

2017 IL App (2d) 160846-U
No. 2-16-0846
Order filed June 6, 2017

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

CITIMORTGAGE, INC.,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellee,)	
)	
v.)	
)	
JAMES M. GORDON, KAREN L.)	
GORDON, BANK OF AMERICA, N.A.)	
S/I/I TO LASALLE BANK, N.A.;)	
MICHAEL A. WEBER, SPECIAL)	
ADMINISTRATOR OF THE ESTATE)	
OF MARCELLA WEBER, DECEASED;)	
UNKNOWN OWNERS AND)	
NONRECORD CLAIMANTS,)	
)	
Defendants,)	
)	
v.)	No. 13-CH-2487
)	
MICHAEL A. WEBER, SPECIAL)	
ADMINISTRATOR OF THE ESTATE)	
OF MARCELLA WEBER, DECEASED,)	
)	
Counter-Plaintiff/Appellant,)	
)	
v.)	
)	
CITIMORTGAGE, INC., JAMES M.)	
GORDON, KAREN L. GORDON, BANK)	
OF AMERICA, N.A. S/I/I TO LASALLE)	
BANK, N.A., UNKNOWN OWNERS)	

appeal. Neither the Gordons nor Bank of America are parties to this appeal. As the record contains no reports of proceedings, the following facts are derived from the pleadings and exhibits attached thereto.

¶ 5 On May 25, 2006, the Gordons granted a mortgage on the subject property to ABN AMRO Mortgage Group, Inc. The mortgage secured a note in the original amount of \$300,000. ABN AMRO then merged with Citimortgage in 2007.

¶ 6 The Gordons eventually defaulted on their monthly payments, prompting Citimortgage to file its foreclosure complaint on September 3, 2013. Therein, Citimortgage made two allegations pertaining to defendant Bank of America. First, Citimortgage alleged that the Gordons had granted a second mortgage on the subject property to Bank of America on November 11, 2006, to secure a note in the original amount of \$100,000. Second, Citimortgage alleged that its mortgage lien was superior to Bank of America's mortgage lien. Bank of America filed an answer and admitted both of these allegations.

¶ 7 On December 19, 2013, the trial court entered an order of default against the Gordons and a judgment for foreclosure and sale of the subject property. On January 8, 2014, Weber filed a petition to intervene in the foreclosure action. The trial court granted the petition and Weber filed an answer and a counterclaim. In his counterclaim, Weber alleged that he had a pending citation to recover assets against the Gordons in a separate probate case, and that the Gordons had misappropriated certain funds from Marcella Weber to pay for improvements to the subject property.

¶ 8 On January 31, 2014, the Gordons filed for bankruptcy in the United States Bankruptcy Court for the Northern District of Illinois. The parties agree that the bankruptcy court granted

the Gordons a discharge on May 13, 2014, thereby allowing the instant case to proceed in the trial court.

¶ 9 On August 1, 2014, Weber and the Gordons entered into a settlement agreement in the probate case. As per the agreement, judgment was entered in favor of Weber and against the Gordons, jointly and severally, in the amount of \$572,809. The Gordons acknowledged that they had acted in concert to misappropriate the funds from Marcella Weber, and that Karen Gordon had breached her fiduciary duty to Marcella Weber under a power of attorney. The Gordons agreed that they had expended \$257,299.22 of the misappropriated funds, as detailed in discovery, for the “construction of certain improvements” to the subject property. Regarding the bankruptcy proceeding, the Gordons agreed that they would not contest the entry of an order of non-discharge to the extent of \$572,809. They also agreed to waive in favor of Weber any monies due to them from the bankruptcy proceedings to the extent of \$572,809.

¶ 10 On October 27, 2014, Weber filed his first amended complaint for foreclosure of equitable lien and other relief. Therein, Weber alleged that Marcella Weber had been diagnosed with Alzheimer’s disease and dementia beginning in 1998. From April 2005 through the time of Marcella’s death, Karen Gordon acted as Marcella’s power of attorney. According to Weber, between April 20, 2005, and July 1, 2008, the Gordons expended \$205,741.86 of the misappropriated funds on improvements to the subject property, including the construction of a sun room and a new garage with living quarters. Between January 12, 2010, and August 27, 2010, the Gordons expended another \$51,557.36 of the misappropriated funds for a “completely replaced kitchen.” Accordingly, Weber asked the trial court to declare an equitable lien and/or a constructive trust with respect to these “enhancements” in the amount of \$257,299.22. Weber

further requested that the equitable lien and/or constructive trust be declared superior to any other lien or encumbrance on the subject property.

¶ 11 Citimortgage and Bank of America brought motions to dismiss Weber's first amended complaint pursuant to sections 2-615 and 2-619 of the Code of Civil Procedure (the Code) (735 ILCS 5/2-615, 5/2-619 (West 2014)). Both parties argued that Weber had failed to adequately plead that he lacked an adequate legal remedy, and that he was further precluded from obtaining equitable relief because his judgment from the probate case demonstrated that he had already obtained an adequate remedy at law. See *Newton v. Aitken*, 260 Ill. App. 3d 717, 720 (1994) ("An equitable remedy is not available where there is an adequate remedy at law."). Additionally, both parties argued that Weber was not entitled to first priority over the "enhancements" to the subject property, as there were no allegations of wrongdoing on the part of any party but the Gordons.

¶ 12 On July 23, 2015, the trial court entered an order granting the motions to dismiss Weber's claim for an equitable lien, with prejudice, but denying the motions with respect to Weber's claim for a constructive trust. The order contains no indication as to whether the denial of the motions with respect to the constructive trust was on the merits.

¶ 13 On October 29, 2015, Weber filed his second amended complaint for foreclosure of equitable lien and other relief. This was identical to the first complaint, except that the Gordons were added as defendants to the remaining claim for a constructive trust.

¶ 14 On November 12, 2015, Citimortgage filed a motion for summary judgment on Weber's claim for a constructive trust. Therein, Citimortgage expounded upon the same arguments that it had made in its earlier motion to dismiss. On March 10, 2016, the trial court entered an order

stating, without further explanation, that Citimortgage's motion for summary judgment was granted.

¶ 15 On September 8, 2016, the trial court entered an order confirming the sale of the subject property and ordering possession. On October 6, 2016, Weber filed a timely notice of appeal. He requested a reversal of the order dated March 10, 2016, granting Citimortgage's motion for summary judgment on his claim for a constructive trust, as well as a reversal of the order dated September 8, 2016, confirming the sale of the subject property and ordering possession.

¶ 16

II. ANALYSIS

¶ 17 Weber's sole contention on appeal is that the trial court erred by granting Citimortgage's motion for summary judgment on his claim for a constructive trust. As discussed, Weber seeks the imposition of a constructive trust with respect to the "enhancements" that the Gordons made to the subject property using funds that they had misappropriated from Marcella Weber. For the following reasons, we affirm the trial court's ruling.

¶ 18 Motions for summary judgment are governed by section 2-1005 of the Code (735 ILCS 5/2-1005 (West 2014)). Summary judgment should be granted only where the pleadings, depositions, admissions, and affidavits on file, when viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact, and that the moving party is clearly entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2014). "The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine issue of material fact exists." *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). In appeals from summary judgment rulings, our standard of review is *de novo*. *Id.* at 43.

¶ 19 Before addressing the merits, we reject Weber’s argument that the trial court’s initial ruling on the motions to dismiss constituted the “law of the case.” Weber maintains that “[t]he trial court erred in granting [Citimortgage’s] motion for summary judgment, as it had already ruled that [Weber] stated an adequate claim for constructive trust.” We disagree.

¶ 20 As set forth above, Citimortgage raised the same issues in its motion for summary judgment that it had already raised in its earlier motion to dismiss. However, “similar to *res judicata* and estoppel, application of the law of the case doctrine requires a final judgment.” *Wakehouse v. Goodyear Tire & Rubber Co.*, 353 Ill. App. 3d 346, 352 (2004). Here, the law-of-the-case doctrine is inapplicable because the trial court’s ruling on Citimortgage’s motion to dismiss was not a final judgment.

¶ 21 Furthermore, unless a trial court disposes of a section 2-619 motion to dismiss on its merits, a party is not precluded from raising the same matters by answer. 735 ILCS 5/2-619(d) (West 2014). Here, the order dated July 23, 2015, does not indicate whether the trial court disposed of Citimortgage’s section 2-619 motion to dismiss on its merits. “Because a court may deny such a motion without reaching the merits, such as when it cannot determine with reasonable certainty that the alleged defense exists or because it concludes the motion may involve disputed factual issues [citation,] we conclude that the denial of such a motion, without more, does not show that the court disposed of the motion on its merits.” *Makowski v. City of Naperville*, 249 Ill. App. 3d 110, 118 (1993). Therefore, under these circumstances, Citimortgage was not precluded from raising the same affirmative defenses in its motion for summary judgment that it had raised in its earlier motion to dismiss. See *Id.*

¶ 22 Turning to the merits of Weber’s claim, “[a] constructive trust is an equitable remedy, which may be imposed where the person in possession of the property would be unjustly

enriched if he or she were permitted to retain that property.” *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 47. “A constructive trust is generally imposed in two situations: first, where actual or constructive fraud is considered as equitable grounds for raising the trust and, second, where there is a fiduciary duty and a subsequent breach of that duty.” *Suttles v. Vogel*, 126 Ill. 2d 186, 193 (1988). A trial court creates a constructive trust when it declares the party in possession of wrongfully acquired property as the constructive trustee of that property. *Charles Hester Enterprises, Inc. v. Illinois Founders Insurance Co.*, 114 Ill. 2d 278, 293 (1986).

¶ 23 Although unjust enrichment typically results from wrongdoing, “it is possible to be unjustly enriched without having done anything wrong.” *Tummelson v. White*, 2015 IL App (4th) 150151, ¶ 27. However, an equitable remedy is not available where there is an adequate remedy at law. *CC Disposal, Inc. v. Veolia ES Valley View Landfill, Inc.*, 406 Ill. App. 3d 783, 788 (2010). Hence, the imposition of a constructive trust is inappropriate when legal damages are an adequate remedy. *Small v. Sussman*, 306 Ill. App. 3d 639, 647 (1999).

¶ 24 The parties here have not presented, nor has our research revealed, any cases dealing squarely with the imposition of a constructive trust when wrongfully acquired funds were used to pay for improvements to real property following the execution of a valid mortgage lien. However, Weber argues that his request for a constructive trust is supported by *LaBarbera v. LaBarbera*, 116 Ill. App. 3d 959 (1983).

¶ 25 In *LaBarbera*, the plaintiff sought to recover funds that his brother had allegedly misappropriated from their deceased parents. After his brother died, the plaintiff brought an action against his brother’s widow, requesting the imposition of a constructive trust over the allegedly misappropriated funds. *LaBarbera*, 116 Ill. App. 3d at 961. The trial court denied the plaintiff’s request, but the appellate court reversed. The appellate court first determined that the

deceased brother had unjustly enriched himself by abusing a “confidential relationship” that he had formed with his parents. *Id.* at 966. The next issue was whether the equitable remedy of a constructive trust could be applied against the brother’s widow even though she was innocent of any wrongdoing. The court noted, “a claimant in a constructive trust can follow property to a gratuitous transferee, who did not have knowledge of the claim of equitable ownership, if that person is not a bona fide purchaser.” *Id.* at 967. Moreover, “a fund impressed with a trust may be traced into a fund of commingled money.” *Id.* Based on these principles, the court concluded that the plaintiff was entitled to one half of the funds that had been misappropriated by his deceased brother. *Id.*

¶ 26 Weber argues that this case is similar to *LaBarbera*, because Karen Gordon breached a fiduciary relationship when she took Marcella Weber’s funds to improve the Gordons’ personal residence. Citimortgage counters by arguing that this case “differs significantly” from *LaBarbera*, because the *LaBarbera* court did not consider whether a constructive trust could be imposed on a mortgagee with a valid lien on the subject property, or whether a constructive trust could have priority over an earlier recorded lien.

¶ 27 While these arguments are compelling, we believe this case turns on an issue that was not considered in *LaBarbera*: the adequacy of the plaintiff’s legal remedy. An adequate remedy at law is one that is concise and complete, while also providing the same practical and efficient resolution as the requested equitable remedy would provide. *In re Marriage of Slomka & Lenehan-Slomka*, 397 Ill. App. 3d 137, 145 (2009). A party has an adequate remedy at law if its injury can be adequately compensated through money damages. *CC Disposal, Inc. v. Veolia ES Valley View Landfill, Inc.*, 406 Ill. App. 3d 783, 788 (2010). “A party seeking equitable relief has the burden of proving the inadequacy of a legal remedy.” *Id.*

¶ 28 Here, Weber has successfully negotiated for a money judgment against the Gordons in the amount of \$572,809. The settlement agreement from the probate case provides that this amount encompasses the \$257,299.22 that was wrongfully spent on improving the subject property. Although the Gordons filed for bankruptcy, they agreed that they would not contest the entry of an order of non-discharge in those proceedings to the extent of \$572,809. They further agreed to waive in favor of Weber any monies due to them from those proceedings to the extent of \$572,809.

¶ 29 Weber has yet to make any allegations or arguments pertaining to the adequacy, or inadequacy, of his legal remedy from the probate case. In his second amended complaint, Weber alleged only that he “does not have a remedy at law to seek recovery of the funds invested in the [subject property] unless [he] is able to prevail in a recovery in the mortgage foreclosure proceeding.” Of course, this allegation is contradicted by the judgment from the probate case. A copy of that judgment was attached to Weber’s second amended complaint. The trial court nonetheless allowed the complaint to survive Citimortgage’s and Bank of America’s motions to dismiss.

¶ 30 In his response to Citimortgage’s subsequent motion for summary judgment, Weber argued that his separate money judgment should not preclude him from seeking the imposition of a constructive trust, as he is simply attempting to collect a money judgment against the subject property. Weber went on to argue: “What [Citimortgage] is doing by its foreclosure action is the very same thing, getting a money judgment and collecting it against a secured interest in the [subject property].” Weber repeats these same arguments, word for word, in his opening brief on appeal. He adds in his reply brief that his situation “is no different than [Citimortgage] seeking a

money judgment on the Note and collecting it against a secured interest in the [subject property].”

¶ 31 Weber’s arguments miss the mark. His request for equitable relief appears to be premised on the misguided notion that he is automatically entitled to a constructive trust as a means of satisfying his existing money judgment. However, “[e]quity does not entertain complaints the fundamental object of which is to secure monetary damages.” *LaSalle National Bank v. Refrigerated Transport Co.*, 165 Ill. App. 3d 899, 901 (1987).

¶ 32 Again, it was Weber’s burden to prove the inadequacy of his legal remedy from the probate case. See *CC Disposal, Inc.*, 406 Ill. App. 3d at 788. “The fact that a remedy at law is available does not oust an equity court of jurisdiction. The question to be determined is whether the remedy at law compares favorably with the remedy afforded by the equity court.” *Frederickson v. Blumenthal*, 271 Ill. App. 3d 738, 742 (1995) (quoting *Hill v. Names & Addresses, Inc.*, 212 Ill. App. 3d 1065, 1082 (1991) (quoting *Johnson v. North American Life & Casualty Co.*, 100 Ill. App. 2d 212, 218 (1986)). As we have discussed, Weber has made no effort to plead or even argue that the more favorable remedy would be the imposition of a constructive trust on the “enhancements” that the Gordons wrongfully made to the subject property.

¶ 33 In sum, even viewing the pleadings and admissions in the light most favorable to Weber, there are no genuine issues of material fact as to whether Weber had an adequate remedy at law. See 735 ILCS 5/2-1005(c) (West 2014). We express no opinions as to whether any such issues could have ultimately been raised. However, standing uncontested, Weber’s money judgment from the probate case was an adequate remedy at law, thereby precluding any equitable relief. Hence, the imposition of a constructive trust would have been inappropriate (see *Small*, 306 Ill.

App. 3d at 647), and the trial court was correct to grant Citimortgage's motion for summary judgment.

¶ 34

III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's order granting summary judgment in favor of plaintiff/counter-defendant Citimortgage, Inc.

¶ 36 Affirmed.