

DOCKET NO. AAN-CV23-6051347-S : SUPERIOR COURT
KELLY DEPALMA : J.D. OF ANSONIA/MILFORD
VS. : AT MILFORD
JOHN T. DEPALMA, ET AL : MAY 7, 2023

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J.D. CLERK'S OFFICE
SUPERIOR COURT
MILFORD, CT

MEMORANDUM OF DECISION

The instant action is a sixteen-count complaint brought by the plaintiff, Kelly DePalma, against numerous parties arising from alleged transactions and pertaining to the ownership, occupancy, use, and enjoyment of property located at 723 Buckingham Ave, Milford (property). Title to the property is presently held by defendant Buckingham Realty Trust (trust) and the trustee of the trust is defendant John DePalma, who is also the grandfather of the plaintiff. John DePalma now moves to strike the seventh count, which alleges breach of an oral contract, arguing that it is precluded by the statute of frauds, Connecticut General Statutes 52-550.¹ John DePalma also moves to strike the ninth count, which alleges that he has personally been unjustly enriched through his control of the property. John DePalma argues that it is the trust, not he, that owns the property; therefore, the plaintiff is unable to state a claim against him in his individual capacity for unjust enrichment. For the foregoing reasons, the motion to strike is denied as to count seven and granted as to count nine.

“The purpose of a motion to strike is to contest ... the legal sufficiency of the allegations of any complaint ... to state a claim upon which relief can be granted. In ruling on a motion to

¹ 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;”

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strike, the court is limited to the facts alleged in the complaint. In deciding a motion to strike the trial court must consider as true the factual allegations, but not the legal conclusions set forth in the complaint. *Liljedahl Bros., Inc. v. Grigsby*, 215 Conn. at 345, 348, 576 A.2d 149 (1990). “What is necessarily implied [in an allegation] need not be expressly alleged. Indeed, pleadings must be construed broadly and realistically, rather than narrowly and technically ...” (Citations omitted; internal quotation marks omitted.) *Doe v. Yale University*, 252 Conn. at 641, 667, 748 A.2d 834 (2000). The court must construe the facts in the complaint most favorably to the plaintiff ... If facts provable in the complaint would support a cause of action, the motion to strike must be denied.” (Citations omitted; internal quotation marks omitted.) *Faulkner v. United Technologies Corp.*, 240 Conn. 576, 580, 593 A.2d 293 (1997).

The statute of frauds 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. *L & R Realty v. Connecticut National Bank*, 53 Conn.App. at 524, 541, 732 A.2d 181, cert. denied, 250 Conn. 901, 734 A.2d 984 (1999). A core allegation of the plaintiff’s count seven is that John DePalma “had an agreement with [the plaintiff] for her to purchase the subject property in her name with him funding same and she agreed to not purchase any other residence and thereafter pay for the taxes and insurance and all subsequent improvements to the property and maintain it as her home and she has performed under said agreement while DePalma has breached the material terms of their agreement.”

Since the plaintiff’s cause of action concerns the transfer of real estate, the alleged agreement between the plaintiff and defendant falls within the statute; however, “[c]ourts [will] permit the [s]tatute of frauds to be raised by a motion to strike only when the alleged agreement falls squarely within those categories of agreements required to be in writing.” (Internal

quotation marks omitted.) *Guillette v. McAlpine*, Superior Court, judicial district of Windham at Putnam, Docket No. CV02-0068940 (March 24, 2003, Foley, J.); see *Breen v. Phelps*, 186 Conn. at 86, 93-94, 439 A.2d 1066 (1982). In the present case, however, the plaintiff has alleged partial performance with a contract for the conveyance of realty. "Full or part performance of an agreement gives rise to equitable considerations removing the oral agreement from the operation of the [s]tatute of frauds ..." (Citations omitted.) *Dore v. Devine*, Superior Court, judicial district of Stamford/Norwalk at Stamford, Docket No. CV00-0176933 (October 6, 2000, D'Andrea, J.) (28 Conn. L. Rptr. 313); see *Stanley v. M.H. Rhodes, Inc.*, 140 Conn. at 689, 695, 103 A.2d 143 (1954). Presuming, as this court must, that the plaintiff's allegations are true, equitable considerations require presentation of her claim. *Barrett Builders v. Miller*, 215 Conn. at 316, 331, 576 A.2d 455 (1990); *Urda v. Sahl*, Superior Court, judicial district of New Haven at New Haven, Docket No. CV02-0468800, (April 17, 2003, Arnold, J.). Accordingly, the defendant's motion to strike count seven is denied.

With respect to the plaintiff's allegations that John DePalma was unjustly enriched in his individual capacity, she has alleged no facts that could support such a claim. As the plaintiff has alleged that the property is owned by the trust, the trust and its beneficiaries are the only ones that can be enriched, unjustly or otherwise, by any improvements the plaintiff has made to the property. Accordingly, the defendant's motion to strike count nine is granted.

SO ORDERED.

By the court,



Welch, J.