IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

William F. Shahan, Jr.,	)	
Plaintiff,	)	C.A. No. 6234-MA
	)	
v.	)	
	)	
Charlotte Shahan, Donna M. Fleece,	)	
Trustee and the Estate of William F.	)	
Shahan	)	
Defendants.	)	

MASTER'S REPORT

Date Submitted: September 6, 2012
Draft Report: November 28, 2012
Final Report: December 10, 2012

Pending before me is a motion for summary judgment filed by Charlotte Shahan ("Charlotte"), Donna Meece, Trustee, ("Donna") and the Estate of William F. Shahan (collectively "Defendants") in this quiet title action filed by William F. Shahan, Jr. ("William").[1] After reviewing the pleadings and the exhibits, in particular, William's deposition testimony, I am issuing a draft report in which I recommend that entry of judgment in favor of the Defendants should be made on William's claim for specific performance of a contract.

Procedural Background

On March 1, 2011, William filed a petition to quiet title to property located at 304 Chestnut Avenue, Wilmington, Delaware 19809, tax parcel number 06-140.00-189 (the

[1] I use first names not out of disrespect, but only to avoid confusion.

"Property"). The Property originally had been part of 306 Chestnut Avenue which was owned by William's parents, William F. Shahan, Sr. ("Shahan") and Charlotte. In 1985, 306 Chestnut Avenue was subdivided into two lots and the vacant lot was designated as the Property. In his petition, William alleges that: (1) in May 1985, his parents obtained a $25,000 loan to build a house on the Property; (2) the house was constructed for the use and benefit of William; (3) William made all loan payments, as well as performed or paid for all work to maintain the Property; (4) William constructed an addition to the house on the Property in June 1994 with his own funds; (5) final payment on the loan was tendered to Shahan in May 2000; (6) Shahan and other family members, friends, and neighbors always referred to the Property as "Bill Jr.'s house;" (7) Shahan died on November 28, 2009; and (8) on July 29, 2010, Charlotte executed a deed transferring her interest in the Property to Donna, as trustee for the Charlotte F. Shahan Trust, which was recorded on August 4, 2010. William's petition contained numerous counts, including unjust enrichment by Charlotte and Donna and specific performance of a contract, and sought the imposition of a constructive trust and resulting trust, the return of the Property, an accounting, and pre- and post-judgment interest, all court costs and attorney's fees.

Defendants filed a motion to dismiss on April 8, 2011. Following briefing, I issued a draft report on September 2, 2011, recommending denial of the motion. No exceptions were taken, and my draft report became an Order of the Court on September 15, 2011. Defendants filed their answer on September 23, 2011, in which they admitted that a house was built on the Property and that William lived in that house, but denied

any allegations that William owned the Property. Defendants counterclaimed for $35,000 in damages to the Property and other costs. After some discovery was conducted, Defendants filed a motion for summary judgment on July 18, 2012.

Summary Judgment

In deciding a motion for summary judgment under Chancery Court Rule 56, the Court must view the evidence in a light most favorable to the non-moving party. After reviewing the record and drawing all inferences in favor of the non-moving party, if the Court finds that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law, then summary judgment will be granted. *Bird's Construction v. Milton Equestrian Center*, 2001 WL 1528956, at *2 (Del. Ch. Nov. 16, 2001). If a genuine issue of material fact remains, summary judgment must be denied.

Facts

The facts that follow are taken from the record and viewed in the light most favorable to the non-moving party, William. In 1985, William was 23 years old, the father of a two-year old daughter named Kathleen, and he was married to a woman named Brenda who was then pregnant with their son. William was approached by his father who offered to create another lot on 306 Chestnut where William could build a house. According to William, Shahan told him, "We will get it subdivided. We will build a house. And it makes more sense to own something for $305 a month than to rent

something you will never own for $350 a month."[2] At the time, William was renting a two-bedroom apartment in Brandywine Hills for $350 per month. His parents were living in the house at 306 Chestnut Avenue, and there was an old five-car garage on a portion of their property, which was torn down prior to the subdivision of the property into two lots.

Shahan arranged and paid for the subdivision of 306 Chestnut Avenue into two lots. Shahan hired a builder and obtained a 15-year variable loan from Wilmington Trust Bank using 306 Chestnut Avenue as collateral to obtain the funds to pay for the construction of a house on the Property. After construction of the house on the Property had begun, William agreed to reimburse his father for the construction loan. Immediately after William and his family moved into the new house, William began making payments to his father each month in the same amount as his parents' monthly construction loan payments. William and his father did not discuss the title to the Property until six months later when William came home from work one day, and Shahan asked him how long he planned on being married. William asked his father if he knew something, and Shahan replied: "Well, Brenda came over today and asked where the deed to the house was and I told her to go ask Kathleen."[3] Shahan told William to be careful, and assured him that everything would be okay. Shortly thereafter, Brenda divorced William, who was grateful to his father for not putting his name on the deed to the Property.

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[2] Response to Motion for Summary Judgment, Exhibit 6 at p. 11.
[3] *Id.* at p. 18.

Around 1993 or 1994, William and his second wife were expecting another child and needed more room. Shahan agreed that the family needed an addition to the house. William built an addition that consisted of a 20' x 24' family room with an eight foot wraparound porch. William paid for the materials and construction of the addition with his own money. In 2000, William stopped making monthly payments to his father after Shahan told him that the construction loan had been satisfied. William considered the Property to have been a gift even though his mother had never said that she would gift him the Property. During the 25 years that William lived in the house, he paid the utilities and for the maintenance of the Property,[4] while his parents paid the sewer bills and property taxes on the Property. After the first five years, William asked his father about contributing to the sewer and property tax payments, but in reply Shahan simply asked William to continue cutting his parents' grass, shoveling their driveway, and helping his father with chores that Shahan was no longer capable of doing on his own.

Around 2002, William approached his parents and asked if he could have his name put on the Property. According to William, there was some work he wanted to do and having his name on the Property also would have helped his oldest daughter's college applications. William's wife had drafted a deed, and William handed the document to his father. According to William, Shahan said, "I don't have a problem with that, but your mother will."[5] Charlotte, who was present during this discussion, got up and walked away. Shahan told his son, "See what I have to deal with. Give me some time. Let me

[4] Shahan paid for the replacement of an air conditioning condenser on the Property.
[5] *Id.* at p. 38.

talk to her. It makes sense what you want." [6] A few days later, Shahan told his son, "I can't get her to budge." William did not pursue the matter at that time.

A year or so later, William told his father that he was concerned about the Property. Shahan replied:

> You have nothing to worry about. Some day you will own two properties. And it's no treat. ... Your sister Cathy has a good life, doesn't want for anything and would never do anything to hurt you. Your sister Donna has no interest in ever living in Delaware. She's lived all over the country and she doesn't want to live in Delaware. You are going to wind up with two houses some day. Don't worry about it.[7]

Shahan also told his son on several occasions that if he ever wanted to move out, Shahan would give him every penny William ever put into that house. William replied that he had no intentions of moving.

Shahan became very ill and eventually was diagnosed with cancer. Before he died on November 28, 2009, Shahan advised his son to buy an historic home in their neighborhood that was located at 411 Lore Avenue. William purchased this property, and around the same time, his daughter Kathleen and her two children, who had been renting an apartment in an unsafe part of Wilmington, moved into the Property. Charlotte objected to Kathleen and her children residing in the Property, but William told his mother that Kathleen's family had nowhere else to go and, furthermore, that they had agreed that his daughter would pay Charlotte rent.

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[6] *Id.*
[7] *Id.* at p. 40.

According to Catherine Bennett, William's oldest sister, the Property was always referred to as "Bill's house" by everyone in the family. Catherine testified that her parents said that they had refused to sign the deed in 2002 because William's marriage was unstable. According to Catherine, her parents intended for William to have the Property upon their deaths, but her father had died before he could execute a will. It was only after her father's death, however, that she learned that her brother had paid for the house on the Property. When Catherine informed William that Donna had told her that she was going to make sure that William would not inherit anything from their parents' estates, her brother said, "Well, I've paid for that house,"[8] and showed her the checks he had written to their father. Catherine then told her mother about the financial arrangement William had had with Shahan, and Charlotte asked her to arrange a meeting. The three met, and Catherine asked Charlotte to give William what he had invested in the Property. According to Catherine, the parties agreed on a figure, but Charlotte said that she had no desire to sell either one of the properties at that time. Catherine then suggested that Charlotte rent the Property to Kathleen so Charlotte could have an income from the Property, and Charlotte thought it was a great idea. The following day, after talking with Donna, Charlotte became upset and refused to make any decisions about the Property, including executing a lease agreement. According to Catherine, Donna did not care for William and was very jealous that William had been given the Property and had been allowed to build there.

[8] Response to Motion for Summary Judgment, Exhibit 7 at p. 10.

Discussion

Defendants seek what is effectively partial summary judgment on William's request for specific enforcement of an oral contract between himself and his parents to convey the Property to William. Defendants seek summary judgment on the following grounds. First, Charlotte has specifically denied the existence of any agreement to convey the Property, and has stated in her deposition that while she and her husband allowed William to reside in the Property as a gift, they intended the Property to be an investment property. Since William can only impeach Charlotte's testimony, Defendants argue that the most William can hope for is to discredit Charlotte's denial, which is not sufficient to demonstrate the existence of a question of material fact, citing *Haglid v. Sanchez*, 2005 WL 2841609 (Del. Super. Oct. 21, 2005). Second, Defendants argue that William cannot prove by clear and convincing evidence that the parties had reached a complete meeting of the minds on all material terms of the oral contract. William cannot state the date the agreement was established, the terms of the agreement, or when the agreement for sale was completed. William also admits that no agreement for transfer of the Property existed between himself and Charlotte. Charlotte's refusal to execute a deed in 2002 also indicates the absence of a valid contract. Finally, Defendants claim that the doctrine of part performance does not exempt William's non-compliance with the Statute of Frauds because any oral agreement could not have been completed within one year, citing *Aurigemma v. New Castle Care, LLC*, 2006 WL 2441978 (Del. Super. Aug. 22, 2006).

William argues that Charlotte's denial of the existence of an agreement does not end the matter. According to William, there is also Catherine's deposition testimony and the fact that William built the addition on the house with his own money and labor. He argues that the one-year limitation on the doctrine of partial performance does not apply where the oral contract is for the conveyance of real property, citing *Sunstar Ventures, LLC v. Tigani*, 2009 WL 1231246 (Del. Super. Apr. 30, 2009). Regarding his parents' refusal to execute the deed in 2002, William argues that their refusal was due to his marital situation, i.e., his parents did not think his marriage would last and it was their intent to turn the deed over to him at their deaths.

A party seeking specific performance of a real estate contract must prove: (1) that it had a valid contract; (2) that it was ready, willing, and able to perform its obligations under the contract; and (3) that the balance of the equities favors specific performance. *Deene v. Peterman*, 2007 WL 2162570, at *5 (Del. Ch. July 12, 2007). If the real estate contract to be specifically enforced is oral rather than written, to avoid the statute of frauds, the party seeking specific enforcement must demonstrate actual partial performance by clear and convincing evidence. *Id.* (citing *Shepherd v. Mazzetti*, 545 A.2d 621, 623 (Del. 1988)). In general, a party's acts are evidence of a real property contract when those acts are related in some respect to the land itself, such as taking possession of the land, making partial or full payment of the land, rendering services that were agreed to be exchanged for the land, or making valuable improvements on the land in reliance on the oral contract. *See Sargent v. Schneller*, 2005 WL 1863382, at **4-5

(Del. Ch. Aug. 2, 2005). Acts constituting partial performance, however, must be "a joint act or an act which 'clearly indicates mutual assent' of the parties to the oral contract." *Id.* at *5 (quoting *Shepherd v. Niles*, 125 A. 669, 670 (Del. Ch. 1924)).

Based on the factual section of this report, no valid contract was ever reached between William and his parents regarding the conveyance of the Property. In his deposition, William conceded that there had been no agreement between himself and his parents that if he paid off the construction loan, the Property would be conveyed to him.[9] William also testified that there had been no agreement between himself and his parents whereby he was allowed to live in the Property in exchange for maintaining it.[10] The only apparent agreement was reached five years after William and his family had moved into the house on the Property, when William agreed to continue helping his father by cutting grass, shoveling the driveway and doing other chores for his father, in exchange for Shahan not asking William to pay the Property's sewer bills and property taxes. Since William already had been helping his father with these chores independent of any contract or agreement relative to the Property, this evidence would not constitute part performance. *See Sargent*, letter op. at *5, *supra* (citing *Shepherd v. Niles*, 125 A. at 669).

William testified that he considered the Property to have been a gift made to him by his father.[11] However, even if Shahan had intended a present gift of the Property to

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[9] Response to Motion for Summary Judgment, Exhibit 6 at pp. 39, 43.
[10] *Id.* at pp. 55-56.
[11] *Id.* at p. 37.

William, Shahan and Charlotte then owned the Property as husband and wife.[12] In this jurisdiction, the "burden is on the party seeking to obtain an interest in land that is jointly held by a married couple to ensure that is has received approval from both spouses or from a spouse who holds a legally authorized right to grant approval (e.g., in the form of written power-of-attorney)." *Henderson v. Chantry*, 2002 WL 244692, at *4 (Del. Ch. Feb. 5, 2002). *See also Neaton v. Neaton*, 2007 WL 895695, at *4 (Del. Ch. March 13, 2007 (Master's Report). There is no evidence in the record that Shahan had the legal right to make such a gift on behalf of Charlotte.

Conclusion

Since there is no evidence that an enforceable contract exists between the parties, I recommend that partial summary judgment be granted in favor of Defendants on Count II of the petition seeking specific enforcement of a contract. Other equitable issues remain to be tried, specifically William's claim of unjust enrichment and whether a resulting trust or constructive trust should be imposed on the Property. These issues may be addressed at the trial which is currently scheduled to take place on December 17, 2012, provided neither party takes exception to this report under Chancery Court Rule 144.

[12] Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment, Exhibit B.