IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

LISA BRIN, Plaintiff,	)	CIVIL NO ST-09-CV-209
v.	)	ACTION FOR PARTITION, ETC.
RECALDO A. DESSOUT, Defendant.	)	

JUDGMENT ORDER

THIS MATTER came on for bench trial on March 23, 2015 on Count 1 (Partition), Count 2 (Accounting), Count 4 (Unjust Enrichment) and Count 5 (Conversion) of Plaintiff's Complaint; Count 3 (Constructive Trust) and Count 6 (Punitive Damages) having been dismissed with prejudice on motion of Plaintiff at the commencement of the trial. Each party presented witness testimony, exhibits and oral argument. At the conclusion of the presentation of Plaintiff's evidence, Defendant submitted his motion for entry of judgment as a matter of law pursuant to Fed. R. Civ. P. 50 and 52(c) and Super. Ct. R. 7 ("Motion for Judgment"). In consideration of the trial evidence, for the reasons set forth in the accompanying Memorandum Opinion entered herewith, it is hereby

ORDERED that Defendant's Motion for Judgment is GRANTED IN PART and DENIED IN PART. And it is

ORDERED, ADJUDGED and DECREED that Judgment is hereby entered in favor of Defendant and against Plaintiff on Count 2 and Count 4 of Plaintiff's Complaint. It is further

ORDERED, ADJUDGED and DECREED that Judgment of Partition is hereby entered in favor of Plaintiff on Count 1, the Court having determined that Plaintiff and Defendant each own an undivided 50% interest as tenants in common in real property known as Parcel No. 316 Estate Wintberg, No. 3 Northside Quarter, St. Thomas, U.S. Virgin Islands ("Wintberg Property"); and having further determined that partition cannot be made without great prejudice to the parties, sale of the Wintberg Property is ordered as set forth herein. It is further

ORDERED, ADJUDGED and DECREED that Judgment is hereby entered in favor of Plaintiff and against Defendant on Count 5 of Plaintiff's Complaint (Conversion), the Court having determined that Plaintiff and Defendant each own an undivided 50% interest as tenants in common in personal property consisting of a mobile home trailer located at 27P Estate Lindberg Bay, No.

4A Southside Quarter, St. Thomas, U.S. Virgin Islands; and Defendant shall pay to Plaintiff the full value of Plaintiff's 50% undivided interest in said property at the time of its conversion, determined to be $300, plus interest thereon at the legal rate from June 9, 1995 to the date of entry of this Judgment Order. The Court retains jurisdiction over this matter, and shall enter its Supplemental Judgment Order confirming title to the mobile home trailer in Defendant's name alone upon submission of proof of his satisfaction of this monetary judgment. It is further

ORDERED that the parties shall have a period of 60 days from the date of entry of this Judgment Order within which the parties may seek to agree on the purchase by one party of the undivided 50% interest of the other, or to otherwise negotiate a mutually acceptable resolution to be presented to the Court for approval; failing which the Court will issue an order appointing a referee to advertise and sell the Wintberg Property by public auction in accordance with 28 V.I.C. § 476, and to report to the Court the results of such proceeding. The order of confirmation of the referee's report will direct the referee to execute conveyance of the Wintberg Property to the successful purchaser, which order will discharge the interest of the parties in the Wintberg Property and shall be binding and conclusive on all interested persons. The proceeds of such sale shall be distributed as follows: first, to pay the costs of the sale process incurred by the referee; second, to pay the reasonable fees charged by the referee; third, to satisfy all outstanding property taxes due on the Wintberg Property; fourth, to reimburse Plaintiff the sum of $471.91, representing 50% of property taxes paid; and the residue to be divided equally between the parties. It is further

ORDERED that, except as set forth herein, each party shall bear its own cost of the action, including attorney's fees. Finally, it is

ORDERED that the accompanying Memorandum Opinion and this Judgment Order shall be served forthwith upon the parties in care of their respective counsel.

Dated: September 29, 2015.

DOUGLAS A. BRADY, JUDGE

ATTEST: ESTRELLA GEORGE
Acting Clerk of the Court

By:
Court Clerk Supervisor
9/29/15

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

LISA BRIN, Plaintiff, v. RECALDO A. DESSOUT, Defendant.	)	CIVIL NO ST-09-CV-209 ACTION FOR PARTITION, ETC.

MEMORANDUM OPINION

THIS MATTER came on for bench trial on March 23, 2015. Plaintiff appeared personally, represented by Robert A. Eberhart, Esq. Defendant appeared personally, represented by Benjamin A. Currence, Esq. Each party presented witness testimony, exhibits and oral argument following which the Court took the matter under advisement, permitting the parties to submit post-trial briefs.[1] At the conclusion of the presentation of Plaintiff's evidence, Defendant presented an oral Rule 50 motion[2] for entry of judgment as a matter of law ("Motion for Judgment") which the Court also took under advisement.[3] For the reasons that follow, Defendant's Motion for Judgment will be granted in part and denied in part.

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[1] On Plaintiff's oral motion at trial, the Court dismissed with prejudice Count 3 (Constructive Trust) and Count 6 (Punitive Damages) of Plaintiff's Complaint. *See* Order entered April 20, 2015. The trial proceeded on the remaining claims for relief of Plaintiff set out in Counts 1, 2, 4 and 5 respectively for Partition, Accounting, Unjust Enrichment and Conversion.

[2] Fed. R. Civ. P. 50, applicable pursuant to Super. Ct. R. 7, governs a motion by a party against whom relief is sought for judgment as a matter of law following the presentation of evidence by the party bearing the burden of proof. Rule 50 applies only to jury trials, but the same relief is available in a non-jury trial through Fed. R. Civ. P. 52(c). "[W]e treat motions for judgment as a matter of law made during bench trials as motions for judgment on partial findings under Rule 52(c)." *Fed. Ins. Co. v. HPSC, Inc.*, 480 F.3d 26, 32 (1st Cir. 2007). *See also Sec'y of Labor v. Doyle,* 675 F.3d 187, 199 n.28 (3d Cir. 2012).

[3] On October 31, 2013, Defendant, acting *pro se*, filed a motion with supporting memorandum seeking leave to file his Amended Answer and Counterclaim, submitted with the motion. The proposed two-count counterclaim sought damages for "Intentional Interference with Business Affairs" and for "Intentional Infliction of Emotional Distress." Plaintiff never responded and the Court never ruled on the motion. Neither at trial nor in his Pre-trial Memorandum did Defendant, now represented by counsel, pursue any claim for affirmative relief from Plaintiff. The Court considers any such purported claims to have been abandoned, and Defendant's Motion for Leave to Amend Answer to More Adequately Describe Counterclaim is denied as moot.

By Order entered April 20, 2015, the parties were to file supplemental briefs on or before May 15, 2015, including proposed findings of fact and conclusions of law, with responses, if any to be filed 14 days after receipt of service. On May 15, 2015, Plaintiff filed her Opposition to Defendant's Oral Rule 50 Motion; Findings of Fact and Conclusion of Law and Plaintiff's Brief in Support. On May 15, 2015, Defendant filed his Memorandum of Law in Support of Motion for Judgment as a Matter of Law, or Alternatively, for Judgment on Partial Findings. Plaintiff filed her Response and Memorandum in Support to Defendant's Memorandum on May 29, 2015.

For the reasons that follow, the Court will enter judgment on Count 1 granting Plaintiff partition of the real property known as Parcel No. 316 Estate Wintberg, No. 3 Northside Quarter, St. Thomas, U.S. Virgin Islands ("the Wintberg Property"), and order that the Wintberg Property be sold and the proceeds thereof be distributed as set forth herein. The Court will grant Defendant's Motion for Judgment and enter judgment in favor of Defendant and against Plaintiff denying relief sought in Counts 2 and 4 of Plaintiff's Complaint seeking an Accounting and equitable relief for Unjust Enrichment. Judgment will enter in favor of Plaintiff and against Defendant on Count 5, Conversion, awarding Plaintiff the full original value of her 50% undivided interest in the amount of $300, plus interest thereon at the legal rate from June 9, 1995 to the date of entry of judgment.

In consideration of the evidence adduced at trial, the Court makes the following:

FINDINGS OF FACT

1. Plaintiff and Defendant entered into a non-marital personal relationship in 1989 that terminated in 1995. They shared the same residence and had four children together, now all adults.

2. On or about August 26, 1992, the parties purchased unimproved property known as Parcel No. 383 Estate Wintberg, St. Thomas, U.S. Virgin Islands ("Parcel 383") from William and Joan

Dimmitt for $45,000 using joint funds.[4] Although unmarried, Plaintiff and Defendant took title by Warranty Deed that identified the grantees as "Recaldo A. Dessout and Lisa Brin (Dessout), his wife as tenancy by the entirety." Plaintiff's Exhibit 6. Both parties contributed to the purchase, maintenance and development of Parcel 383, with Plaintiff making most monthly payments on the mortgage.[5] Defendant obtained a building permit, cleared and excavated the property, and commenced construction of a driveway, retaining wall and cistern.[6] The parties also shared household and child-rearing expenses during their cohabitation and, although maintaining separate accounts, comingled their respective incomes and personal funds.[7]

3. In early 1995, the parties applied for a loan from Bank of Nova Scotia ("BNS Loan") in the amount of $51,000, using Parcel 383 as collateral, for the purpose of repaying the Dimmitt Loan and developing Parcel 383. The loan application was conditionally approved and closing scheduled for June 16, 1995.

4. Before the BNS Loan closing, Defendant advised Plaintiff of a scheduled May 31, 1995

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[4] The purchase and sale was owner financed with Plaintiff and Defendant paying at closing $9,000, comprised of Banco Popular personal loan proceeds of $5,000 contributed by Plaintiff (Plaintiff's Exhibit 17, at 94) and $4,000 of personal funds contributed by Defendant. Plaintiff and Defendant executed a Mortgage Note and First Priority Purchase Money Mortgage in favor of Dimmitts, financing and securing the $36,000 balance of the purchase price, to be paid with interest at 9% per annum, in monthly payments of 456.04 over 120 months ("Dimmitt Loan"). Plaintiff's Exhibits 4 and 5. By Stipulation and Order Regarding the Admissibility of Exhibits dated March 23, 2015, the parties stipulated to the admissibility of all exhibits.

[5] The record reflects that as to the Dimmitt Loan, Plaintiff made a total of 23 payments of $456.04 between October 1992 and October 1994 ($10,488.92), and Defendant made three payments in January, March and April 1995 ($1,368.12). Plaintiff's Exhibit 17; Defendant's Exhibit 4.

[6] Defendant offered checks and receipts dated between January and August 1995 totaling $4,179.29 for building materials, supplies and labor, plus building permit fee relating to Parcel 383. Defendant's Exhibits 19, 32.

[7] In September 1992, Plaintiff withdrew and delivered to Defendant $2,000 of her 1991 tax refund to finance his purchase of a truck. In April 1995, Defendant wrote Plaintiff a check for $400 for "Love." Plaintiff's Exhibit 19, at 98; Defendant's Exhibit 4.

property tax auction and the parties agreed to "change course" and to use the excess of the BNS Loan proceeds to purchase property at the property tax auction rather than to develop Parcel 383.[8] At the property tax auction on May 31, 1995, the parties were the successful bidders on three properties: the Wintberg Property ($7,500); Parcel No. 2 Lille Gade ($5,130);[9] and a trailer located on 27P Estate Lindbergh ("Trailer") ($600).[10] The terms of sale required 10% of the purchase price to be deposited on the day of the sale, with the full balance due ten days thereafter, on or before June 9, 1995. Defendant withdrew the necessary deposit amounts due on the day of the sale and delivered the funds to Plaintiff who paid the deposit to the Government of the Virgin Islands on May 31, 1995, a received a receipt in her name alone.[11]

5. Because the BNS Loan proceeds would not be dispersed within the ten-day period (to June 9, 1995) within which the remaining 90% balance due on the auction bid price was to be satisfied, Defendant borrowed $12,000 from Denice Webster, memorialized by a hand-written document signed by Defendant and Ms. Webster, stating: "Borrowed to Recaldo Dessout $12,000.00 for purchase of V.I. Gov't auction properties, to be repaid by 7/8/95" ("Webster Loan"). Plaintiff's Exhibit 14.

6. The proceeds of the Webster Loan were used in their entirety to pay to the Department of

[8] Trial testimony of Plaintiff Lisa Brin.

[9] The owner of Parcel No. 2 Lille Gade redeemed the property within the statutory redemption period, and it is not a subject of this litigation.

[10] The legal basis upon which the Trailer was subject to sale for non-payment of property taxes pursuant to 33 V.I.C. § 2251 is unclear from the record. Both parties agree that the Trailer is personal property, although the Certificate of Purchase ultimately issued relative to the Trailer characterizes it as "real property" and "Building," apparently deemed physically a part of the real property located at 27P Lindberg. Plaintiff's Exhibit 9; Defendant's Exhibits 12 and 13.

[11] The total price for the three properties purchased was $13,230. Defendant testified that on May 31, 1995, he withdrew a total of $1,800 from his Scotiabank account. *See* Defendant's Exhibits 2 and 3. Defendant's Exhibit 6 is a receipt to Lisa Brin for the 10% deposit only on the Wintberg Property (Parcel No. 1-03103-0436-00) in the amount of $760.

Finance the 90% balance due on the purchase prices for the three auctioned properties. The Government of the Virgin Islands issued receipts for the final payment on the Wintberg Property ($6,750), the Trailer ($540), and on Parcel No. 2 Lille Gade in the names of "Lisa Brin and Recaldo Dessout." Plaintiff's Exhibit 7.

7. The BNS Loan to both Plaintiff and Defendant in the amount of $51,000 closed on June 16, 1995. Both parties were obligated on the note and the parties jointly executed the mortgage pledging Parcel 383 as collateral for the loan. All proceeds of the BNS Loan were dispersed to Defendant.

8. The parties agree that the BNS Loan proceeds were used to satisfy the outstanding balance due on the Parcel 383 purchase money Dimmitt Loan in the approximate amount of $31,000. From the balance of the BNS Loan proceeds, Defendant repaid the $12,000 due on the Webster Loan.[12] Additionally, Defendant used the BNS Loan proceeds to repay a loan from his aunt Genevieve Downing in the approximate amount of $5,000,[13] to repay a personal Citibank loan of approximately $5,000, and to pay for improvements to the driveway, cistern and retaining wall on Parcel 383 (although no proof or breakdown of such costs was presented).

9. In about August 1995, Plaintiff and Defendant separated and Plaintiff moved away from their joint residence. A restraining order issued in favor of Plaintiff prevented contact between the parties. Plaintiff made no payments on the BNS Loan and has not contributed to the

[12] Plaintiff claims that, as required by the terms of the Webster Loan, Webster was repaid from the BNS Loan proceeds. Both Defendant and Denice Webster Dessout, now married to Defendant, testified that the $12,000 Webster Loan has never been repaid. The Court finds that the Webster Loan was repaid from the BNS Loan proceeds.

[13] Defendant testified initially that the proceeds of the loan from his aunt may have been used to make the down payment on the three auction properties. He subsequently testified that he could not recall where he obtained the funds to make the down payment; then ultimately Defendant testified that he was sure that the loan from his aunt was not used to make the auction 10% down payment on the day of the sale.

maintenance, taxes, upkeep or insurance or the Wintberg Property or for the Trailer. Defendant made a total of seven payments on the BNS Loan by payroll deduction between the months of July 1995 and July 1996, in the amount of $346.50 each. Defendant's Exhibits 21 – 24.

10. Defendant took possession and effectively exercised sole and exclusive control over both the Wintberg Property and the Trailer. Plaintiff testified that she has never been denied access to either the Wintberg Property or the Trailer; that she has visited the Trailer once, with her attorney, at which time she found "no one home."
11. The parties failed to pay property taxes on the Wintberg Property from 1996 through 2007. Defendant entered into an Installment Agreement for Delinquent Property Taxes with the Office of the Lt. Governor on January 26, 2012 by which the total sum of $4,349.87 was to be paid within a period of 24 months. Defendant's Exhibit 35. Defendant made payments pursuant to the Agreement in the amount of $943.82. Defendant's Exhibit 37. There is no evidence in the record as to present status of property taxes on the Wintberg Property.
12. Plaintiff confirmed that she has no information concerning Defendant's rental of or receipt of any income from the Trailer or from the Wintberg Property. Based upon the record, the Court finds that Defendant has received no rental or other income from either property.
13. Within months after obtaining the BNS Loan, the parties defaulted on their loan obligations to BNS, and BNS foreclosed on Parcel 383, eventually obtaining Default Judgment entered April 20, 1999 in the matter known as *The Bank of Nova Scotia v. Recaldo A. Dessout and Lisa Brin,* Territorial Court, Division of St. Thomas and St. John, Civil No. 805/1998. Plaintiff's Exhibit 11. Following entry of Judgment, the parties jointly conveyed Parcel 383 to BNS.
14. Following the conclusion of the statutory redemption period following the property tax auction,

on June 11, 1996, the Commissioner of Finance issued a Certificate of Purchase for the Wintberg Property and a second Certificate of Purchase for the Trailer, each only in the name of Lisa Brin. Defendant's Exhibits 10, 12. A "Corrected Copy" of each Certificate of Purchase was issued December 9, 1997, noting that both the Wintberg Property and the Trailer had been purchased in both parties' names and that the Commissioner of Finance granted and conveyed both properties to Plaintiff and Defendant. Defendant's Exhibits 11, 13.

15. The parties had separated by the time the redemption price was paid by the owner of Parcel No. 2 Lille Gade within the statutory redemption period following the tax auction. The Department of Finance initially issued its refund check in the amount of $5,130 in Plaintiff's name only. Upon Defendant's complaint, two identical checks in the amount of $2,565 were issued, one to Plaintiff and one to Defendant. Defendant has not sought to recover the portion of the reimbursement paid to Plaintiff.
16. It appears by the evidence that the Wintberg Property is so situated that the partition of each by physical division cannot be made without great prejudice to the owners.

DISCUSSION

Plaintiff alleges that she has a 50% ownership interest in both the Wintberg Property and the Trailer and that she is entitled to partition of the Wintberg Property and damages for Defendant's conversion of the Trailer. She further claims that, after she and Defendant separated, Defendant leased the Trailer (from 1995 and thereafter) but never compensated Plaintiff for her share of any rental proceeds.

A. **Plaintiff holds a 50% ownership interest in the Wintberg Property and is entitled to partition as a matter of law.**[14]

To prevail on her claim for partition of the Wintberg Property, Plaintiff must establish that she is a tenant in common or otherwise holds a legal or equitable interest in the property. During the period of their cohabitation, while both parties contributed to the maintenance and expenses of their household and child-rearing, they jointly purchased and financed Parcel 383, taking title jointly (but incorrectly) as "tenants by the entirety." Both parties contributed to the initial down payment of Parcel 383. Plaintiff took a personal loan from Banco Popular, from which she contributed $5,000 to the down payment. Plaintiff contributed most, but not all, of the Dimmitt Loan mortgage payments, and Defendant contributed costs toward the initial development of Parcel 383. To develop Parcel 383 as their family's homestead, the parties jointly determined to obtain the $51,000 BNS Loan. Before the loan closing the parties changed course and jointly agreed, on Defendant's suggestion, to use the excess BNS Loan proceeds, following repayment of the Dimmitt Loan, to purchase other properties at a property tax auction.

Plaintiff attended the May 31, 1995 tax auction and successfully bid on behalf of the parties on the Wintberg Property (as well as the Trailer and the Lille Gade property, later redeemed). The initial 10% tax auction down payment was delivered by Plaintiff to the Government from funds supplied by Defendant. With funds from the Webster Loan, the parties paid the 90% balance due on the purchase price for the Wintberg Property on June 9, 2015, obtaining receipts in both names. Defendant's Exhibit 5. The parties' joint BNS Loan proceeds liquidated their joint obligation on

[14] Plaintiff's claim for partition pursuant to 28 V.I.C. Chapter 21 is correctly limited to her interest in real property, i.e. the Wintberg Property, and does not encompass the Trailer, which is personal property, and not subject to statutory partition.

the Dimmitt Loan on Parcel 383, titled in the name of both parties, which the parties later jointly conveyed to BNS following entry of foreclosure judgment following their default on the BNS Loan.

When the statutory right of redemption was not exercised by the former owner following the May 31, 1995 tax auction, by Certificate of Purchase, dated December 9, 1997 and recorded in the office of the Recorder of Deeds for the District of St. Thomas and St. John on January 28, 1998, the Commissioner of Finance conveyed to the parties jointly the Wintberg Property.

> If the right of redemption provided for in subchapter IV of this chapter is not exercised within the time prescribed, said certificate when recorded in the office of the Recorder of Deeds, shall vest the title to said property in said purchaser, free from all mortgages, liens or other encumbrances. The certificate shall be prima facie evidence of the facts recited therein in any controversy, proceeding or action involving or concerning the rights of the purchaser, his heirs or assigns, to the property thereby conveyed.
>
> 33 V.I.C. § 2251.[15]

That is, the evidence of the recorded Certificate of Purchase of the Commissioner of Finance conveying to both parties the Wintberg Property constitutes prima facie evidence of the vesting of title to both Plaintiff and Defendant as tenants in common, each entitled to a 50% interest in the property. That evidence is supported by evidence of the parties' relationship over the several years during which they cohabited, had four children together and jointly financed and maintained their family household. They bought and jointly paid for and contributed to the ownership of Parcel 383, which served as collateral for the BNS Loan, the net proceeds of which the parties intended to use to finance the development of their intended family homestead on Parcel 383, before changing course by agreeing to use the proceeds to purchase other properties at the May 31, 1995

[15] Prior to the 2007 amendment to 33 V.I.C. § 2251, the Commissioner of Finance, rather than the Lt. Governor, conducted tax auctions and conveyed properties purchased by the identical statutory procedure.

tax auction.

The parties acted in concert to purchase the Wintberg Property. The fact that Defendant financed the initial May 31, 1995 deposits by a withdrawal from his Scotiabank account, and that he secured the $12,000 Webster Loan to satisfy the balances due on June 9, 1995 are insufficient to rebut the prima facie evidence that Plaintiff and Defendant jointly own the Wintberg Property.

The evidence shows that Plaintiff contributed more financially to the joint property at Parcel 383 than did Defendant.[16] While Defendant procured the initial purchase price at the tax auction for the Wintberg Property by the Webster Loan and a loan from his aunt, those payments were fully repaid from the proceeds of the parties' joint BNS Loan. The record is devoid of evidence of either party contributing to the development or maintenance of the Wintberg Property, although Defendant has paid a total of $943.82 toward delinquent property tax obligations on the Wintberg Property.

Pursuant to 28 V.I.C. § 457, the rights of the parties having been put in issue and tried, the Court determines that each party is the owner of a 50% interest as tenant in common with the other in the ownership of the Wintberg Property.

Title 28 V.I.C. § 451 states that:

> When several persons hold and are in possession of real property as tenants in common, in which one or more of them have an estate of inheritance, or for life or years, or when several persons hold as tenants in common a vested remainder or reversion in any real property, any one or more of them may maintain an action of an equitable nature for the partition of such real property according to the respective rights of the persons interested therein, and for a sale of such property, or a part of it, if it appears that a partition cannot be had without great prejudice to the owners.

[16] Between down payment and mortgage payments, the evidence in the record establishes that Plaintiff contributed $15,488.92 to the parties' joint ownership of Parcel 383. Defendant contributed to the down payment, mortgage and initial development costs in the total amount of $9,547.41.

Therefore, having found that Plaintiff and Defendant jointly own the Wintberg Property as tenants in common, the Court will deny Defendant's Motion for Judgment as to Count 1 of Plaintiff's Complaint and will enter judgment of partition, ordering the partition and sale of the Wintberg Property. Because the Court finds that it appears by the evidence that the property is so situated that partition cannot be made without great prejudice to the parties as owners, the Court will order the appointment of a referee and the sale of the Wintberg Property. Any revenue derived from these sales, after payment of the expenses of the sales, and reimbursement to Defendant of 50% of his property tax payments, shall be divided equally between the parties.

B. Plaintiff has not established that Defendant received rental income from the Trailer and Defendant's Motion for Judgment will be granted as to Count 2 - Accounting.

Plaintiff seeks by Count 2 of her Complaint an accounting for all alleged profits gained from the Trailer by Defendant while he has been in exclusive possession.

An equitable accounting is "...a remedy of restitution where a fiduciary defendant is forced to disgorge gains received from the improper use of the plaintiff's property or entitlements." *Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp.*, 38 V.I. 431 (D.V.I. 1998). A plaintiff makes a "prima facie case by showing a breach of fiduciary duty plus gross receipts resulting to the fiduciary, and the defendant must prove what deductions are appropriate to figure the net profit." *Gov't Guarantee Fund of Republic of Finland*, 955 F. Supp. 441, at 466 (D.V.I. 1997), quoting 1 DAN B. DOBBS, LAW OF REMEDIES § 4.3(5), at 610 (2d ed. 1993). "The absence of an adequate remedy at law is a prerequisite to the right to maintain a suit for an equitable accounting." *Isaac v. Crichlow*, 2015 V.I. LEXIS 15, at *39 (V.I. Super. Ct. Feb. 10, 2015), citing *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 478 (1962). "If an adequate remedy at law exists for a given claim, the party seeking an equitable accounting must demonstrate that the accounts between the parties are of such a 'complicated nature' that only a court of equity can unravel them." *Id.*

The record is devoid of any evidence that Defendant collected rents or received any income while in exclusive possession of the Trailer, and Plaintiff testified that she has no proof that Defendant has received any income from the Trailer. Therefore, as Defendant made no "gains," and Plaintiff has failed to establish a *prima facie* case for an accounting, Defendant's Motion for Judgment will be granted and judgment will enter in favor of Defendant as to Count 2 of Plaintiff's Complaint.

C. Plaintiff has not established that Defendant was enriched by his possession of the Trailer and Defendant's Motion for Judgment will be granted as to Count 4 – Unjust Enrichment.

Plaintiff seeks compensation for any rents collected by Defendant while he was in possession of the Trailer, claiming that "…Defendant has never paid Plaintiff her share of the rental income generated from the parties' mobile home." Complaint, ¶35.

"A cause of action for… unjust enrichment will ordinarily lie in a case where the defendant 'receive[s] something of value to which he is not entitled and which he should restore' to the plaintiff." *Cacciamani & Rover Corp. v. Banco Popular de Puerto Rico*, 61 V.I. 247, 251 (VI. 2014), quoting *Walters v. Walters*, 60 V.I. 768, 776 (V.I. 2014). The equitable action of unjust enrichment "…is a quasi-contract cause of action imposing liability where there is no enforceable contract between the parties 'but fairness dictates that the plaintiff receive compensation for services provided.' " *Cacciamani & Rover Corp.*, 61 V.I. at 251, citing *Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 747 A.2d 600, 607 (Md. 2000). (*See also Dunnaville v.*

McCormick & Co., 21 F. Supp. 2d 527, 535 (D. Md. 1998)).

Here, because Plaintiff has failed to show that Defendant has received "something of value," Defendant is entitled to judgment as a matter of law on Plaintiff's unjust enrichment claim, and Defendant's Motion for Judgment will be granted and judgment will enter in favor of Defendant as to Count 4 of Plaintiff's Complaint.

D. Defendant is entitled to judgment as a matter of law as to Count 5 of Plaintiff's Complaint - Conversion

Plaintiff argues that Defendant's "exclusive control over the parties' mobile home" deprived Plaintiff of her right to joint ownership. Complaint, ¶39. She claims that Defendant's neglect resulted in the Trailer's deterioration and that she has a legal right to recoup that lost value.

Conversion is defined as "....an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." *Ross v. Hodge*, 58 V.I. 292, 308 (V.I. 2013), quoting RESTATEMENT (SECOND) OF TORTS § 222A(1) (1965). [17] The elements of conversion require the plaintiff to prove that a defendant "intentionally or wrongfully exercise[d] acts of ownership, control or dominion over personal property to which he has no right of possession at the time ..." *Id.* (citing *Zimmerman v. FirsTier Bank*, N.A., 255 Neb. 410, 585 N.W.2d 445, 451-52 (1998)).

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[17] In *Ross v. Hodge,* citing *Banks v. Int'l Rental and Leasing Corp.,* 55 V.I. 967, 976 (V.I. 2011), the Supreme Court reiterated "that although 1 V.I.C. § 4 does not incorporate all of the Restatement provisions as if they were actual statutory text, those provisions are nevertheless persuasive authority." 58 V.I. at 304. The Court implicitly determined that the provisions of RESTATEMENT (SECOND) OF TORTS § 222A(1) represent the best rule for the Virgin Islands relative to the tort of conversion by adopting its provisions in passing upon the plaintiff's conversion claim in that case. *See Hodge,* 58 V.I. at 308. As the law relative to conversion has been determined by the Supreme Court, there is no need to independently conduct a *Banks* analysis as to the law applicable to Plaintiff's conversion claim herein.

Plaintiff has offered no evidence of any deterioration of the Trailer or of the diminution of the value of the Trailer as the result of Defendant's possession and control. As such, her claim fails to the extent that she seeks to recover for any diminution of the value of her interest in the Trailer.

However, for the same reasons that the Court finds that Plaintiff owns a 50% undivided interest in the Wintberg Property, Plaintiff similarly holds a 50% undivided interest in the Trailer. "Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." *Hodge*, 58 V.I. at 308.

Here, although Defendant and Plaintiff each have the right to possess the Trailer by virtue of the 50% ownership interest of each as tenant in common, neither has the right to intentionally exercise dominion or control over the Trailer so as to seriously interfere with 50% undivided ownership interest of the other co-tenant. Following the purchase of the Trailer by the parties, Defendant promptly assumed and has maintained exclusive possession and control of the Trailer, to the exclusion of Plaintiff as a practical matter. Plaintiff testified that she has not been prevented from visiting the Trailer and that she has only done so once, accompanied by her attorney, since Defendant has been in possession.

Yet, in 1995 when Defendant assumed control of the Trailer, including Plaintiff's 50% undivided interest, the parties had just separated and their relationship had deteriorated so severely that Plaintiff sought and obtained a judicial restraining order against Defendant. "Not only the conduct of the defendant, but also its consequences, are to be taken into account. In each case the question to be asked is whether the actor has exercised such dominion and control over the chattel, and has so seriously interfered with the other's right to control it, that in justice he should be required to buy the chattel." *Id.* § 222A(1) cmt. d.

The consequences of Defendant's conduct in assuming sole and exclusive control of the Trailer has so seriously interfered with Plaintiff's right to control the trailer that justice requires that Defendant should be required to buy the 50% undivided interest of Plaintiff in the Trailer. "In conversion the measure of damages is the full value of the chattel, at the time and place of the tort. When the defendant satisfies the judgment in the action for conversion, title to the chattel passes to him, so that he is in effect required to buy it at a forced judicial sale." *Id.* § 222A(1) cmt. c.

Accordingly, Defendant's Motion for Judgment on Count 5, Conversion, will be denied, and judgment will enter in favor of Plaintiff and against Defendant, requiring Defendant to pay to Plaintiff the full value of her undivided 50% interest at the time of the conversion. Since the parties paid the price of $600 for the Trailer, judgment will enter in favor of Plaintiff and against Defendant in the amount of $300, together with interest at the legal rate (9% per annum) from June 9, 1995 to the date of entry of judgment herein. Title to the Trailer shall pass to Defendant in his name alone upon his satisfaction of the judgment.

CONCLUSION

Following a one day bench trial where Plaintiff and Defendant both testified, the Court concludes based upon a preponderance of the evidence presented that the Wintberg Property and the Trailer are owned jointly by Plaintiff and Defendant as tenants in common, each with an undivided 50% ownership interest. As such, by separate Judgment Order entered contemporaneously herewith, the Court orders the partition of the Wintberg Property and the appointment of a referee to sell that property, with each party to receive 50% of the net sale proceeds of the sale, following payment of costs relative to the sale process, payment of all outstanding property taxes due, and reimbursement to Defendant of the sum of $471.91, representing 50% of the tax payments made by Defendant on the Wintberg Property since the parties became owners.

Because Plaintiff failed to demonstrate that Defendant has collected rent or other income from either the Wintberg Property or the Trailer, judgment shall enter in favor of Defendant denying relief to Plaintiff relative to her claims for an accounting and unjust enrichment.

Judgment will enter in favor of Plaintiff and against Defendant for conversion of Plaintiff's 50% undivided ownership interest in the Trailer. Defendant will be required to pay to Plaintiff the sum of $300 representing 50% of the purchase price for the Trailer, plus interest that has accrued thereon at the legal rate from June 9, 1995 to the date of entry of judgment herein. Upon full satisfaction of such judgment sum, title to the Trailer will be solely and exclusively in the name of Defendant.

Each party shall bear her and his own costs of the action, including attorney's fees.

Dated: September 29, 2015.

DOUGLAS A. BRADY, JUDGE

ATTEST:
ESTRELLA GEORGE
Acting Clerk of the Court

By:
Court Clerk Supervisor
9/29/15