DOCKET NO: KNLCV226059019S **SUPERIOR COURT**

STORY, DEBORAH C. **JUDICIAL DISTRICT OF NEW LONDON**

V. **AT NEW LONDON**

CARBONE, JR, BENJAMIN ET AL **MAY 10, 2024**

MEMORANDUM OF DECISION

INTRODUCTION

This matter, tried to the court, presently comes before the court on the Defendant's Motion for Directed Verdict and/or Post-trial Brief and the Plaintiff's Post-trial Memorandum. (Docket Entry Nos. 143 and 144.) The Defendant contends that he is entitled to judgment on all six counts of the Plaintiff's Complaint on the grounds that: (1) the underlying contract between the Plaintiff and the Defendant is void as against public policy; (2) the parties' agreement is void by operation of the statute of frauds and (3) the Plaintiff has failed to demonstrate that there was an agreement between herself and the Defendant. For the reasons set forth below, the court will treat the motion filed by the Defendant as a motion for judgment of dismissal judgment under Practice Book § 15-8, and hereby grants that motion.

RELEVANT FACTS AND PROCEDURAL HISTORY

On October 24, 2022, the Plaintiff, Deborah C. Story, commenced this action by service of process against the Defendant Benjamin Carbone, Jr.[1] In the operative pleading, the

[1] The other named Defendants in this case are Paula Crabb, Thomas Carbone, Karen L. Bowens, Toni A. Clark, Douglas W. Dorsey, and Dime Bank. The first five of these

copies sent 5/10/24

Amended Complaint filed on November 8, 2023 (Docket Entry No. 133), the Plaintiff alleges the following facts. All of the facts relevant to the disposition of the Defendant's motion and this case are uncontroverted. Anne Carbone (Carbone) was the mother of both the Plaintiff and the Defendant, and she owned certain real property located at 7 Lee Road in Waterford (the property). On October 4, 2019, Carbone executed a last will and testament. According to this document, upon her death, the property was to be sold and the proceeds equally divided among the Plaintiff, the Defendant, and four of Carbone's other children, Paula Crabb, Jackie Carbone Dorsey,[2] Karen (Lisa) Bowens, and Thomas Carbone (collectively, the siblings). Subsequently, on February 8, 2020, Carbone, in the presence of witnesses, entered into an oral agreement with the Defendant. As part of this purported contract, Carbone agreed to transfer the property to the Defendant for no consideration such that in the event Carbone needed long-term care, the property would be protected for her children to inherit. The Defendant, in turn, would be allowed to live on the property rent free and he agreed that upon Carbone's death, he would transfer and/or sell the property in equal shares to all of Carbone's children.[3]

Defendants are named because they may have a legal interest in the property at issue. Dime Bank is listed as a Defendant because it holds an open-ended mortgage on the subject property. None of these Defendants have appeared, and the Plaintiff does not allege that any of these Defendants have committed wrongful acts. Therefore, for the sake of convenience, Benjamin Carbone, Jr. will be referred to as the sole Defendant.

[2] According to the Complaint, Jacqueline Carbone Dorsey passed away on January 6, 2021. Douglas W. Dorsey is Jacqueline's surviving spouse, and Toni A. Clark is her only child. Therefore, these individuals are listed as Defendants in this matter instead of Jacqueline Carbone Dorsey.

[3] The Defendant disputes this characterization of the agreement at issue.

To that end, on February 11, 2020, Carbone executed a quit claim deed conveying her interest in the property to the Defendant. This deed was recorded on the Waterford land records. Thereafter, on February 26, 2020,[4] the Defendant executed a last will and testament that provided that the property was to be sold and the proceeds distributed among the Defendant's son (Benjamin P. Cabone, III), the Plaintiff, and the siblings. The purpose of this will was to ensure that the property was to be divided in accordance with Carbone's wishes. On November 24, 2020, Carbone passed away. Following Carbone's death, on June 17, 2021, the Defendant executed a new will and testament that only left the property to his son and excluded the Plaintiff and the siblings. The Plaintiff alleges that Carbone relied on the Defendant's oral agreement when she transferred the property to the Defendant. Despite the Defendant's acknowledgment of the agreement, the Defendant refuses to sign a deed transferring his ownership to the Plaintiff and his siblings. According to the Plaintiff, the Defendant is wrongfully taking the position that he is the sole owner of the property.

As a result of all of this alleged conduct, the Plaintiff brings the following causes of action against the Defendant: (1) count one—motion to determine title in accordance with General Statutes § 47-31; (2) count two—partition as to the property pursuant to General Statutes § 52-495 et seq.; (3) count three—breach of contract; (4) count four—unjust enrichment; (5) count five—tortious interference with the expectation of an inheritance; and (6) count six—constructive trust. In his answer (Docket Entry No. 139), the Defendant alleges the

[4] The Complaint alleges this will was executed on February 28, 2020, whereas the date on the document is February 26, 2020. (Pl's Exh. 7.)

following special defenses: (1) contract void as illegal; (2) contract void as a matter of public policy; (3) statute of frauds; (4) unjust enrichment impermissible under public policy; (5) invalid cause of action; (6) wrongful conduct rule; and (7) unclean hands.

The parties appeared on December 15, 18, and 21, 2023, for a court trial. Following the proceedings, the court ordered simultaneous post-trial briefs to be filed within forty-five days. On February 5, 2024, the Defendant filed a "Motion for Directed Verdict and/or Post-trial Brief" (Docket Entry No. 143) and the Plaintiff filed a post-trial memorandum (Docket Entry No. 144). The court heard oral argument on these pleadings on February 15, 2024.

DISCUSSION

Nature of Issue Before the Court

As a threshold issue, the court must determine whether the Defendant's arguments are appropriately before it as a motion for directed verdict. Under Connecticut law, "[a] trial court should direct a verdict only when a *jury* could not reasonably and legally have reached any other conclusion. . . . In reviewing the trial court's decision [to grant a Defendant's motion for a directed verdict] [an appellate court] must consider the evidence in the light most favorable to the Plaintiff. . . . A directed verdict is justified if . . . the evidence is so weak that it would be proper for the court to set aside a *verdict* rendered for the other party." (Emphasis added; internal quotation marks omitted.) *Farrell* v. *Johnson & Johnson*, 335 Conn. 398, 417, 238 A.3d 698 (2020). This language plainly suggests that a court may only direct a verdict within the context of a jury trial. This conclusion is supported by the applicable Practice Book provision which provides, in relevant part, that "[w]henever a motion for a directed verdict

made at any time after the close of the Plaintiff's case-in-chief is denied or for any reason is not granted, the judicial authority is deemed to have submitted the action *to the jury* . . . ." (Emphasis added.) Practice Book § 16-37; see also *State* v. *Morrison*, 2 Conn. Cir. Ct. 443, 445, 200 A.2d 737 (1963) (stating, that with respect to a motion for direct verdict, "[n]o such motion lies in a trial to the court").

The rules of practice specifically authorize an analogous procedure to a directed verdict motion for civil court trials. Practice Book § 15-8 provides in relevant part: "If, on the trial of any issue of fact in a civil matter tried to the court, the plaintiff has produced evidence and rested, a defendant may move for judgment of dismissal, and the judicial authority may grant such motion if the plaintiff has failed to make out a prima facie case." In order for this practice book provision to apply, "[a] motion for judgment of dismissal must be made by the defendant and decided by the court after the plaintiff has rested his case, but before the Defendant produces evidence." (Emphasis omitted; internal quotation marks omitted.) *Moutinho* v. *500 North Avenue, LLC*, 191 Conn. App. 608, 618, 216 A.3d 667, cert. denied, 333 Conn. 928, 218 A.3d 68 (2019). In the present matter, after the Plaintiff rested her case, the Defendant did not present any evidence. Rather, the Defendant indicated that he intended to make appropriate legal arguments in his post-trial brief. Therefore, although the Defendant has not directly cited to § 15-8, the court will construe the Defendant's motion as being filed under that section of the rules of practice because "[w]here a party captions its motion improperly, [a court] look[s] to the substance of the claim rather than the form." (Internal quotation marks omitted.) *Machado* v. *Taylor*, 326 Conn. 396, 402, 163 A.3d 558 (2017); see, e.g., *Office of Chief Disciplinary*

Counsel v. *Miller*, Superior Court, Judicial District of Danbury, Docket No. CV17-6022075-S (November 26, 2018, *Shaban, J.)*, aff'd and reprinted at 335 Conn. 474, 499 n.7, 239 A.3d 288 (2020) (wherein the court applied § 15-8 even though it had not been cited by the movant); *Eady* v. *Cowles*, Superior Court, Judicial District of Waterbury, Docket No. CV09-5014356-S (June 4, 2013, *Sheedy, J.T.R.*) (stating, in a court trial, that "[d]efendant's [m]otion for [d]irected [v]erdict is properly a [m]otion for [j]udgment of [d]ismissal under . . . § 15–8").

"The standard for determining whether the Plaintiff has made out a prima facie case, under Practice Book § 15-8, is whether the Plaintiff put forth sufficient evidence that, if believed, would establish a prima facie case, not whether the trier of fact believes it. . . . For the court to grant the motion [for a judgment of dismissal pursuant to § 15-8], it must be of the opinion that the Plaintiff has failed to make out a prima facie case. In testing the sufficiency of the evidence, the court compares the evidence with the allegations of the Complaint. . . . In order to establish a prima facie case, the proponent must submit evidence, which, if credited, is sufficient to establish the fact or facts which it is adduced to prove. . . . [T]he evidence offered by the Plaintiff is to be taken as true and interpreted in the light most favorable to [the Plaintiff], and every reasonable inference is to be drawn in [the Plaintiff's] favor." (Internal quotation marks omitted.) *Briarwood of Silvermine, LLC* v. *Yew Street Partners, LLC*, 209 Conn. App. 271, 278, 267 A.3d 905 (2021). The court will examine each of the arguments raised by the Defendant with this standard in mind.

Legality and Public Policy Considerations of the Alleged Contract

The Defendant first argues that the purported oral contract between the Defendant and Carbone to hold the property in trust and then reconvey it to the Plaintiff and her siblings upon Carbone's death is void as against public policy. According to the Defendant, the objective of this agreement was to work around Medicaid by sheltering the property from being considered one of Carbone's assets that determined her Medicaid eligibility. It is the Defendant's position that although the original conveyance of the property from Carbone to the Defendant was legal because transfers of property to a disabled son or daughter are exempt from the reach of Medicaid, the subsequent agreement to transfer the property back is legally unenforceable. On this basis, the Defendant contends that he is entitled to judgment in his favor.

In response, the Plaintiff asserts that this argument must fail because neither the state of Connecticut nor the federal Medicaid program was defrauded. Rather, according to the Plaintiff, the transfer of the property was properly disclosed, and Carbone was only on Medicaid for an approximately five-month period. The Plaintiff also contends that Carbone's estate fully repaid and satisfied the Medicaid lien.[5] Additionally, the Plaintiff argues that Carbone did not deceive anybody, and that Carbone relied on the advice of counsel with respect to Medicaid eligibility and the relevant property transfers. Finally, the Plaintiff asserts that this matter is similar to cases where Connecticut courts have held that equity demands the creation of a constructive trust.

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[5] The Plaintiff offered evidence at trial that Carbone inherited substantial assets after the death of her long-time companion
, Joseph Siragusa. According to the Plaintiff, with these additional funds, Carbone became ineligible for Medicaid.

"The [Medicaid] program, which was established in 1965 as Title XIX of the Social Security Act and is codified at 42 U.S.C. § 1396 et seq. . . . is a joint federal-state venture providing financial assistance to persons whose income and resources are inadequate to meet the costs of, among other things, medically necessary nursing facility care. . . . The federal government shares the costs of [M]edicaid with those states that elect to participate in the program, and, in return, the states are required to comply with requirements imposed by the [M]edicaid [A]ct and by the [S]ecretary of the Department of Health and Human Services." (Internal quotation marks omitted.) *Pikula* v. *Dept. of Social Services*, 321 Conn. 259, 264, 138 A.3d 212 (2016). "One of those provisions is the asset transfer provision in 42 U.S.C. § 1396p. Section 1396p (c) (1) imposes a period of ineligibility, generally called the penalty period, on persons who dispose of their assets for less than fair market value within [thirty-six] months before their application for long-term care benefits." *Croll* v. *Commissioner of Dept. of Social Services*, Superior Court, Judicial District of New Britain, Docket No. CV17-6035934-S (February 23, 2018, *Huddleston, J.*).

"Connecticut's Medicaid plan implements the requirements of 42 U.S.C. § 1396p (c) (1) through several statutes and regulations." Id. General Statutes § 17b–261 (a) provides in relevant part that "[m]edical assistance shall be provided for any otherwise eligible person . . . if such person . . . has not made an assignment or transfer or other disposition of property for less than fair market value for the purpose of establishing eligibility for benefits or assistance" under the Medicaid program. Additionally, General Statutes § 17b–261a (a) provides that any transfer of assets with the penalty period before applying for medical assistance "shall be

presumed to be made with the intent . . . to obtain or maintain eligibility for medical assistance. This presumption may be rebutted only by clear and convincing evidence that the transferor's eligibility or potential eligibility for medical assistance was not a basis for the transfer or assignment."

When passing the Medicaid program, Congress demonstrated a "legislative concern that the [M]edicaid program not be used as an estate planning tool. The [M]edicaid program would be at fiscal risk if individuals were permitted to preserve assets for their heirs while receiving [M]edicaid benefits from the state. [Accordingly, Medicaid's] . . . provisions [were] designed to assure that individuals receiving nursing home and other long-term care services under Medicaid are in fact poor and have not transferred assets that should be used to purchase the needed services before Medicaid benefits are made available." (Internal quotation marks omitted.) *Forsyth* v. *Rowe*, 226 Conn. 818, 828-29, 629 A.2d 379 (1993). Simply put, "[t]he federal statutes illustrate that Congress has mandated that [M]edicaid be a payer of last resort . . . ." (Internal quotation marks omitted.) *Rathburn* v. *Health New of the Northeast, Inc.*, 315 Conn. 674, 686, 110 A.3d 304 (2015). To that end, "[a] person who has income or assets above those limits must 'spend down' those resources to become eligible for Medicaid long-term care benefits." *Rathburn* v. *Commissioner of Dept. of Social Services*, Superior Court, Judicial District of New Britian, Docket No. CV15-6028667-S (June 16, 2017, *Huddleston, J.*).

Although the parties agree that the initial transfer of the property from Carbone to the Defendant was not prohibited by federal law because the Defendant was Carbone's disabled

son; 42 U.S.C. § 1396p (c) (2) (A) (ii)[6]; it is apparent that the overall objective of that transfer, and the alleged agreement for the Defendant to reconvey the property upon Carbone's death, was to thwart—or would reasonably be expected to have the effect of thwarting--Medicaid's statutory scheme. Indeed, in paragraph seventeen of her Complaint, the Plaintiff alleges that pursuant to the February 8, 2020 oral agreement between Carbone and the Defendant, Carbone was to "transfer her home . . . to [the Defendant] for no consideration so in the event that . . . Carbone needed long term care, the property would be protected for her children to inherit." Moreover, the Plaintiff's testimony at trial explicitly established that the transfers at issue were a "paper transaction." Therefore, even when the court interprets the evidence in a light most favorable to the Plaintiff, it becomes clear that the agreement at issue was formulated to achieve an purpose in contravention of the law.

"Although it is well established that parties are free to contract for whatever terms on which they may agree . . . it is equally well established that contracts that violate public policy are unenforceable. . . . As a general rule, a court will [not] lend its assistance in any way toward carrying out the terms of a contract, the *inherent purpose* of which is to violate the law . . ." (Citation omitted; emphasis in original; internal quotation marks omitted.) *Vaccaro* v. *D'Angelo*, 184 Conn. App. 467, 490, 195 A.3d 443 (2018). Accordingly, "[c]ontracts that are illegal may defy public policy, in which case they are void and unenforceable. . . . The

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[6] 42 U.S.C. § 1396p (c) (2) provides in relevant part: "An individual shall not be ineligible for medical assistance . . . to the extent that—
(A) the assets transferred were a home and title to the home was transferred to—
(ii) a child of such individual who . . . is . . . totally disabled . . . ."

question of [w]hether a contract is enforceable or illegal is a question . . . to be determined from all the facts and circumstances of each case. Similarly . . . the question [of] whether a contract is against public policy is [a] question of law dependent on the circumstances of the particular case . . . ." (Citations omitted; internal quotation marks omitted.) *Carriage House I-Enfield Assn., Inc.* v. *Johnston*, 160 Conn. App. 226, 245-46, 124 A.3d 952 (2015). As it is clear that the intent behind the agreement at issue was to achieve a purpose in contravention of the Medicaid law, it cannot be enforced by this court.

In an attempt to avoid this result, the Plaintiff primarily relies on *Cohen* v. *Cohen*, 182 Conn. 193, 438 A.2d 55 (1980). *Cohen* arose in the following factual and procedural context. The plaintiff, who was going through dissolution proceedings, purchased a condominium as joint tenants with her son, the defendant. Although title was held by both parties, the defendant did not contribute any funds to the purchase of the property. Rather, the plaintiff chose for her son to have joint ownership because she "feared that [her husband] would acquire some interest in the condominium if she died; and the defendant warned her that property held in her name could be reached by his father's creditors and that it was likely that his father would try to use such property to secure or to satisfy his debts." Id., 197. The parties made this agreement "with the understanding that the defendant would deed his interest back to his mother upon her request." Id., 197-98. Despite this apparent agreement, the defendant refused to reconvey the property to the plaintiff. Our Supreme Court determined that, under the facts presented in *Cohen*, the imposition of a constructive trust was appropriate because "[t]he defendant in this case successfully persuaded his mother to place the property involved in the joint estate

ostensibly to defeat the potential claims of his father's creditors. Although he promised to reconvey to his mother his record interest in the property at a future date, he never, in fact intended to do so. These facts support a conclusion that the defendant took personal advantage of his confidential relationship with his mother by fraud and artifice." Id., 205. Key to the Supreme Court's conclusion in this regard was "[t]here is no indication here that the Plaintiff intended to perpetrate a fraud upon the court . . . ." Id.

At first blush, it may appear that *Cohen* is factually similar to the present case. Nevertheless, this matter is more analogous to *Pappas* v. *Pappas*, 164 Conn. 242, 320 A.2d 809 (1973). In *Pappas*, the plaintiff, who was going through divorce proceedings, "consulted with his children . . . and formulated a plan to transfer his real estate to them until his marital difficulties were over and then have the property transferred back to him. Prior to the transfer, the defendant[, one of the plaintiff's children,] agreed to reconvey the properties after the plaintiff had settled his problems with his wife." Id., 244. As stated by our Supreme Court: "At a deposition taken in connection with the divorce action, the plaintiff testified that he transferred the real estate to his children in satisfaction of certain financial and other obligations to them." Id. "Nevertheless, as part of his plan for the ultimate retention of this property, the plaintiff misrepresented the transfer as being absolute. The plaintiff persisted in this misrepresentation when, in connection with the divorce action, he testified falsely under oath concerning the consideration given for the transfer. This testimony, given after the initiation of the divorce action, along with the Plaintiff's testimony in this case, constituted a fraud on the court." Id., 245. When the defendant refused to reconvey the subject properties back to the

plaintiff, the trial court imposed a constructive trust. The Supreme Court determined this course of action was in error because the facts indicated that the plaintiff in *Papas* acted with unclean hands and perpetrated a fraud on the court. Id., 247. Accordingly, the case was remanded to the trial court with direction to enter judgment in favor of the defendant.

The evidence indicates that the series of purported transactions here were undertaken with the intent to shield the property from Medicaid and to enroll Carbone in a government program for which she would not otherwise be eligible. As noted by the Vermont Supreme Court: "it is well settled that one who seeks relief in equity must come to the court with clean hands. . . . [A] party requesting a constructive trust on property transfer[red] . . . to avoid his creditors . . . would not appear to meet this requirement. . . . The same principle applies when the object of the conveyance is not to defraud a private creditor but to mislead the government." (Citations omitted; internal quotation marks omitted.) *Shattuck* v. *Peck*, 193 Vt. 123, 128 70 A.3d 922 (2013). "Courts have thus refused to impose a constructive trust in a variety of circumstances where the original transfer was to avoid a governmental penalty or obtain an unwarranted governmental benefit." Id., 129. Similarly, the Alabama Court of Civil Appeals has recognized that this rule applies when a party "alleges that [another] conveyed the property to her in order to defraud a governmental entity into considering her to be eligible for Medicaid and other government benefits." *McMichael* v. *Flynn*, 686 So. 2d 254, 256 (Ala. Ct. Civ. App. 1995), appeal dismissed, 686 So. 2d 257 (Ala. 1996). Simply put, "[h]e who comes into equity must come with clean hands, a court of equity will not lend its aid in any manner to one who has been guilty of unlawful or inequitable conduct in a transaction from which he

seeks relief, nor to one who has been a participant in a transaction the purpose of which was to defraud a third person, to defraud creditors, or to defraud the government." (Internal quotation marks omitted.) *Estate of Bruner* v. *Bruner*, 338 F.3d 1172, 1177 (10th Cir. 2003). Accordingly, as the purpose of the agreement to reconvey the property from the Defendant to the Plaintiff and his siblings after Carbone's death was part of a scheme to work around state and federal law, the Plaintiff cannot succeed on either her legal based causes of action (breach of contract/tortious interference) or those that sound in equity (unjust enrichment/constructive trust.) The court observes that it was only a matter of chance and timing—not reasonably contemplated at the time of the subject oral agreement and other transactions--that Carbone happened to inherit funds from her long-time companion making her again ineligible for Medicaid and able to pay back the lien.

Statute of Frauds

The Defendant further argues that he is entitled to judgment in his favor pursuant to the statute of frauds,[7] specifically, that portion of the statute of frauds that prohibits oral agreements concerning the sale of real property.[8] As the purported agreement between the

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[7] This special defense only specifically applies to counts one through three of the Complaint.

[8] The Defendant also argues that the Plaintiff's claims are barred by the portion of the statute of frauds that prohibits oral agreements that cannot be performed within one year. "Our case law in Connecticut . . . has taken a narrow view of the one-year provision of the statute of frauds now codified as [General Statutes] § 52–550 (a) (5). . . . [Our Supreme Court has] held that it has been repeatedly adjudged, that unless it appear[s] from the agreement itself, that it is not to be performed within a year, the statute does not apply. . . . The statute of frauds plainly means an agreement not to be performed within the space of a year, and expressly and specifically so agreed. . . . It does not extend to cases where the thing only may be performed within the

Defendant and Carbone to reconvey the property upon Carbone's death was not in writing, the Defendant asserts that it cannot be enforced by the courts. In opposition, the Plaintiff contends this portion of the statute of frauds does not govern this matter because it is inapplicable to trusts that arise by operation of law.

General Statutes § 52-550 provides in relevant part: "(a) No civil action may be maintained in the following cases unless the agreement, or a memorandum of the agreement, is made in writing and signed by the party, or the agent of the party, to be charged . . . (4) upon any agreement for the sale of real property or any interest in or concerning real property . . . ." "The provision requires that every agreement or memorandum of an agreement for the sale of real property or any interest in or concerning real property be in writing and signed by the party to be charged in order for a civil action to be maintained against that party. . . . The primary purpose of the statute of frauds is to provide reliable evidence of the existence and the terms of the contract . . . ." (Citation omitted; internal quotation marks omitted.) *Sovereign Bank* v. *Licata*, 116 Conn. App. 483, 496, 977 A.2d 228 (2009), appeal dismissed, 303 Conn. 721, 36 A.3d 662 (2012).

In paragraph eighteen of her Complaint, the Plaintiff alleges that "the agreement [at issue] was not reduced to writing." Additionally, according to the evidence introduced at trial,

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year." (Citation omitted; emphasis omitted; internal quotation marks omitted.) *C.R. Klewin, Inc.* v. *Flagship Properties, Inc.*, 220 Conn. 569, 577-78, 600 A.2d 772 (1991). As it was certainly possible that Carbone could have passed away and then the Defendant in turn proceeded to convey the property to the Plaintiff and his siblings within one year, this portion of the statute of frauds does not defeat the Plaintiff's causes of action.

it is undisputed that any contract between Carbone and the Defendant was oral. As the contract in the present case was for the conveyance of real estate, the statute of frauds plainly applies. In opposition, the Plaintiff only cites to law holding that "[i]n this jurisdiction . . . the statute of frauds does not apply to trusts arising by operation of law. . . . Within this category fall constructive trusts . . . ." (Citation omitted; internal quotation marks omitted.) *Jarvis* v. *Lieder*, Superior Court, Judicial District of Ansonia-Milford, Docket No. CV-06-5001737-S (October 6, 2008, *Levin, J.*), aff'd, 117 Conn. App. 129, 978 A.2d 106 (2009), citing, *Worobey* v. *Sibieth*, 136 Conn. 352, 355-56, 71 A.2d 80 (1949). Although this is a correct statement of the law, the court has already concluded that a constructive trust is inappropriate under the facts of this matter. Accordingly, even if the evidence offered at trial is interpreted in a manner most favorable to the Plaintiff, she cannot escape the application of the statute of frauds. This observation provides an additional basis to enter judgment in favor of the Defendant.[9]

Conclusion

[9] Having reached the conclusion that the Defendant is entitled to judgment in his favor with respect to his first two arguments, the court need not examine his last argument, i.e., that the Plaintiff has failed to demonstrate that there was an agreement between Carbone and the Defendant. In any event, within the procedural context that is currently before this court, it would be inappropriate to reach this ground because the court would necessarily have to engage in fact finding. Under our rules of practice, "[o]n . . . a [Practice Book § 15–8] motion, the court is confined to determining whether the Plaintiff's evidence, if believed and if given the benefit of all favorable inferences, makes out a prima facie case. . . . The court, on such a motion, may not make findings of fact, either favorable or unfavorable to the Plaintiff." (Emphasis omitted; internal quotation marks omitted.) *Charter Oak Lending Group, LLC* v. *August*, 127 Conn. App. 428, 436, 14 A.3d 449, cert. denied, 302 Conn. 901, 23 A.3d 1241 (2011).

For the foregoing reasons, the court treats the Defendant's Motion for Directed Verdict/Post-trial Brief as a motion for judgment of dismissal and judgment pursuant to Practice Book § 15-8, and it grants that motion. Judgment shall enter accordingly in favor of the Defendant.

James Field Spallone,
Judge, Connecticut Superior Court