

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Samuel E. Powell, Sr.	:	C.A. No. 04-12-0027
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
Samuel E. Powell Jr. and	:	
Susan Thompson-Powell	:	
	:	
Defendants.	:	

Decision after Trial

Trial: January 10, 2006

Decided: January 18, 2006

**Judgment is entered on behalf of plaintiff, Samuel E. Powell, Sr.
and against Defendant, Susan Thompson-Powell.**

John I. Ellis, Esquire, Street & Ellis, P.A., 426 South State Street, P O Box 1366, Dover,
Delaware 19903, Attorney for the Plaintiff

Adam M. Perza, Esquire, Hudson, Jones, Jaywork and Fisher, 225 South State Street,
Dover, Delaware 19901, Attorney for the Defendant, Susan Thompson-Powell.

Trader J.

In this civil action the plaintiff, Samuel E. Powell, Sr., seeks reimbursement for sums he advanced on behalf of the defendants, Samuel E. Powell, Jr. and Susan Thompson-Powell, for payment of their mortgage to Mid Atlantic Farm Credit as well as payment of the county taxes to Kent County Receiver of Taxes. Samuel E. Powell, Sr. is the father of Samuel E. Powell, Jr., and Samuel E. Powell, Jr. and Susan Thompson-Powell are formerly husband and wife. Prior to trial the claim against Samuel E. Powell, Jr. was dismissed with prejudice. As to the claim against Susan Thompson-Powell, I hold that the money advanced on her behalf can be recovered on a theory of a contract implied in law. Accordingly, judgment is entered on behalf of the plaintiff for the sum of \$9,328.57, prejudgment interest, plus costs of these proceedings.

On February 10, 1994, Samuel E. Powell, Jr. and Susan Thompson-Powell executed a note and mortgage to Delaware Farm Credit for the sum of \$37,700.00. The mortgage covered 2.743 acres of land located on County Road 384, Kent County, Delaware, as well as a small tract of land located on the south side of County Road 430 in Kent County, Delaware. The 2.743 acres of land constituted marital property, but the other tract of land was inherited by Susan Thompson-Powell from her grandfather. In 2002 the defendants defaulted on the mortgage, and the plaintiff made payments on the mortgage so that the bank would not proceed to mortgage foreclosure. The plaintiff paid a total of \$13,902.31 on the mortgage and he signed an unsecured note for the balance owed by the defendants for the sum of \$4,268.72. Thereafter, he paid off the unsecured debt in the amount of \$4,268.72, as well as county taxes in the amount of \$326.11.

At trial the plaintiff and Samuel E. Powell, Jr. testified that Samuel E. Powell, Jr. agreed to repay the plaintiff for the amounts paid on the mortgage as well as the county

taxes. Susan Thompson-Powell was not present at the time of the discussions between the plaintiff and Samuel E. Powell, Jr. and there is no evidence that she knew about the agreement for repayment.

In May 2004 Samuel E. Powell, Jr. obtained a divorce in the Family Court of Kent County. The order for property division required that the 2.743 acres of marital real estate be sold and the results of the sale be divided 50 percent to each party. When the real estate was sold, Samuel E. Powell, Jr. paid the plaintiff \$39,014.05, and that sum included repayment of one-half of monies paid by the plaintiff on the mortgage and to the Receiver of Taxes.

Susan Thompson-Powell contends that the advance of money by the plaintiff constituted a gift. She contends that a presumption of a gift arises from the relationship of the parties. The defendant's contention is incorrect. Although the advance of money from father for the benefit of a child may create a presumption of gift, the relationship of father-in-law and daughter-in-law does not give rise to a presumption of a gift. 66 Am Jur 2d *Restitution and Implied Contracts* Sec. 75 (2001). While this rule is applied in the context of services rendered by a parent-in-law to a child-in-law, there is no reason why it should not apply to a loan advanced to a son which benefits the son's wife. In this case there is convincing evidence that the advance of money constituted a loan and if any presumption arises, it is rebutted by plaintiff's evidence. The undisputed testimony of the father and the son was that the monies paid on the mortgage and to the Receiver of Taxes constituted a loan. Moreover, there is undisputed testimony that this loan was repaid by the son to the father at the time of the sale of the marital property.

Susan Thompson-Powell asserts that the lack of a writing concerning the repayment of the loan and the fact that regular payments were not made by Samuel E. Powell, Jr. on the loan casts some doubt on the testimony of the father and son. Despite these facts, I am persuaded that there was an oral agreement for repayment of the loan.

Susan Thompson-Powell also asserts that the failure of Samuel E. Powell, Jr. to file a Rule 16(c) with the Family Court listing a debt to his father also shows the non-existence of the loan. I am not persuaded that the failure to file a Rule 16(c) with the Family Court sheds any light on the existence or non-existence of the loan from the father to the son.

The primary issue in this case is whether the plaintiff can recover from Susan Thompson-Powell on the theory of a contract implied in law. A contract implied in law permits recovery of that amount by which the defendant has benefited at the expense of the plaintiff in order to preclude unjust enrichment. *Barrett Builders v. Miller*, 576 A.2d 455 (Conn. 1990); *see also Lawrence v. DiBiase*, 2001 Del. Super. LEXIS 368 (Feb. 27, 2001 Del. Super.). To claim restitution, the plaintiff must show that the defendant was unjustly enriched and secured a benefit that it would be unconscionable to allow her to retain. *Midcoast Aviation v. General Electric Credit Corp.* 907 F.2d 732 (7th Cir. 1990).

“The essential elements of a quasi-contract are a benefit conferred upon the defendant by the plaintiff, appreciation or realization of the benefit by the defendant, and acceptance and retention by the defendant of such benefit under such circumstances that it would be inequitable to retain it without paying the value thereof.” 66 Am Jur 2d *Restitution and Implied Contracts* Sec. 11 (2001) (citations omitted).

In the case before me the plaintiff paid the mortgage of the son and daughter-in-law at a time when the bank was about to foreclose on the mortgage. If the property had been sold at a foreclosure sale, neither Samuel E. Powell, Jr. nor Susan Thompson-Powell would have received any benefit from the sale of the marital property. Additionally, payment of the mortgage protected Susan Thompson-Powell's inherited property. Thus, because of the plaintiff's acts in preserving the real estate from foreclosure Susan Thompson-Powell received a substantial benefit at the plaintiff's expense. Since the retention of the benefit in this case is unjust, she must repay her share of the money advanced by the plaintiff.

The Defendant argues that the plaintiff only has an equitable remedy in this case. I disagree. This cause of action was developed at common law as one of the counts general assumpsit. 66 Am Jur 2d *Restitution and Implied Contracts* Sec.169; *see also Ramunno v. Persimmon Lane Apts.*, 1976 Del. C.P. LEXIS 11 (July 8, 1976 Del. C.C.P.). It is founded on the principle that one should not enrich himself at the expense of another. Therefore, the plaintiff is entitled to recover from Susan Thompson-Powell one-half of the money advanced by the plaintiff for her benefit.

Accordingly, judgment is entered on behalf of Samuel E. Powell, Sr. and against Susan Thompson-Powell for the sum of \$9,248.57, prejudgment interest from the time of the filing of the cause of action on December 6, 2004, and the costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge