would have had as the purchaser of the property the Court makes the following determinations. From the amount due Hanley for her equity in the property of \$1,860, representing the rent she owes, must be deducted. From this resulting sum of \$2,550.15, the Court must deduct ½ of the back taxes paid by Kohler. The amount paid for back taxes was \$457.85, as Kohler testified. The Court does not award payment to Kohler/Lepley of the 1999 taxes, inasmuch as the Court is awarding Kohler/Lepley \$1,860 on account of

rent due from Hanley. One-half of the back taxes allowed by the Court is \$228.92. In addition, Hanley is responsible for ½ of the June loan payment, total payment of \$118.81; ½ thereof is \$59.40. Hanley is also responsible for the \$340 dumpster fees incurred to remove debris she left behind as well as damaged property left behind. Hanley is also responsible for repairs as follows: Windows - \$235; ½ of the painting - \$113.96; wainscoating - \$186.48; chair rail - \$122.75; ½ of the carpeting - \$177.52; the drywall - \$107.88.

The Court determines that Hanley is responsible for only one-half of the painting and carpeting because the value in place of the new painting and carpeting was given to Kohler/Lepley who put them in a much better position than they would have been with brand new paint and new carpeting than if they had received the house in the condition in which Hanley should have furnished it to them as it existed in September 1998. There would also be some deterioration in the painting and carpeting (which admittedly was not initially of very good quality during the time that Hanley occupied the property from September 1998 through December 1999 for which she is being charged with rent responsibility. The Court does not believe the other amounts claimed such as insurance from the date of purchase by Kohler forward nor expenses to repair the sub-flooring have been appropriately established as being Hanley's responsibility. Deducting these expenses which amount to \$2,171.91 and setting those expenses off against \$1,549.55 value of Hanley's equitable value in the House, it is determined that Hanley owes Kohler/Lepley \$622.36.

However, the Court is still left with the claim concerning the automobile advanced by Hanley. The testimony concerning the automobile was confusing at best. Regardless, it appears at the outset of the case it was clearly established by counsel's agreement that the value to be attributed to the car was \$1,500 and the Court surely needed to determine whether Hanley had an equitable interest therein. The Court has determined that she did have an equitable in it for ½ of the value thereof. Accordingly, Hanley has a claim against Lepley only of \$750. She is entitled to offset that claim, however, against the amounts owed to Kohler/Lepley. Doing so is also a final determination that of the monies owed in this case between the parties Lepley owed to Hanley \$127.64. A table showing these calculations is attached as Appendix "A" to the Opinion. Accordingly, the following Order will be entered.

Conclusions of Law

1. Lepley would be unjustly enriched if permitted to keep the house on Cottage Avenue without some benefit therefrom for Hanley.
2. A constructive or resulting trust exists in favor of Hanley for one-half of the net value of the house on Cottage Avenue between September 1996 and today's date.
3. A constructive or resulting trust exists in favor of Hanley for one-half the value of the 1984 Oldsmobile Cutlass automobile in the instant case.
4. Kohler and Lepley are the sole owners of the real estate and are entitled to exclusive possession of the property.

ORDER

AND NOW, this 26th day of May 2000, in the above-captioned cases a verdict is entered in the favor of Debra Hanley against Terry L. Lepley in the amount of \$127.64. Each party shall pay their own costs.

BY THE COURT,

William S. Kieser, Judge

cc: Eileen A. Grimes, CST
David C. Raker, Esquire
James R. Protasio, Esquire
Judges
Nancy M. Snyder, Esquire

APPENDIX "A"

CALCULATIONS OF AMOUNT DUE BETWEEN PARTIES

Value of House	\$11,000.00
Less Debt Owed on House	<u>-4,179.70</u>
Equitable Value of House	\$
6,820.30	
Hanley's ½ Equitable Value	\$ 3,410.15
Less Fair Rent Value Owed by Hanley	
To Kohler/Lepley 15.5 Months at \$120/month	\$ 1,860.00
Value of Hanley's Equitable Interest in House	\$ 1,549.55
Less Expenses of Repair, Taxes and	
Payments Owed by Hanley to Kohler/	
Lepley:	
½ of Back Taxes	\$ 228.92
½ of \$118.81 June Loan	
Payment made by G.	
Lepley, Sr., et. ux.	59.40
Dumpster Fee	340.00
Window Repair	235.00
½ Painting Repairs	113.96
Wainscoating Repairs	186.48
Chair Rail Repair	122.75
½ Carpeting Replacement	777.52
Drywall Repair	<u>107.88</u>
Subtotal	\$ 2,171.91
Owed by Hanley to Kohler/Lepley	<u>-627.36</u>
Less Value of Hanley Interest in Car	<u>-750.00</u>
Total Owed by Lepley to Hanley	\$ 127.64
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