

STATE OF VERMONT
ADDISON COUNTY, SS.

LAWRENCE H. DELISLE

v.

VIOLA EMMONS

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Addison Superior Court
Docket No. 28-2-01 Ancv

MEMORANDUM OF DECISION

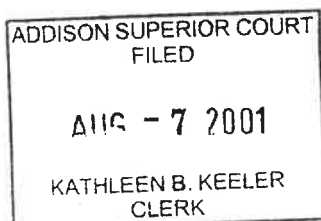
Plaintiff's Motion to Alter or Amend Judgement filed July 24, 2001

This matter came before the court on July 17th 2001 for a hearing on the merits of Plaintiff's claim for eviction and unpaid rent, and Defendant's counterclaim for a life interest in the real estate, judgment for the value of services, and other relief. Plaintiff is represented by Kathleen Walls, Esq. The Defendant is represented by George R. Vince, Esq. Findings and Conclusions and the judgments were delivered orally on the record. Attorney Vince was to prepare and file a proposed Order which he did, and Attorney Walls has filed an Objection and alternative proposed Order, as well as a Motion to Alter and Amend the Judgment, which was filed on July 24, 2001. Attorney Vince filed an Opposition on August 3, 2001, and Attorney Walls filed a Response to the Opposition on August 6, 2001.

The Motion is denied for the following reasons:

1. At no time during the trial, through closing arguments, did Plaintiff's attorney object to the court's consideration of Defendant's constructive trust theory which was identified in Defendant's opening statement and was included in a memo filed on the day of trial in opposition to Plaintiff's Motion for Summary Judgment, which had been filed by Plaintiff only 12 days before trial. After judgment has been announced, it is too late to seek, for the first time, to preclude the introduction of a legal theory used at trial and in a memo responsive to Plaintiff's motion.

2. Plaintiff's attorney filed a Motion for Summary Judgment just 12 days before the scheduled trial on the merits. Defendant is entitled to 30 days under Rule 56 to respond to a Motion for Summary Judgment. The Court announced at the hearing that because the Defendant had not had sufficient time to respond as a result of the date of filing, the Motion for Summary Judgment was denied, but the memorandum would be treated as a trial memorandum. Plaintiff's attorney raised no objection. The Plaintiff's attorney cannot now claim that Defendant waived the full 30 days by filing a response prior to 30 days, and seek judgment on the Motion after judgment on the merits has been announced. The Defendant's attorney was put in a position of uncertainty by the date of Plaintiff's filing, and filing a response on the hearing date was not an unreasonable response as a means of protecting Defendant's position. The Court denied the Motion for Summary Judgment on the grounds of untimely filing, and the Plaintiff may not now, after a trial on the merits and judgment announced, reopen the Motion and claim waiver by Defendant.



3. The Court heard all the evidence and exercised its function of attempting to reconcile conflicting evidence, determine how much weight to give each piece of evidence, and determine whether Plaintiff met his burden to prove his claims by a preponderance of the evidence. The Court's findings and conclusions, delivered on the record, stand as delivered, and the Court, having considered the Motion to Alter or Amend, declines to alter or amend the findings or conclusions on either the claim or counterclaim.

Because there appears to be some confusion, the Court clarifies the terms of the judgment as follows:

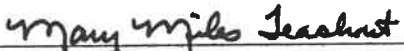
The constructive trust theory contributed to the reasoning of the Court in determining that Plaintiff would be unjustly enriched if Defendant's contribution to the property was not recognized, but in its judgment, the Court did not grant Defendant a property interest in the premises. Rather, the Court simply granted judgment to Defendant in the amount of \$12,480.00 as of July 17, 2001, and explained its reasons for the judgment. As a result of the judgment, Plaintiff is the sole owner of the premises, and Defendant's only interest is as a tenant in possession. Defendant holds no other interest in the real estate. There is no automatic lien on the premises for the amount of the judgment. A post-judgment attachment would require further action on the part of Defendant, and nothing has been filed. V.R.C.P. 4.1(a). Furthermore, nothing precludes the Plaintiff from commencing to terminate Defendant's tenancy in accordance with law.

ORDER


Based on the foregoing reasons,

The Motion to Alter or Amend is *denied*.

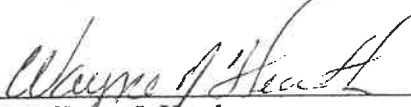
Dated at Middlebury, Vermont this 7th day of August, 2001.



Hon. Mary Miles Teachout
Superior Judge, presiding



Hon. James D. Lilly
Assistant Superior Judge



Hon. Wayne J. Heath
Assistant Superior Judge

STATE OF VERMONT
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ORDER

The above entitled matter came before the undersigned Judges for final hearing on July 17, 2001. Based on the Findings and Conclusions delivered on the record and the clarification set forth this day in a Memorandum of Decision,

IT IS HEREBY ORDERED:

1. Judgment is entered for Defendant on the Plaintiff's claim for eviction and unpaid rent.
2. Judgment is entered in the amount of \$12,480.00 as of July 17, 2001 on the Defendant's counterclaim.

Dated at Middlebury, Vermont this 7th day of August, 2001.

ADDISON SUPERIOR COURT

By: Mary Miles Teachout
Hon. Mary Miles Teachout
Superior Judge, presiding

By: James D. Lilly
Hon. James D. Lilly
Assistant Superior Judge

Wayne J. Heath
Hon. Wayne J. Heath
Assistant Superior Judge

ADDISON SUPERIOR COURT
FILED
AUG - 7 2001
KATHLEEN B. KEELER
CLERK