

DOCKET NO. CV-20-6103992-S : STATE OF CONNECTICUT
 NEDAL SHEHADEH : SUPERIOR COURT
 V. : JUDICIAL DISTRICT OF NEW HAVEN
 : AT NEW HAVEN
 TAMER ABDALLAH : JUNE 4, 2024

Judicial District of New Haven
 SUPERIOR COURT
 FILED

JUN 04 2024

MEMORANDUM OF DECISION

CHIEF CLERK'S OFFICE

STATEMENT OF CASE AND PROCEDURAL HISTORY

This is an action for civil theft, conversion, unjust enrichment and breach of fiduciary duty arising out of an oral arrangement between the plaintiff, Nedal Shehadeh and his nephew defendant Tamer Abdallah, in which the defendant agreed to help plaintiff manage plaintiff's rental properties. Count one of the Amended Revised Complaint dated March 7, 2022, is a claim for civil theft and alleges that between January 1, 2015 and March 31, 2018, the defendant stole \$66,450.00 from plaintiff in violation of Connecticut General Statutes, section 52-564. Count two is for conversion and alleges that the defendant converted those funds to defendant's own use. Count three is a claim for breach of fiduciary duty and alleges that the defendant owed a fiduciary duty to the plaintiff based upon the agreement plaintiff entered into with the defendant that the defendant would help manage plaintiff's rental properties, and that the defendant breached his fiduciary duty to plaintiff when he stole \$66,450.00 from the plaintiff. Count four is for unjust enrichment and alleges that the defendant benefitted from deposits of money belonging to the plaintiff into the defendant's bank accounts and that the defendant was unjustly enriched when he did not return plaintiff's funds to the plaintiff and that the failure to return those funds to the plaintiff was to the plaintiff's detriment.

The defendant filed an answer, special defenses and counterclaim. The defendant denied the majority of the allegations in the plaintiff's amended revised complaint. In his answer, the defendant raised a statute of limitations special defense as to counts one, two, three and four, pursuant to General Statutes § 52-577, and to the extent the court construes the plaintiff's claims as sounding in negligence, the defendant likewise argued that the plaintiff's claims in counts one, two, three, and four are barred by § 52-584. The defendant also raised the defense of laches as to counts one two three and four.

The defendant filed a counterclaim alleging conversion and unjust enrichment. On November 30, 2023, the defendant withdrew the count for conversion, therefore leaving the unjust enrichment as the sole count.

The case was tried to the court on November 30, 2023, December 1 and December 19, 2023. By order of the court, the parties filed post-trial briefs on January 31, 2024. The parties agreed to waive the 120 day time for filing the court's decision until June 20, 2024.

At the conclusion of the plaintiff's case, on December 1, 2023, the defendant moved to dismiss the plaintiff's claims pursuant to Practice Book § 15-8 for failing to make out a prima facie case. After hearing argument on the motion, the court granted the motion as to the civil theft, conversion and breach of fiduciary duty counts. The court denied the motion as to the unjust enrichment count, thereby leaving said count as the remaining count.

The defendant/counterclaim plaintiff thereafter put on evidence as to his remaining unjust enrichment claim. In his counterclaim the defendant alleges that the plaintiff/counterclaim defendant asked to use defendant's bank account to receive rental income and to pay plaintiff's expenses. The defendant further claims that the amount of personal and business expenses he

paid out of his account on behalf of the plaintiff exceeded the amount of monies the plaintiff gave to the defendant to deposit into defendant's account for the payment of same, by a sum of \$25,000.00. The defendant argues that his counterclaim against the plaintiff rests squarely upon the plaintiff's use of defendant's bank account (...8725) and credit cards (Capital One & Sam's Club). The defendant claims that the plaintiff has been unjustly enriched by monies plaintiff received for his personal expenses and the expenses associated with his rental properties and by his wrongful retention of defendant's funds, all to the detriment of the defendant.

BURDEN OF PROOF/STANDARD OF PROOF

The burden of proof is on the plaintiff to prove all of the essential allegations of his complaint and on the defendant to prove all of the essential elements of his counterclaim. See *Lukas v. New Haven*, 184 Conn. 205, 211, 439 A.2d 949 (1981). "While the plaintiff is entitled to every favorable inference that may be legitimately drawn from the evidence, and has the same right to submit a weak case as a strong one, the plaintiff must still sustain the burden of proof on the contested issues in the complaint and the defendant need not present any evidence to contradict it . . . The general burden of proof in civil actions is on the plaintiff, who must prove all the essential elements of [his] cause of action by a fair preponderance of the evidence." *Gulycz v. Stop and Shop*, 29 Conn.App. 519, 523, cert. denied, 224 Conn. 923, 618 A.2d 529 (1992). Failure to do so results in judgment for the defendant. *Id.* In Connecticut, "[a] [counterclaim] must be proven by the defendant." (Internal quotation marks omitted.) *Caciapoli v. Lebowitz*, Superior Court, judicial district of New Haven, Docket No. CV 08 5020658 (March 4, 2010, *Berdon, J.T.R.*). Like the plaintiff, the defendant must prove all of the essential elements of his counterclaim by a fair preponderance of the evidence. The ordinary civil standard of proof

is the fair preponderance of the evidence standard. *Freeman v. Alamo Management Co.*, 221 Conn. 674, 678, 607 A.2d 370 (1992). “The burden of persuasion in an ordinary civil action is sustained if evidence induces in the mind of the trier a reasonable belief that it is more probable than otherwise that the fact in issue is true.” (Internal quotation marks omitted.) *Lopinto v. Haines*, 185 Conn. 527, 533, 441 A.2d 151 (1981). The standard of proof, a fair preponderance of the evidence, is “properly defined as the better evidence, the evidence having the greater weight, the more convincing force in your mind.” (Internal quotation marks omitted.) *Cross v. Huttenlocher*, 185 Conn. 390, 394, 440 A.2d 952 (1981).

FINDINGS OF FACT

“The [fact-finding] function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties” (Internal quotation marks omitted.) *Cavolick v. DeSimone*, 88 Conn. App. 638, 646, 870 A.2d 1147, cert. denied, 274 Conn. 906, 876 A.2d 1198 (2005). “It is the sole province of the trial court to weigh and interpret the evidence before it and to pass on the credibility of the witnesses.” (Emphasis omitted; internal quotation marks omitted.) *Zahringer v. Zahringer*, 124 Conn. App. 672, 679-80, 6 A.3d 141 (2010). The court makes the following findings of fact by a fair preponderance of the evidence.

The plaintiff Shehadeh owns and rents properties located at 660 Howard Avenue, 61-63 Rosette Street, in New Haven, Connecticut. The property located at Rosette Street is residential property and the property located at Howard Avenue, is a MiniMart. From 2015 to March of 2018, Gabriela Roman, the mother of plaintiff’s children and the plaintiff’s children lived at 58 Daggett Street, which is owned by the plaintiff. The only mortgage was on plaintiff’s property

located at 644 Howard Avenue where the plaintiff lived.

Lillian Roman, sister-in-law to Gabriela Roman, occupied 63 Rosette Street from January 2015 through March 2018. Roman's rent was \$900 per month. Roman never had any dealings with the defendant. Roman began paying rent by check in November 2016, and prior to that she paid rent in cash directly to the plaintiff. The plaintiff allowed for a reduction in rent for work Roman and her husband performed in maintaining the property, however, she did not remember how much or when she paid a reduced rent for the years in question.

Jonathan Roman was a tenant at 61 Rosette Street in New Haven for two years on a month to month tenancy. Jonathan's rent was \$900 per month. He made payments in cash between November 2016 and April 2018.

The monthly rent on the MiniMart property at 660 Howard Avenue from February 2015 through the date of trial was \$3000 per month. The tenant of the MiniMart fell behind by \$12,000 but was allowed to pay \$500 extra each month to resolve the back rent. In addition to rent, the tenant paid \$333 each month for real estate taxes on the property. The defendant also had monthly parkers to whom he rented parking spaces at 660 Howard Avenue and who paid different monthly rent amounts. These rent amounts were paid mostly in cash, some were paid by check. These were informal rental arrangements, with no records except for deposits.

On September 24, 2015, TD bank, the plaintiff's bank notified the plaintiff that it received a garnishment order in the amount of \$9318.25 which represents a judgment in the amount of \$8095.87 obtained by the Greater New Haven Water Pollution Control Authority (GNHWPCA), plus fees and cost. GNHWPCA issued a levy against the plaintiff's bank account at TD Bank and withdrew \$2,886.23 from his account on September 24, 2015. As a result of the

garnishment, the plaintiff closed his TD bank account on October 24, 2015 at which time plaintiff asked the defendant to help him by paying the plaintiff's bills and depositing rent monies. The parties decided to use the defendant's TD bank account for rental deposits and to pay the plaintiff's bills and expenses. The plaintiff admitted that he wanted to use the defendant's bank account to avoid further garnishment of his money by creditors, particularly the GNHWPCA. Based on the evidence submitted, the money collected from rents were deposited into defendant's account, along with any deposits of the defendant's own personal monies. In addition, monies for defendant's own expenses and for the plaintiff's expenses were paid out of the defendant's account. In March of 2018, the plaintiff and defendant had a dispute about money the plaintiff claimed was missing from the account. According to the plaintiff, defendant had not deposited all of the rents he had given to the defendant to deposit. It was at this time the plaintiff closed the bank account, opened a new account and stopped giving rent payments to the defendant.

In support of his unjust enrichment claim, in addition to his own testimony, the plaintiff submitted, a report from Kathy West, a certified public account hired by the plaintiff in 2019 to help resolve his dispute with the defendant. West collected information on plaintiff's rental operation for the period from 2015 through the first quarter of 2018. She received information from both the plaintiff and defendant, including copies of rent checks, bank statements, credit card statements, utility bills and real estate bills. Both the plaintiff and defendant provided her with expenses paid by them individually. According to West, the plaintiff provided her with information on the monthly parking rent that was claimed to have been paid in cash. West testified that she found that the overall income for the period 2015 through the first quarter of

2018 was \$66,450. The plaintiff claims that \$102,762 was deposited into defendant's account and that the defendant only paid \$68,186.11, leaving the defendant indebted to the plaintiff in the amount of \$34,575.89.

The defendant submitted, in addition to his testimony, profit and loss statements to demonstrate the expenses that he paid out on behalf of the plaintiff. The defendant claims that according to the profit and loss statements submitted, he paid out \$25,066.23 in excess of the amount of monies plaintiff gave him to deposit into his account for plaintiff's personal bills and expenses and bills and expenses related to plaintiff's properties. The court will make additional findings as necessary.

LEGAL ANALYSIS

In count four, the remaining count in his complaint, the plaintiff claims that the defendant was unjustly enriched because the defendant benefitted from deposits into defendant's bank account that belonged to the plaintiff. The defendant, likewise in his counterclaim, claims that the plaintiff was unjustly enriched because the amount of plaintiff's expenses paid by the defendant on behalf of the plaintiff, exceeded the amount that the plaintiff deposited into defendant's account.

"Unjust enrichment applies wherever justice requires compensation to be given for property or services rendered under a contract, and no remedy is available by an action on the contract. . . . A right of recovery under the doctrine of unjust enrichment is essentially equitable, its basis being that in a given situation it is contrary to equity and good conscience for one to retain a benefit which has come to him at the expense of another." (Internal quotation marks omitted.) *Vertex, Inc. v. Waterbury*, 278 Conn. 557, 573, 898 A.2d 178 (2006). "This doctrine is

based upon the principle that one should not be permitted unjustly to enrich himself at the expense of another but should be required to make restitution of or for property received, retained or appropriated. . . . The question is: Did [the party liable], to the detriment of someone else, obtain something of value to which [the party liable] was not entitled?" (Internal quotation marks omitted.) *Horner v. Bagnell*, 324 Conn. 695, 708, 154 A.3d 975 (2017).

"Unjust enrichment is a 'noncontractual means of recovery in restitution.' (Emphasis added; internal quotation marks omitted.) *Professional Electrical Contractors of Connecticut, Inc. v. Stamford Hospital*, 196 Conn. App. 430, 438, 230 A.3d 773 (2020); see also *Hospital of Central Connecticut v. Neurosurgical Associates, P.C.*, supra, 139 Conn. App. at 784, 57 A.3d 794 ('[u]njust enrichment applies wherever justice requires compensation to be given for property or services rendered . . . and no remedy is available by an action on the contract' (emphasis added)). In other words, unjust enrichment is not available as a remedy when there is a valid contract between the parties and that contract addresses the matter at issue in the unjust enrichment action. See *Connecticut Light & Power Co. v. Proctor*, 158 Conn. App. 248, 251 n.7, 118 A.3d 702 (2015) ('[a] court . . . cannot grant relief on a theory of unjust enrichment unless the court first finds that there was no contract between the parties'), aff'd, 324 Conn. 245, 152 A.3d 470 (2016). 'Nevertheless, when an express contract does not fully address a subject, a court of equity may impose a remedy to further the ends of justice.' (Emphasis added; internal quotation marks omitted.) *New Hartford v. Connecticut Resources Recovery Authority*, 291 Conn. 433, 455, 970 A.2d 592 (2009)." *Gleason v. Durden*, 211 Conn.App. 416, 428, 272 A.3d 1129 (2022).

Here, although the parties orally agreed that the plaintiff would use the defendant's bank

account to deposit rent monies, and pay plaintiff's expenses, there were no specific contractual terms governing the oral agreement. Therefore the court will analyze both plaintiff's and defendant's claims pursuant to the doctrine of unjust enrichment.

Here, the evidence submitted, demonstrates that monies from rents collected from plaintiff's properties were deposited into the defendant's account and commingled with the defendant's monies in that account. The evidence also demonstrates that the defendant did pay expenses out of the account. However, the court cannot discern from the evidence submitted who unjustly benefitted from what and from whom. The court does not find the written report of West credible as there are too many discrepancies in her findings. Neither does the court find credible the profit and loss statement submitted by the defendant in support of his unjust enrichment claim, as there are discrepancies contained therein. The court also rejects the testimony of the plaintiff, defendant and West on what deposits were made into defendant's account and what expenses were paid out of the defendant's account as the court finds the testimony of said witnesses not credible. All the court can discern from the evidence submitted regarding monies in and monies out, is that the plaintiff received the benefit of the defendant's account to avoid garnishment of his own account, and the defendant benefitted from the use of some of the plaintiff's monies deposited into his account to pay some of his own expenses. Each benefitted from the other, and the accounting submitted is so indecipherable that the court cannot determine who may have been unjustly enriched. Accordingly, the plaintiff has failed to prove by a preponderance of the evidence his claim for unjust enrichment. The court therefore enters judgment in favor of the defendant on count four of the complaint. Likewise, the defendant has failed to prove count one of his counterclaim for unjust enrichment. The court therefore enters

judgment in favor of the plaintiff/counterclaim defendant on count one of the counterclaim.

CONCLUSION

Based on the foregoing, the court finds in favor of the defendant on the plaintiff's unjust enrichment claim set forth in count four of the plaintiff's complaint. Likewise, the court finds in favor of the plaintiff/counterclaim defendant on the defendant's unjust enrichment claim in count one of the defendant's counterclaim.¹ It is so ordered.

Juris No. 421279

Wilson, J.

¹In light of the court's ruling dismissing the plaintiff's civil theft, conversion and breach of fiduciary duty claims for lack of a prima facie case pursuant to Practice Book § 15-8, it need not address the defendant's statute of limitations and laches defenses as to those claims. As to defendant's statute of limitations and laches special defenses relating to the plaintiff's unjust enrichment claim, in light of the court's ruling as to plaintiff's claim of unjust enrichment, it is not necessary for the court to reach the defendant's statute of limitations and laches special defenses as to that claim.