Superior Court of New Jersey

Appellate Division

Docket No. A-003996-22T1

FRANCISCO MATOS, RAMONA MATOS, and NOEL MATOS, as ATTORNEY IN FACT, *Plaintiffs-Appellants,* vs. JOHNNY CUETO and ARLENE MATOS (now ARLENE MATOS CUETO), *Defendants-Respondents.*	:	CIVIL ACTION ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, SUSSEX COUNTY DOCKET NO.: SSX-L-19-21 Sat Below: HON. WILLIAM J. MCGOVERN III, J.S.C.

BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS

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PRELIMINARY STATEMENT

This Memorandum of Law is submitted in Support of Appellants FRANCISCO MATOS, RAMONA MATOS and NOEL MATOS, (hereinafter referred to collectively as "MATOS" or Appellants) seeking a reversal of the judgment after trial which improperly awarded only partial restitution of unjust enrichment and failed to fully impose a constructive trust. A confidential relationship was found to exist, and therefore the burden of proof must be shifted to the *Defendants for them to have proven* ***by clear and convincing evidence*** that Johnny Cueto deserves to keep the benefits of the transaction of the home purchases. We believe that because these dealings have no written evidence, and were conducted within a confidential relationship, that Francisco Matos and Ramona Matos are the rightful owners.

The Court entered a Final Judgment on August 4, 2023, augmented by oral rulings from the Judge on September 14, 2023, as well as a Summary Judgment Decision on July 22, 2022 parts of which we now take Appeal. At trial, the Court properly found that a confidential relationship existed between the elderly parents, FRANCISCO MATOS and RAMONA MATOS on the one side, and the defendants, ARLENE CUETO and JOHN CUETO, on the other. The Court correctly found that no gift was made of $50,000 from parent Francisco Matos (a man now in his 80's and almost 90 years old) to the future son-in-law, John Cueto. Lastly, the Court awarded that $50,000.00 back to the

Plaintiffs Ramona Matos and Francisco Matos under the theory of unjust enrichment.

The Court should have imposed a constructive trust over the entire house at issue. Once the Court ruled that 1) that there was no gift by Franisco to John Cueto, 2) that there was a confidential relationship between the parents and daughter and soon to be husband, and 3) that there was unjust enrichment requiring a return of the $50,000.00, we argue that the complete remedy for essentially a breach of a confidential relationship was the imposition of a constructive trust over the entire house. That would have resulted in giving the entire equity to Francisco and Ramona Matos, which they paid for almost in its entirety.

However, the Court failed to view the actions of John Cueto through the prism of that confidential relationship, with obligations akin to a fiduciary responsibility. Had the Court followed through and done so, the results that follow indicate that John Cueto took advantage of his confidential relationship towards his own future father-in-law by profiting off of his trust in him. John Cueto admitted at trial that he was charged with buying a house for Francisco Matos and Ramona Matos, but instead bought it for himself, and put his name, not Francisco's, on the deed. By placing the house in his own name, and not that of Francisco Matos and Ramona Matos, he violated their trust. Mr. Cueto claims that Francisco just wanted to rent, not own. It is a very self-serving opinion. A constructive trust should have been imposed by the Court

recognizing Francisco Matos and Ramona Matos as equitable owners and converted the property on the deed to their names.

Despite a finding of unjust enrichment, and not a gift, the Court incorrectly awarded the majority of the equity and legal title to the home to the Defendants, a home valued at over $300,000.00. The dominant party, John Cueto, must not profit at the expense and advantage of the elderly Francisco Matos, who had placed John Cueto in a position of trust, which formed the confidential relationship. Additionally, the Court failed to consider that Ramona Matos, the elderly wife of Francisco was never informed of the transactions involving her money to buy a home as well.

Elderly and uneducated, the immigrant Francisco Matos entered into a relationship of trust and confidentiality with John Cueto, holder of an MBA degree, and entrusted him with $50,000 to buy a house for Francisco Matos. John Cueto testified that he could only use the "gift" money to buy a house for Francisco Matos to live in and rent it to him. We believe that his renting of the home to Francisco was in breach of his duties under a confidential relationship to Francisco and Ramona Matos because John Cueto put his own name on the property instead. Mr Cueto took ownership instead of the elderly Francisco Matos. Francisco Matos paid all home costs for many years, such as taxes, mortgage and all utilities. At some point Mr. Cueto paid for a portion of the HOA fees.

PROCEDURAL HISTORY

Francisco Matos, Ramona Matos and Noel Matos, Appellants, as Plaintiffs below, filed suit on or about January 5, 2021 with a Complaint and Order to Show Cause. (Pa64-184). The matter was transferred to the Law Division on January 14, 2021. (Pa185) The Cueto Respondents as Defendants answered on or about March 26, 2021. (Pa535-543). Plaintiffs filed a Motion for Summary Judgment on May 25, 2022. (Pa190-247). Defendants Cross moved for Summary Judgment on or about June 15, 2022. (Pa248-305). Plaintiff's reply brief was served and filed on July 1, 2022 (Papers except brief Pa306-317).

The Hon. William J. McGovern, III J.S.C. rendered decisions partially granting summary judgment on the cross motion and denying Plaintiff's motion for summary judgment on July 22, 2022. (Pa10-44) for the reasons set forth in an opinion issued therewith.

The parties went to trial on March 20, 2023 and the Court rendered an oral decision on July 31, 2023 (6T 1-42) and a written decision on August 4, 2023 (Pa1-9). The Court heard a motion for a stay on September 14, 2023 and denied same, but orally added to its rulings on the trial, (7T 1-18).

On August 20, 2023, Plaintiffs filed a Notice of Appeal from the both the trial and summary judgment decisions (Pa45-49); an amended Notice of

Appeal was filed on October 2, 2023 due to an extra hearing (Pa57-61; 7T 1-18). No Cross Appeal has been filed.

STATEMENT OF FACTS

Noel Matos and Arlene Matos are siblings, both born to Francisco Matos and Ramona Matos, their parents. The Parents, Ramona Matos and Francisco Matos, sought help from Arlene Matos and Johnny Cueto on various issues over the years, and in regards to this case had a need for new housing in 2014. Johnny Cueto and Arlene Matos believed the parents trusted them and that prior to the move from Florida to New Jersey in 2016, "at that time, it became clear to Ramona and Francisco they could no longer live on their own in Florida without their support system around them." (Pa 16, Pa 329-377 - Cueto Deposition pp. 50, L 20-23; pp. 36-37, L 20-25, 1-13; p. 92, L 6 -19, p. 24 L 12-19; pp. 36-37, L 9-25, 1-13; p. 93 L 25, p. 94 L 1-25, p. 95, L 1-6; p. 25 L 20-25, p.2 6 L 1-16; p. 26-27 L 24-25, 1-15, pp. 50-51, L 14-25, 1-24.)

There was a first purchase of a Florida Home located at 631 Northwest 60 Court in Miami, Florida 33126 in December of 2014 by Johnny Cueto. Neither Ramona Matos, nor Francisco Matos are on the HUD or closing disclosure as buyers. (Pa 201-207; Pa331-Cueto Deposition p. 7 L 9-12). There was a sale of the first home on December 4, 2015 by Johnny Cueto. Neither

Ramona Matos, nor Francisco Matos are on the HUD or closing disclosure as sellers. (Pa208-209).

There was a second (2nd) purchase of a home at 8 Tillbrook Court, Hardyston Township, Hamburg NJ 07419 on April 29, 2016 by Johnny Cueto. Neither Ramona Matos, nor Francisco Matos are on the HUD or closing disclosure as buyers. (Pa210-212) This is the home over which Plaintiffs believe a constructive trust should be imposed designating the true owners as Ramona Matos and Francisco Matos.

Johnny Cueto is a graduate of Rutgers University with a college degree as well as a graduate MBA degree from St. Joseph College. (Pa330 - Cueto Deposition p.5, L 13-25).

Francisco Matos and Ramona Matos both worked as janitors and Ramona only had a 6th grade education and neither was a high school graduate. (Pa 388 - Noel Matos Deposition at pp. 38-39, L 21-25, 1-3).

Arlene Matos's name is not on the deed. (Pa353 **-** Deposition of Cueto pp. 97, L 13-20.**).**

There is a bank generated document, signed by Johnny Cueto and Francisco Matos, stating that the $50,000 was not required to be paid-back by Cueto to Matos. (Pa213). Despite this document, the Court below ruled that there was no gift intended. (6T 20-24, 27).

There are no documents of any kind, writing, emails, contracts or text messages, or other recorded communications that preserve whatever agreements may have been made, if any, between Francisco Matos and Johnny Cueto, as to the purchases and rentals of both the Florida and New Jersey homes. There was never a lease agreement either. (6T-13, 21-22).

Francisco Matos gave Johnny Cueto a check for $50,000.00. (Pa214). (Pa334-335 - Cueto Deposition at p.21, L1-8.).

Johnny Cueto is now the husband of Arlene Matos Cueto and therefore the son-in-law of Francisco Matos. However, at the time of the Florida home purchase, he was just her boyfriend, but living together. (Pa335 - Cueto Deposition p. 22, L 8-25, 1-3.).

Arlene Matos believes that her Mother was lying when she stated that the home in New Jersey belonged to her and not her daughter Arlene. (Pa431 - Arlene Matos Deposition p. 39, L 3-21).

Johnny Cueto admits that the elderly Matos couple could have achieved the same outcome of renting without contributing $50,000.00 to him. (Pa338 - Cueto Deposition pp. 36-37, L9-25, 1-13).

Johnny Cueto admitted that he would not do something benevolent for his in-laws at his cost or expense. (Pa352-353 - Cueto Deposition p. 93, L25, p. 94 L1-25, p. 95, L1-6).

Johnny Cueto also stated that the same $50,000.00 from the Francisco Matos' check made its way into the equity at the Tillbrook, NJ address, from the sale of the Florida home via a 1031 Exchange. (Pa215, and Pa332, 340, 349 – Cueto Deposition p. 13, L16. p.42, L18-25: p. 78, L12-15).

No Lawyer or financial expert was ever consulted for the benefit and independent advice that could have been beneficial to Ramona Matos and Francesco Matos. (Pa334 - Deposition of Cueto p. 21, L 9-23, 6T 22). Francesco Matos paid off Johnny Cueto's car loan. See Exhibit J payoff from BMW, (Pa 246, 342 **-** Deposition of Cueto at p. 51**).** Mr. Francisco Matos never fell behind and paid $1,500.00 a month since moving to the New Jersey Tilbrook property, paying $18,000.00 a year. (Pa351 - Deposition of Johnny Cueto p. 89).

Arlene Matos and John Cueto sent letters attempting to evict their parents/inlaws and even attempted to bypass their counsel to get them to drop the lawsuit by going to their home and trying to get them to sign papers. (Pa509, 2T 58-59). This was underhanded and wrong.

Trust was placed by Francisco Matos in Johnny Cueto. (Pa 338, 352 - Cueto Deposition pp. 36-37, L20-25, 1-13; p. 92, L 6 -19).

There was a relationship based upon a Father and daughter and her live in, eventual husband in the role of son-in-law, being a typical parent/child relationship. (Pa 353 - Cueto Deposition p 94, L 1-25, p. 95, L 1-6).

Francisco Matos believed that he owned both the home bought in Florida and the current home in New Jersey. (1T 55-58). Likewise, Ramona Matos believed that she was the true owner of the home in Florida as well as the current home in New Jersey. (1T 41-48).

ARGUMENT

1. The Court Below failed to impose a Constructive trust on the home property for the benefit of Plaintiffs after determining that there was a Confidential relationship and that Unjust Enrichment must be returned as no Gift was ever made by Francisco Matos to John Cueto (Pa1-7) (6T 31-42)

a. Elements of a Confidential Relationship were met (Pa1-7) (6T 31-42)

The concept of a confidential relationship triggering the need for a constructive trust has a long and well-reasoned list of precedents in the law of New Jersey. As we review the law applicable to this case, foremost in our minds is the result at trial in the instant case, in which the Court held that there was a confidential relationship between Francisco Matos and John Cueto. (See 7T). A confidential relationship essentially is one in which there is a domination of one person's will over another, created by a trust placed therein

by one party to another. In *Foster v. Medela, 9 N.J. Super. 195*, (App. Div 1950) the Appellate Court described the situation so aptly:

> We disagree with the Vice-Chancellor's finding that no dominant ***confidential*** relation [was] obtained ***between*** plaintiff and defendants. We think **[***7]** such a relation was established calling for the application of the principle that when a person is under the influence of and dependent upon others and enters into an improvident transaction with them stripping himself of virtually all his assets, **a presumption of undue influence arises from the facts casting upon the dominant partners the burden to show by clear and convincing proof [*202]** that the transaction was the voluntary and intelligent act of the dependent person made with the benefit of competent and disinterested counsel and fully understood and intended. *Slack v. Rees, 66 N.J. Eq. 447* (*E. & A.* 1903); *Seylaz v. Bennett, 5 N.J. 168 (1950)*; *Croker v. Clegg, 123 N.J. Eq. 332* (*E. & A.* 1938); *Alberts v. Alberts, 119 N.J. Eq. 391* (*E. & A.* 1935); *Pearce v. Stines, 79 N.J. Eq. 51* (*Ch.* 1911); *Christian v. Canfield, 108 N.J. Eq. 547* (*Ch.* 1931); *In re Fulper's Estate, 99 N.J. Eq. 293* (*Prerog.* 1926). Id at 201-202. (*emphasis supplied*).

The Appellate Division in *In re CODICIL OF STROMING,* 12 N.J. Super. 217(App. Div.1951) explained further what a confidential relationship means, even though it may take many forms:

> There are innumerable cases involving ***confidential relationship***, but the courts have not been able precisely to define what it is. See *Foster v. Medela, 9 N.J. Super. 195* (*App. Div.* 1950); *In re Fulper, 99 N.J. Eq. 293* (*Prerog.* 1926). A ***confidential*** relation is not confined to any specific association of the parties; "Its essentials are a reposed confidence and the dominant and controlling position of the beneficiary of the transaction." *Foster v. Medela, supra.* "***It is clear that the dominance must be of the mind, and the dependence must be upon the mind rather*** than upon the hands and feet of the donee." *Chandler v. Hardgrove, 124 N.J. Eq. 516* (*Ch.* 1938). It exists when the circumstances

> make it certain that the parties do not deal on equal terms, but on the one side there is an overmastering influence, or, on the other, weakness, dependence or trust, justifiably reposed. It does not exist where **[***10]** the parties deal on terms of equality, although, as here, they are at the same time mother and son and business associates. See Croker v. Clegg, 123 N.J. Eq. 332 (*E. & A.* 1938). Id at p 9 – 10. (*emphasis supplied*).

See also *Albright v. Burns, 206 N.J. Super. 625 (App. Div. 1986)*, expanding on the ways that a confidential relationship can create a fiduciary relationship, by holding that "A *fiduciary* relationship may be deemed to have existed . . . by reason of their closeness, family relationship, entrustment, the granting of the power of attorney and Burns' promises that he would provide for his uncle. *See Stroming v. Stroming, 12 N.J. Super. 217, 224 (App.Div.1951)*, certif. den. *8 N.J. 319 (1951)*; *Foster v. Medela, 9 N.J. Super. 195, 201-202 (App.Div.1950)*." Id at 635. It is also clear in New Jersey that confidential relationships create fiduciary like responsibilities. Teasing out the difference, if any, from dominance within a confidential relationship and the effects of undue influence, is very difficult. The creation of fiduciary-like responsibilities urges equity to restrain a grantee or recipient of properties from taking advantage of the confidential relationship. The Court in *In re Estate of Suesser, 2017 N.J. Super. Unpub. LEXIS 2948* held: "Evidence of undue influence varies from case to case, with the *relationship* of the parties being a significant factor. *See, e.g., Albright v. Burns, 206 N.J. Super. 625,*

635, 503 A.2d 386 (App. Div. 1986) (describing how, based on a nephew and uncle's *relationship*, a *confidential relationship* may be presumed). Here, Pine was the decedent's niece. A *fiduciary relationship* may arise *between* aunt and niece by reason of their closeness, family *relationship*, or entrustment. *See ibid" Id.* at 15. *See also Harry Kuskin 2008 Irrevocable v. Pnc Fin. Group,* 2023 N.J. Super. Unpub. LEXIS 1277 (offering a detailed explanation of the parallels between fiduciary and confidential relationships).

In Estate of Ostlund v. Ostlund, 391 N.J. Super. 390 (App. Div. 2007) *the Court held:*

> The factors to be considered in determining whether a ***confidential relationship*** is present, therefore, include whether ***trust*** and confidence between the parties actually exist, whether they are dealing on terms of equality, whether one side has superior knowledge of the details and effect of a proposed transaction based on a fiduciary ***relationship***, whether one side has exerted over-mastering influence over the other or whether one side is weak or dependent. As one court has said, "there are innumerable cases involving ***confidential relationships***, but the courts have not been able precisely to define what it is." *Stroming v. Stroming, 12 N.J. Super. 217, 224, 79 A.2d 492 (App.Div.)*, *certif. denied, 8 N.J. 319, 85 A.2d 272 (1951)*. **Its essentials are both "a reposed confidence and the dominant and controlling position of the beneficiary of the transaction."** *Ibid.* "[T]he dominance must be of the mind and the dependence must be upon the mind," **[***18]** rather than the physical. *Ibid.* "It exists when the circumstances make it certain that the parties do not deal on equal terms." *Ibid.* It does not exist "where the parties deal on terms of equality," even though they are, at the same time, family members and business associates. *Ibid.* The test, then, is a fact-sensitive one, but focuses on the equality of the parties with respect to each another. Id at 18 to

19. (*emphasis supplied*).

In *Stewart v. Harris Structural Steel Co., 198 N.J. Super. 255 (App. Div. 1984)* the court explained how a constructive trust works:

> It is fundamental that a constructive trust should "be impressed in any case where to fail to do so will result in an unjust enrichment." *D'Ippolito, et al. v. Castoro, et al., 51 N.J. 584, 588 (1968)*; *Hirsch v. Travelers Insurance Company, 134 N.J. Super. 466, 470 (App.Div.1975)*. Justice Cardozo recognized this principle in *Beatty v. Guggenheim Exploration Co., **[*266]** 225 N.Y. 380, 122 N.E. 378, 380 (Ct.App.1914)*, when he stated that:
>
> A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.
>
> The *Restatement, Restitution § 163* at 661 (1937) explains that "[w]here the owner of property transfers it as a result of a mistake of such a character that he is entitled to restitution, the transferee holds the property upon a constructive trust for him." *Section* 16 of the *Restatement, Restitution at 69* recognizes one type of mistake which entitles a person to restitution as:
>
> A person who **[***17]** has paid money to another because of an erroneous belief induced by a mistake of fact that in so doing he is performing a contract with the other which is not subject to avoidance, is entitled to restitution of the amount so paid if the transaction is voidable by either party because of the mistake and is avoided.
>
> This is in accord with the holding of our Supreme Court that, "[g]enerally **all that is required to impose a constructive trust is a finding that there was some wrongful act, usually, though not limited to, fraud, *mistake*, undue influence . . . which has resulted in a transfer of property**." *D'Ippolito, et al. v. Castoro, et al., 51 N.J. at 589* (emphasis supplied). **Moreover,**

> **"'[a] constructive trust may arise . . . even though the acquisition of the property was not wrongful. It arises where the retention of the property would result in the unjust enrichment of the person retaining it.'"** *D'Ippolito, et al. v. Castoro, et al., 51 N.J. at 589* (quoting from *Scott on Trusts*, § 462.2, p. 3417 (3rd ed. 1967)).

Id at 265-266. *(emphasis supplied). See also The Confidential Relationship Theory of Constructive Trusts - an exception to the Statute of Frauds*, Fordham L. Rev. Volume 29, Issue 3, 561 (1961). **(Pa555-565).**

In the Instant case, the trial court ruled orally from the bench on July 31, 2023 that the elderly Matos was in a confidential relationship with John Cueto and Arlene Matos:

> And as I said before, I do find, and I did find previously last year that there is a confidential relationship, and there was an attitude and atmosphere of trust between Ramona and Francisco with John and Arlene based upon the educational gap – education gap between the parents and the daughter and son-in-law, as well as the impediments that existed vis-à-vis the Spanish language versus the English language, and the easier familiarity that Arlene and John had with English by far than Ramona and Francisco did.
>
> Also, in terms of sophistication, I think it could be said that generally speaking, without getting in detail, that because Arlene and John were substantially younger, John has an MBA, that doesn't necessarily prove anything, but it certainly bespeaks of the fact that he has a broader educational range and experience. It doesn't mean that you are necessarily a genius, but it certainly speaks to an individual who, more often that not, would ask the right questions when questions need to be asked, and get answers that are necessary before making informed decisions.
>
> So as I indicated a few minutes ago, in my view, what we have here is – there is a confidential relationship. I find that there is no

> basis for me to conclude that undue influence was exerted in any way, shape, or form, but rather, a lack of attention to detail on the part really of everyone.

(6T 29-30 of July 31, hearing).

b. The Court Below improperly failed to shift the burden of proof to the Defendants, even after finding that there was a Confidential Relationship, such that the Defendants had to prove by clear and convincing evidence that they were supposed to benefit from the house purchase and not the Elderly Parents, (Pa-1-7) (6T- 31-42) (Pa 28)

While the judge in the trial court level herein found a confidential relationship, he also failed to find undue influence, but placed the burden of proof on the wrong parties. He should have placed the burden on the defendants. Clearly, the Court ruled that there was not gift of $50,000.00:

> So this $50,000, in my view, was not and cannot be described as being a gift that satisfies all of the elements of a gift with no string attached. There were strings attached. The string attached was you're going to use this to buy a house that we can live in. Check the box; done.

(Id at 6T 27).

The Court awarded unjust enrichment of $50,000.00 to Plaintiff:

> 15. Plaintiffs' claims against Defendant, Johnny Cueto, based on undue influence, are dismissed with prejudice (Count IX of Plaintiffs' Complaint). Plaintiffs claims (Count IV, unjust enrichment) against Johnny Cueto are granted, in part, for the reasons stated on the record, to the limited extent that consideration of equity requires that the %50,000 be reimbursed to Francisco Matos and Ramona Matos, the Court having concluded that there is insufficient proof that the Plaintiff(s) made and intended an unconditional gift.

(Id. at Pa7).

The reasons were not given, but when we look at the actual words that the defendant, John Cueto, used to describe the transaction, he said basically that the $50,000.00 was a gift given to him by Francisco, but the only thing he could use the money for was to purchase a house for Francisco. (2T 34-37). Yet, John Cueto bought the house *for himself* by placing his name alone on the deed. Of course there appears superficially that Francisco was willing to do so. If undue influence is lacking, it is because Francisco Matos was obviously tricked by trusting John Cueto to handle the details. John Cueto pulled the wool over old man Francisco Matos' eyes. More importantly, the judge's logic is somewhat less than outlined by the law. He never shifted the burden of proof onto the defendants, as all of the caselaw cited shows must happen, once you find a confidential relationship.

The way we can discern that the Court did not shift the burden of proof to the Defendants is that it did not consider the lack of any documentation as proof that there was no intention of John Cueto being the beneficiary of the transaction. For example, had a writing existed, stating that John Cueto should be the owner, and that Francisco made a gift, that would have been some sort of proof. However, the Court ruled that there was no gift, and certainly did not rely upon the Chase bank gift letter, which was abundantly flawed because if

stated that John Cueto was the nephew of Francisco Matos, which was a lie. It is impossible for John Cueto to meet the standard of proof of clear and convincing evidence that he was to be the sole beneficiary of the transaction without a single document corroborating his testimony. Further, there was no lease agreement between John Cueto and Francisco Matos either. That would have shown that there was some notion between the two that one was a landlord and the other a mere tenant. No documents exist at all. However, the court viewed it as the Plaintiffs' failure to demonstrate that Defendant John Cueto was not the owner, when the law demands that John Cueto prove that he was the intended owner, because he obtained the money for the purchase from Francisco Matos and admitted that he was supposed to buy a home for Francisco Matos. John Cueto offered no corroboration for his story that Francisco Matos gave him the house as a gift, meaning the $50,000.00 Deposit, plus all future monthly payments of $1500.00 for mortgage and taxes and HOA fees. At some point John Cueto paid a portion of HOA fees approximating 15,000.00. Francisco Matos contributed approximately $200,000.00 over 8 years with the initial $50,000 plus 8 years of monthly payments. It is difficult to argue that John Cueto did not take advantage of his father in law, Francisco Matos. It is tragic that they are in true peril of losing their home. (Pa566-570)

The Court instead forced the plaintiffs to prove that the house was theirs, when instead he was supposed to shift the burden to John Cueto for him to prove that he was the intended beneficiary, but the Court failed to follow the law. Not only that, but the Court found that there were zero documents that attested to what was going on. That means that John Cueto could never win had the burden of proof been placed upon him, because the only thing backing up his story was his own self-serving testimony, and similar testimony from his wife. Defendants had no independent, corroborative proof. The shifting of the burden of proof is critical, and the Court failed to do it. We don't have to get into the difficult aspect of Pascale, which is whether a gift was made and not understood, because the Court ***correctly found that there was no gift made by Francisco to John Cueto!*** **(Pa 6T at 20, 24, 27, 31)** The Court ordered a restitution of the unjust enrichment, but failed to consider that the rest of the transaction was wrong as well. The house was never meant to be John Cueto's.

In *Pascale v. Pascale*, 549 A. 2d 782, 113 N.J. 20 (1988) NJ Supreme Court 1988, the Court enunciated the rule as to how one should analyze a case with confidential relationships and gifts of substantial assets.

> *In respect of an inter vivos gift,* ***a presumption of undue influence*** *arises when the contestant proves that the donee dominated the will of the donor*, Seylaz v. Bennett, 5 N.J. 168, 172 (1950); Haydock v. Haydock, 34 N.J. Eq. 570, 574 (E. & A. 1881), ***or when a confidential relationship exists between donor and donee,*** In re Dodge, supra, 50 N.J. at 227; Mott v. Mott, 49

> N.J. Eq. 192, 198 (Ch. 1891). 30 ***In explaining the reason for the presumption of undue influence when the donee enjoys a confidential relationship with the donor, we have stated that "[i]ts purpose is not so much to afford protection to the donor against the consequences of undue influence exercised over him by the donee, as it is to afford him protection against the consequences of voluntary action on his part, induced by the existence of the relationship between them, the effect of which upon his own interests he may only partially understand or appreciate."*** [In re Dodge, supra, 50 N.J. at 228 (quoting Slack v. Rees, 66 N.J. Eq. 447, 449 (E. & A. 1904)).] With respect to a will, to create a presumption of undue influence the contestant, by comparison, must show the existence not only of a confidential relationship, but also "suspicious circumstances," however "slight." Haynes, supra, 87 N.J. at 176. Without proof of suspicious circumstances, a confidential relationship will not give rise to the presumption in the testamentary *31 context. 5 N.J. Practice, Clapp, Wills & Administration § 62, at 224-28 (3d ed. 1982). **Underlying the absence of a requirement of showing suspicious circumstances with an inter vivos gift is the belief that a living donor is not likely to give to another something that he or she can still enjoy. Id. at § 62, at 226 n. 15. 31 When the presumption of undue influence arises from an inter vivos gift, the donee has the burden of showing by clear and convincing evidence *not only that "no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but that it was well understood."*** In re Dodge, supra, 50 N.J. at 227 (quoting In re Fulper's Estate, 99 N.J. Eq. 292, 302 (Prerog. Ct. 1926)); accord Slack, supra, 66 N.J. Eq. at 449; Mott, supra, 49 N.J. Eq. at 198. *Id* at pp 5-7 (*emphasis supplied*)

The Court in the summary judgment motion acknowledged that the burden of proof must shift to the Defendants, but failed to apply it properly at the trial.[1]

[1] Summary Judgment Decision at page 19 (Pa28):

2. The Trial Court Below erred in awarding the incorrect amount of Unjust Enrichment, and wrongly allowed the Defendants to keep the the equity of the home (Pa1-7) (6T 31-42)

Undue influence is presumed once he found a confidential relationship. Whether this involved a substantial part of Francisco's assets or not (and ultimately the equity in the house would be the most substantial asset he owns) is only relevant *when a gift is made,* and that gift has to be undone based upon a theory that the person didn't understand in light of the percentage of his assets being given away. However, the trial Court, as a fact finder after trial, held that Francisco Matos never intended to make a gift, despite the Defendants claiming it was a gift. Clearly the Court did not believe the Defendants, regardless of who it stated was more credible. Considering that ***the Court did not believe a major component of the Defendants' story, that the money ($50,000.00 from Francisco) was given to them as a gift***, how could any court believe that the Defendants carried the day by "clear and convincing" evidence, ***when the heart of the Defendants' story was rejected?*** Obviously we cannot believe it and implore the high Court to reverse this decision.

Therefore, the logic is that as a gift was never made or intended by Francisco Matos, the Court should have been following the logic of *Moses v Moses, supra,* such that a constructive trust was the only way to explain why

Francisco paid for everything except for a few thousand dollars in HOA fees, but indeed paid the downpayment, paid the mortgage through defendants, paid the taxes and all via a $1500 a month payment for almost 8 years. That is because he thought the home, which he was paying for, would be his. Yet his own daughter and son-in-law violated and betrayed the confidential relationship they had with their Father/Father-in-law.

Accordingly, the proper remedy is that a constructive trust be placed over the entire home, for the benefit of Francisco and Ramona Matos, and legal title be stripped from Defendant John Cueto.

3. The Court Below improperly determined that there was a joint venture, when neither party claimed or argued that there was a joint venture, and it makes no sense considering that the Court did find unjust enrichment. In fact it could never be a joint venture because the Court had ruled no contract existed on summary judgment; and even if there had been one, improperly divided the equity (Pa1-7) (6T 31-42) (Pa31-31)

The Court already ruled that 1) there was no gift, 2) there was a confidential relationship and 3) there was unjust enrichment. The Court also ruled in the summary judgment decision that there was no claim for a breach of contract, which makes the Court's ruling that there was a joint venture totally absurd. The Court below failed to properly impose a constructive trust, and failed to place the burden of proof on John Cueto to demonstrate why he

was entitled to keep the home. Remember, there was no paperwork whatsoever describing how or why he should get to that result.

We say this because at trial, the Court's decision is incongruous. The Gift letter was not persuasive to the Court, probably because it was tainted. The Court also found no elements of a contract had been made, no meeting of the minds. If we accept that, the Court's findings at Summary Judgment was no contract, and at trial, no gift. The Court dismissed Plaintiffs' claim for a breach of contract. We are unsure how the Court below found a joint venture at trial. A joint venture is a form of an agreement or contract, but the Court never discerned what the terms were. How can it deny the cause of action for a contract breach, because there was not contract, and yet find a deal was made for a joint venture?

The case of *Moses v. Moses, 140 N.J. Eq. 575 (Court of Errors and Appeals, 1949)* most gives guidance to cases with fact patterns similar to the instant case. A constructive trust is appropriate when:

> …although it would seem that a purchase of property by one person in the name of another suggests an express ***trust*** arising out of the intention of the purchaser, equity has long considered the transaction as giving rise to a resulting ***trust***, wholly apart from the intention, since the character of the transaction raises an inference that the purchaser did not intend that the grantee should **[***9]** have the beneficial interest in the res, and therefore the Statute of Frauds does not serve to deprive the purchaser of the right to compel the grantee to convey the property to him. The circumstances of the transaction render

> unnecessary proof of an undertaking by the grantee to hold the property **[*579]** in ***trust*** for the purchaser, and so dispense with the requirement of the Statute of Frauds that there be a written memorandum of the creation of an express ***trust*** in land.
>
> . . . The fraud giving rise to a ***constructive trust*** may be either actual or ***constructive***; it suffices in this regard if the retention of the property would constitute an unconscionable advantage by the holder of the legal title over the grantor. And this is the case where, by reason of kinship, the grantor reposes a high degree of ***trust*** and confidence in the grantee, and the grantee abuses the ***confidential relationship*** by retaining the property as his own in violation of his oral promise to hold it **[***14]** in ***trust*** for the grantor. Equity relieves against a breach or abuse of such confidence. It is not requisite that there be a technical fiduciary ***relationship***. Where the confidence was induced by close kinship, its abuse will support a ***constructive trust***. Equity affords a remedy where unjust enrichment ensues from an abuse of the confidence thus reposed. *Sinclair v. Purdy, 235 N.Y. 245*; *139 N.E. 255*; *Foreman v. Foreman, 251 N.Y. 237*; *167 N.E. 428*; *Housewright v. Steinke, 326 Ill. 398*; *158 N.E. 138*; *Brison v. Brison, 75 Cal. 525, 17 P. 689*; *Silvers v. Howard, 106 Kan. 762*; *190 P. 1*. *Id* at 807- 809

Therefore, in the instant case, when Francisco Matos gave a check for $50,000.00 to John Cueto, it was for the purpose of buying a house for Francisco Matos and his wife, Ramona Matos. Even John Cueto admitted as such, with his testimony that the $50,000.00 was a gift, but the only thing he could do with it was to buy a house for Francisco. ***supra***. As the Court concluded that 1) there was a confidential relationship, 2) that there was no gift of $50,000.00, and that 3) unjust enrichment had to be returned, the court only failed to cloak the entire property with a constructive trust, and give all of the equity and title to the rightful owner, Francisco Matos. Instead, the Court

only awarded $50,000.00 to Francisco and Ramona Matos. Under the logic of *Moses v Moses*, the Court below missed the opportunity to correct a wrong. John Cueto abused his confidential relationship with the in-laws by placing his own name on the deed and not theirs.

When the Court rendered its summary judgment decision, the Court wrote that no contract was formed at all, and dismissed Plaintiffs' count for breach of contract. Somehow at trial, where no one argued joint venture, that is what the Court concluded. (Pa31-32). The Court inserted that result when instead an equitable remedy was proper. All we really know is what Plaintiff claimed, and Defendant admitted to, namely that Defendant John Cueto had to buy a home for Francisco Matos, but instead he did a selfish thing and bought the house for himself with Francisco's money.

Ramona Matos was clear in her testimony, while Francisco admittedly could not remember much. Yet this scenario is not new. The *Moses v Moses* case and Pascale should guide this high court to a ruling in favor of Francisco Matos and Ramona Matos, as detailed above. Had there been a joint venture, hornbook law requires a dissolution based on equity contributions, after paying off creditors, much like a company that goes out of business and must wind down. In such a scenario, the Plaintiffs Francisco Matos and Romona Matos would have received the majority of the equity, approaching $200,000.00, and

Mr. Cueto less than $20,000, relative to his capital contributed. The Court also failed to quantify the value of the improvements to the home in its evaluation. The improvements are shown in pictures, and certification of costs thereto. (Pa306-319). The Court did not articulate any methodology as to how or why it only returned $50,000.00 to the Plaintiffs and the majority of the equity to the Defendant John Cueto, if this truly were a joint venture.

4. The Court erred when it dismissed Plaintiff's Count for Breach of Fiduciary on the Summary Judgment Cross Motion (Pa36-38)

The Court below dismissed Plaintiff's claim for breach of Fiduciary Duty. (Pa38-39). In the summary judgment decision, the court relied upon *In Re Estate of Folcher*, 224 N.J. 496 (2016) which held that the fiduciary relationship that sprang from the confidential relationship between the surviving wife and her decedent husband, did not extend to beneficiaries of the estate, for whom she was not an appointed Executrix. The Court in *dicta* said that a confidential relationship does not necessarily rise to create fiduciary relationships, but the trial Court erroneously used that to ignore the longstanding precedents that have held that constructive trusts do arise from confidential relationships, akin to fiduciary duties. Long standing precedent establishes in New Jersey that a confidential relationship does indeed create a fiduciary like responsibilities triggering constructive trusts.

As can be seen at trial, the Court found that there was a confidential relationship. See discussion, *supra.* When such a relationship occurs, it creates fiduciary-like obligations as a matter of law. See *Pascale*, and *Moses*, *supra*. Accordingly, it should have viewed all of the transactions under the prism of a fiduciary relationship. As such, John Cueto had a fiduciary duty to do what was in the best interests of Francisco Matos.

CONCLUSION

Appellants should prevail on this Appeal, as the case was incorrectly decided on the law below at trial.

Respectfully submitted,

/s/ Robert G. Ricco

Robert G. Ricco, Esq.

Robert G. Ricco, Esq.
Dated November 27, 2023

		SUPERIOR COURT OF NEW JERSEY **APPELLATE DIVISION** Docket No. A-003996-22
FRANCISCO MATOS, RAMONA MATOS, and NOEL MATOS, as ATTORNEY IN FACT,	:	CIVIL ACTION ON APPEAL
Plaintiffs-Appellants,	:	FROM SUPERIOR COURT LAW DIVISION
vs.	:	SUSSEX COUNTY
JOHNNY CUETO and ARLENE MATOS CUETO,	:	DOCKET NO. SSX-L-19-21 HON. WILLIAM J. McGOVERN III, J.S.C.
Defendants-Respondents.	:	Sat Below

AMENDED BRIEF AND APPENDIX FOR RESPONDENTS JOHNNY CUETO AND ARLENE MATOS CUETO

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PRELIMINARY STATEMENT

1. The Parties

The parties are immediate family members.

The three Plaintiffs are NOEL MATOS, 58, and his parents, FRANCISCO MATOS, 89, and RAMONA MATOS, 85. The parents are Cuban immigrants. Due to Francisco's memory problems and because Ramona only speaks Spanish, the son downloaded Power of Attorney forms for their signature enabling him to file this lawsuit in their name.

The Defendants are ARLENE MATOS CUETO, also known as ARLENE MATOS, 50, sister of Noel and daughter of the elderly Matos's and the long time caregiver of her parents, and her husband, JOHNNY CUETO, 52. Johnny is his given name. Johnny Cueto is also of Cuban descent.

Plaintiffs are the Appellants.

2. Factual Summary

At the heart of this litigation is a 2014 transaction between the elderly Francisco Matos and his son-in-law, Johnny Cueto, which led to:

1. Johnny's 2014 purchase of a home in Florida for Francisco and his wife using $50,000.00 Francisco contributed;

2. the sale of the Florida home shortly afterward in 2015 when the health of the elderly Matos's became a concern; and
3. Johnny's purchase of a condominium in 2016 in Crystal Springs in Sussex County, a five minute walk from the home Johnny shared with their daughter, Arlene, and Arlene's three children.

At that point the elderly Matos's had a guaranteed roof over their heads for the remainder of their days thanks to Johnny Cueto. They were perfectly situated to qualify for at-home Medicaid services if their health declined so that assisted living or a nursing home would never be necessary.

In January, 2021, the son, Noel Matos, filed this lawsuit insisting that his father thought he owned the condominium and Johnny tricked him. However, Francisco's memory issues as evidenced at trial made it impossible for him to have been the source of any of Noel's allegations in of the Verified Complaint.

The Trial Court repeatedly signaled the very real risk that the home would be lost, but Plaintiffs rejected all settlement offers and forced a trial where the inevitable happened. The Court ordered that the condominium be sold, subject to conditions, so that Francisco could be repaid his $50,000.00 contribution under a theory of restitution, and the parties could go their separate ways if they chose.

4. The Issue Presented

Who is the rightful owner of the condominium located at 8 Tillbrook Court, ("Tillbrook") in the Crystal Springs section of Hardyston Township, New Jersey, purchased by Respondent Johnny Cueto in 2016 for $232,000.00 with a mortgage for $174,000.00 and the benefit of a 1031 exchange, so that the elderly Matos's could live near their daughter and grandchildren?

The second issue presented is who is entitled to the $50,000.00 Francisco contributed at the outset when Tillbrook is not needed for the elderly Matos's anymore.

5. Relief Sought

Defendants Johnny Cueto and Arlene Matos Cueto ask that the Appellate Court affirm the Trial Court's conclusions on Summary Judgment, at Trial and on the subsequent Motion to Stay.

STANDARD OF REVIEW

On review of Summary Judgment:

R. 4:46-2(c) provides that a motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." The court must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

On Review of the Trial Below

"Reviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

On Review of Equitable Remedies

The Appellate Division reviews the denial of equitable remedies - such as constructive trusts - under the abuse of discretion standard. Sears Mortg. Corp. v. Rose, 134 N.J. 326, 354 (1993). See Kaye v. Rosefielde, 223 N.J. 218, 231 (2015).

On Motion for a Stay

Applications for a stay in a civil matter are governed by the test outlined in Crowe v. De Gioia, 90 N.J. 126, 132-34 (1982), that is "[a] party seeking a stay must demonstrate that (1) relief is needed to prevent irreparable harm; (2) the applicant's claim rests on settled law and has a reasonable probability of succeeding on the merits; and (3) balancing the relative hardships to the parties reveals that greater harm would occur if a stay is not granted than if it were.'" Garden State Equal. v. Dow, 216 N.J. 314, 320 (2013) (quoting McNeil v. Legis. Apportionment Comm'n, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting)).

PROCEDURAL HISTORY

On January 5, 2021, Appellant Noel Matos, filed a ten count Complaint in Probate Court against his brother-in-law and sister on behalf of his elderly parents asserting that Defendants had misled the elderly Francisco Matos as to who was the true owner of Tillbrook. The ten counts were:

Count One: Breach of Contract

Count Two: Accounting

Count Three: Detrimental Reliance

Count Four: Unjust Enrichment

Count Five: Constructive Fraud

Count Six: Breach of Fiduciary Duty

Count Seven: Common Law Fraud

Count Eight: Consumer Fraud

Count Nine: Undue Influence

Count Ten: Negligence

(Pa64)

On January 14, 2021 Judge Maritza Berdote Byrne, P. J. Ch., transferred the matter *sua sponte* to the Civil Division, possibly because one of the ten counts was a Consumer Fraud claim (Pa185).

On June 4, 2021, Judge Stephan C. Hansbury J.S.C. *on recall* denied a motion to bifurcate the Consumer Fraud count and return the other nine counts which sounded in equity to the probate docket. At the same hearing, Judge Hansbury entered an Order forbidding Defendants from encumbering or selling Tillbrook during the pendency of the litigation (Da1).

On May 25, 2022 Plaintiffs filed a Motion for Summary Judgment on the single count of undue influence (Pa190-247).

On June 15, 2022 Defendants cross moved for Summary Judgment on all ten counts of the Verified Complaint (Pa248-305).

On July 22, 2022, Judge William J. McGovern III, J.S.C. entered an Order dismissing eight of Plaintiffs' ten counts but preserving two counts for trial, undue influence and unjust enrichment (Pa10-44).

On March 20, 21, 22, 23 and April 3, 2023, the parties undertook a five day trial before Judge McGovern (6T4:9-10).

On July 31, 2023 the Court rendered its opinion, finding the existence of a confidential relationship between the elderly parents and their daughter and son-in-law, Johnny Cueto, but finding no evidence of undue influence that would trigger the need for a constructive trust. The Court further ordered that Plaintiffs vacate Tillbrook by May 1, 2024, so that Johnny Cueto may sell it after affording the Plaintiffs in effect a right of first refusal, and that the $50,000.00 contributed to the purchase by Francisco Matos be returned to him (6T31:17-38:17).

The Court extended the terms of the Order entered by Judge Hansbury on June 4, 2021 (Da1). Defendant Johnny Cueto as the owner of Tillbrook cannot do anything to encumber the property or sell it prior to May 1, 2024 (Da7).

On August 30, 2023, Plaintiffs filed this appeal (Pa45).

On August 31, 2023, Plaintiffs filed a Motion to Stay the Trial Court verdict until a decision could be returned by the Appellate Division. That Motion was denied for reasons placed on the record on September 14, 2023. At that time the Court took the opportunity to amplify its findings and conclusions at trial (7T11:20-12:2).

STATEMENT OF FACTS

1. In 2014, when the events relevant to this appeal began, the elderly Matos's were retired and living in Florida after working as custodians at Meadowlands Racetrack in East Rutherford their entire careers (1T56: 9-13).
2. They were living in a small apartment that developed mold issues which were remediated, but they wanted to move anyway (1T61:17 - 62:9).
3. Francisco had a friend at a senior club in Florida who was selling a rental property that she owned at 631 North West 60th Court, Miami, Florida (1T63:9-11, 6T12:21-13:3).
4. The Court below found that Francisco wanted to move into the rental property, but he did not want to buy it (6T12:23-25).
5. The purchase price was $160,000.00 (6T18:12).

6. The Trial Court found that Francisco had $160,000.00 in his savings account at that point, but the home purchase would have depleted his resources significantly (6T15:13-22).
7. At that time, their daughter, Arlene, was engaged to Johnny Cueto who was living with her and helping her raise her three sons in New Jersey (3T67:16-24). All the Matos's had known Johnny previously because he had grown up in the neighborhood where they lived in West New York (2T71:1-11).
8. Francisco approached Johnny Cueto about whether he would be interested in buying the Miami house as an investment (2T36:5-12).
9. Francisco offered to provide $50,000.00 toward the purchase price, as he had done years before when Arlene was purchasing a home with her first husband (6T16:6-10; 2T36:5-12).
10. The Court found that a $50,000.00 bank check dated July 19, 2014 and drawn on TDBank, was evidence the transfer to Johnny Cueto took place (6T10:2-17).
11. The Court below found that no emails, letters or texts were entered into evidence by either Plaintiffs or Defendants that explained any of the details of this undertaking (6T13:14-18).

12. The Court below found that there were documents in evidence showing that Johnny Cueto took out a mortgage, assumed all the risk and tied up his credit to purchase the home that Francisco wanted to live in with Ramona (6T13:24-14:3).

13. Johnny Cueto's unrefuted testimony at trial was that Johnny asked Francisco and Ramona why they didn't ask their son, Noel, to purchase the home for them, and Francisco said he would not trust Noel with the money. Johnny further testified that Noel was going through a divorce and was losing "a million dollar home" so 2014 was not a good time (2T48:21-49:11).

14. The Florida property was purchased by Johnny Cueto on August 18, 2014 (6T11:17-21).

15. Francisco Matos contributed $900.00 per month to the carrying costs (2T34:20-21).

16. The only documentation in evidence was the closing statement and a gift letter prepared by Chase Bank in the amount of $50,000.00, signed by both Francisco Matos and Johnny Cueto (6T13:18-19).

17. Johnny Cueto testified that neither side gave any thought to retaining an attorney because this was considered a family matter (2T48:4-20).

18. Several months later while the elderly Matos's were visiting Arlene and Johnny at their new home in Crystal Springs, Ramona fell and broke her hip (6T18:2-3).

19. The Matos's and Arlene and Johnny realized that the elderly parents had become frail and would be needing more assistance going forward (6T18:3-4).

20. In 2016, and with the Matos's blessing, Johnny Cueto sold the Florida property and, utilizing a 1031 Exchange to avoid capital gains, purchased a condominium for the elderly parents that was near to where Johnny and Arlene lived (6T18:4-19:18, 4T33:25 - 34:15).

21. The Court below found that Johnny was denied a mortgage for the new condominium initially because he already had a mortgage on his own home and a car loan (6T23:20-23).

22. The Court found that again Francisco came to the rescue by paying off the car loan so that Johnny could get the mortgage needed to purchase the Tillbrook condominium for his in-laws (6T23:20-23).

23. Johnny closed on the new property located at 8 Tillbrook Court, Hamburg, New Jersey, on April 29, 2016 for $232,000.00 with the help of the money from the 1031 Exchange and a mortgage of $174,000.00 (6T18:20-19:6).

24. Francisco told Johnny that he could not afford to put more than $1,500.00 per month toward the carrying costs for their new home. Johnny and Arlene pay the condominium association fees from their own money each month. As taxes have increased, they have absorbed the increases as well (6T19:7-9, 1T108:16-19).

25. The Court further found that Johnny discounted the monthly payment Francisco paid him by $500.00 per month until he had repaid Francisco in full for paying off Johnny's car loan (6T23:20-23).

26. The Court below observed that based on the testimony at trial, the family had a long history of helping each other out in this way (6T16:1-3).

27. The trial court found that throughout this time period Johnny and Arlene and Francisco and Ramona were very close (6T17:3-22).

28. At trial, Johnny Cueto testified that Francisco wrote a check for $1,500.00 on the first day of every month because they were very honorable people to help with the mortgage and carrying costs (3T95:8-19).

29. At trial, Arlene testified that she drove her parents everywhere because Francisco had given up driving when they moved to New Jersey. She accompanied them to doctor's appointment to translate as

need be, and filled all their prescriptions at the pharmacy (3T44:19-25 - 45:1-10).

30. The Court further found that in the spring of 2020, Noel was going through a bankruptcy and lost his job so he moved into Tillbrook with his elderly parents (6T7:21-8:3).

31. Nothing in the Trial Court record indicates that Noel Matos has ever contributed financially to the $1,500.00 that Francisco paid each month to Johnny Cueto.

32. Arlene and Johnny attempted to maintain normal relations but Noel became suspicious of their motives and used security equipment installed for the safety of the parents to monitor their visits (Pa394, Arlene Matos Dep., 57:10-58:25).

33. Arlene's three sons stopped visiting because they were so uncomfortable (Pa436, Arlene Matos Dep. 60:22-61:1).

34. Noel downloaded a Power of Attorney form and a Will form, filled it out to make himself Agent under the Power of Attorney and Executor of the Will, brought a notary to Tillbrook and had his parents sign the documents (2T90:6-21, Pa97, Pa108).

35. At trial, Ramona said that she had never signed a Power of Attorney and that she did not recognize her signature (4T69:5-25).

36. In January of 2021, Noel used the Powers of Attorney to file this lawsuit (Pa64).

37. When Arlene tried to talk to her parents about Noel's lawsuit, they insisted they would have nothing to do with it. Arlene prepared a letter for them to sign withdrawing from the suit, but they never signed it (1T93:20-96:12).

38. Noel took over making the $1,500.00 monthly payment from Francisco's checking account to Johnny, and once Noel took over, every month the payment was late (1T110:1- 111:20).

39. Noel also began deducting fabricated expenses from the monthly $1,500.00 payment (6T31:24-32:3, 1T109:17-110:9).

40. Noel then represented to the Township of Hardyston Building Department that he was the owner of Tillbrook. He got a permit to install a charging station in Tillbrook for his Tesla with no notice to Johnny or Arlene (3T103:24 – 104:24).

41. Noel was then parking his RV illegally in the Matos's driveway which led to penalties for by-law violations that accrued to Johnny as the owner (2T53:1-7).

42. Out of exasperation that Noel and his son were living for free on Johnny's property and incurring parking penalties, Johnny drafted and sent a letter threatening to evict them as alleged (2T58:3 – 59:10).

43. No evidence was introduced at trial that Johnny had done a "cash-out" refinance to personally enrich himself from equity in the Florida or Tillbrook properties as alleged.

44. The Court below found that there was also nothing entered into evidence to support the notion that Johnny ever told Francisco that he would never get a mortgage as alleged (6T14:22-15:7).

45. In his deposition, when asked about the details of his agreement with Johnny that led to the purchase of the Florida property, Francisco answered, "I don't remember" nine times and repeatedly volunteered that his memory wasn't so good anymore (Pa493, Francisco Matos Dep. 14:20-22, 15:9-24, 16:4-16) (Pa495, 23:20-23, 25:4-13) (Pa496, 27:19, 28:5).

46. The Court found for the record that all parties agreed that Francisco has significant memory problems (6T10:21-11:1).

LEGAL ARGUMENT

FIRST POINT: THE TRIAL COURT CONCLUDED THAT PLAINTIFFS DID NOT PROVE BY CLEAR AND CONVINCING EVIDENCE THAT, "A

WRONGFUL ACT" HAD OCCURRED WHICH IS A NECESSARY ANTECEDENT TO IMPOSING A CONSTRUCTIVE TRUST (6T15:25).

Plaintiffs argue that the Trial Court erred in not imposing a constructive trust on the Tillbrook property. Plaintiff further asserts that the Court erred in not shifting the burden of proof to Defendants to prove there was no undue influence. Plaintiffs are conflating two different equitable remedies.

1. The Court below found that no wrongful act had occurred (7T17:14-16).

A constructive trust is an equitable remedy available to the court if the court finds that, "there was some wrongful act, usually though not limited to fraud, mistake, undue influence or breach of a confidential relationship which has resulted in a transfer of property....It arises where the retention of the property would result in the unjust enrichment of the person retaining it." Massa v. Laing, 160 N.J. Super. 443, 446 (App.Div. 1977). *Judgment affirmed by* 77 N.J. 227, July 20, 1978. Plaintiffs must establish by clear and convincing evidence that a constructive trust is warranted. Id. at 448.

In Massa, a daughter and her husband moved home to care for her elderly mother. Id. at 444. The mother executed a will leaving the home to the daughter and if the daughter predeceased her, then to her other surviving children. Id. at 445. The mother died and the house passed to the daughter.

Ibid. The siblings asked the daughter to execute a will leaving the house to them as was the mother's wish. Ibid. The daughter allegedly assured her siblings that the house would be theirs, and she did not need a will. Ibid. The daughter died, and the house passed by intestacy to her husband. Id. at 443.

The siblings filed suit alleging that the husband unduly influenced his wife not to make a will and it was her mistake not to make one. Id. at 444. The trial court found for plaintiffs and imposed a constructive trust. Ibid. The Appellate Division reversed, finding, there is, "nothing in the record from which it can reasonably be inferred that decedent was induced not to make a will because of what her husband had said or that she was misled by him in any way." Id. at 447.

The Appellate Division concluded, "Plaintiffs' proofs fall short of the clear and convincing standard for establishing a constructive trust." Id. at 448.

While factually distinct, the present matter is similar to Massa in that the Trial Court here too scrutinized the record for wrongdoing and found no evidence of anything, "nefarious, or untoward, or suspicious" (6T15:25, 7T17:14-16). The Trial Court warned Plaintiffs in its' Summary Judgment Opinion that the proofs before the Court to date were lacking (Pa30). Other than the gift letter prepared by Chase Bank, "[t]here are no documents,

writings, emails, contracts or text messages, or other recorded communications that preserve whatever other agreements may have been made between Francisco Matos and Johnny Cueto" (Pa16).

Plaintiffs in their Appellate brief admit there is no documentation between Francisco and his son-in-law as to their understanding of what they were doing when Francisco conveyed $50,000.00 to Johnny Cueto as he purchased the Florida property (Pb7). Somehow, from this utter lack of evidence, Plaintiffs conclude that a constructive trust is warranted.

Massa has the answer: "A constructive trust must be established, 'by clear, definite, unequivocal and satisfactory evidence." Id. at 446 *quoting from* Gray v. Bradley, 1 N.J. 102, 104 (1948). Plaintiffs did not meet their burden, and the Court correctly found no trust was warranted.

Defendants respectfully request that this reviewing Court find that the Court below was correct not to impose a constructive trust because no wrongful act was found, and leave the findings of fact and conclusions of law of the Trial Court undisturbed.

2. **While the court did find the existence of a confidential relationship which is the first element of undue influence, defendants were able to rebut the presumption of undue influence by clear and convincing evidence (6T31:4-5).**

Pascale v. Pascale, 113 N.J. 20 (1988), a Supreme court case, neatly lays out not only the test for undue influence in *inter vivos* gifting, but also the shifting burden which allows the donee of the gift to rebut the presumption of undue influence. The Pascale Court found that no undue influence had occurred, in that case, between a father and a son.

The underlying facts in Pascale are not "on all fours" with the present matter, but the underlying law of undue influence is the same.

In Pascale, a divorcing father who owned two highly profitable businesses backdated a transfer of stock and real estate in one business to one of his sons for purposes of defrauding his divorcing wife in the equitable distribution of assets . Id. at 24. Later the father and son relationship deteriorated, and the father sued the son to get control of his business back, alleging undue influence in the initial transfer. Id. at 22. The son successfully rebutted the presumption.

The Supreme Court stated that, "In respect of an inter vivos gift, a presumption of undue influence arise when the contestant proves that the donee dominated the will of the donor [string cites omitted], or when a confidential relationship exists between donor and donee." Id. at 30.

As to situations that give rise to a finding of a confidential relationship, "Among the most natural of confidential relationships is that of parent and child," as we have in our case. Ibid.

The Supreme Court then reviewed examples of situations where the Court has found undue influence to have resulted from a confidential relationship. The first situation where undue influence is found is where the donor is dependent on the donee and improvidently gifts away all his assets to him without understanding the consequences of his actions. Id. at 31.

In the present matter, it is uncontested that donor Francisco Matos was in Florida while Johnny Cueto and Arlene Matos, 1300 miles apart (2T74:10-14). Furthermore, Francisco did not give Johnny Cueto and Arlene Matos everything he had. Francisco gifted $50,000.00 which left him with about $160,000 in the bank (6T15:15). Therefore, the first example does not apply to our facts.

The second example the Supreme Court references where undue influence will be found is in situations where the gift leaves the donor without adequate means of support. Id. at 31. In the present matter, however, there has never been a representation on the record that Francisco cannot afford the monthly payment or has been left incapable of supporting himself. In fact, the monthly

payment that Francisco paid was and is what he said he could afford (2T35:12-15).

The Court then notes that where the donor is *not* dependent on the donee as in the two prior examples, then "independent advice is not a prerequisite to the validity of an improvident gift even though the relationship between the parties is one of trust and confidence." Id. at 31.

Therefore, while Plaintiffs argue that Francisco never had benefit of counsel in these transactions (Pb8), the law as laid out in Pascale does not require it. The elderly Francisco was never dependent on Johnny in any sense, nor did this transaction leave Francisco financially vulnerable.

The Pascale Court was not done enumerating situations where undue influence may be found, however. The Court also noted that undue influence will be found where the donor justifiably reposes confidence in the donee and the donee has superior knowledge of the true nature of the transaction *proposed by him* and "the detriment to be suffered by the donor if he engages in it." Id. at 32. *Emphasis added.*

Francisco's gift does not fit within this example either. Johnny Cueto did not propose the $50,000.00 gift. Francisco did (2T36:5-12). This was uncontested testimony at trial. Neither has Francisco suffered any detriment.

On the contrary, Francisco and his wife got to live in the house that they wanted in Florida. No detriment there. Furthermore, the Court found that the elderly Matos's are paying far below market rent for a Crystal Springs condominium, so no detriment can be found there (6T25:21-26:13).

The Pascale Court further notes that the granting of a Power of Attorney by the donor to the donee can generally be accepted as an indication of trust and a confidential relationship. Id. at 34. Interestingly, nothing in the record indicates that Francisco Matos or Ramona Matos ever appointed Johnny Cueto or Arlene Matos as their Power of Attorney. In fact, the only Powers of Attorney known to exist are the ones prepared by the son, Noel Matos, for his parents' signature, in which he is appointed their Agent (2T90:6-9), an indicator that it is Noel who has the confidential relationship, not Johnny or Arlene.

The Pascale Court notes that undue influence will also be found where the donees promise to take care of the donor in return for the gift. Id. at 34. The record in our case is devoid of any such promise as an enticement to make the gift, and none is alleged.

The Pascale Court moved on to determine on what grounds such a presumption of undue influence due to a confidential relationship between

parent and child could be rebutted by clear and convincing evidence by defendants. Id. 38.

The Pascale Court found that the son demonstrated that when it suited the father's purposes to transfer ownership of one of his businesses to his son for purposes of defrauding his wife, he did so. Ibid. Then when it no longer served his purposes and he wanted the business back, the father claimed in court that he had been duped by his son. Ibid. The Pascale Court saw through the father's scheme and concluded that the son successfully rebutted by clear and convincing evidence his father's claim of undue influence.

From the trial below we know the following undisputed facts in our case that rebut a finding of undue influence:

- It is undisputed that at all times relevant to this transaction, not only did Francisco and Ramona not live with Johnny and Arlene such that they might be unduly influenced, they lived in Florida and New Jersey respectively, 1300 miles apart (2T74:10-14).
- It is undisputed that Francisco and Ramona never made Johnny Cueto or Arlene Matos Agents under their Powers of Attorney (Pa393, 59:15-60:1).

- It is undisputed that Plaintiff Noel Matos prepared Powers of Attorney for his parents to sign and serves to this day as his parents' fiduciary, not Johnny Cueto or Arlene Matos (2T90:6-21).
- It is undisputed that attorneys did not represent the parties on either side of the $50,000.00 transaction. Francisco Matos did not have the benefit of an attorney and neither did Defendants Johnny Cueto and Arlene Matos (6T22:1-12).
- It is undisputed that a Gift Letter was executed contemporaneously with the $50,000.00 gift signed by Francisco Matos who we know reads and understands English (Pa213).
- It is undisputed that Francisco and his wife have enjoyed the security of first living in a home they wanted in Florida and then when they needed additional care, were able to move to a home near Defendants where the Cuetos could assist the elderly Matos's on a daily basis (6T25:13-16).

As acknowledged above, the facts in Pascale are not similar to the facts of the present case, but the elements of law can still be applied.

The Trial Court in our matter, after summarizing the relevant facts, found "nothing nefarious, or untoward, or suspicious" (6T15:24-16:1, 6T30:12-14) The Court concluded, "[undue influence] certainly has not been

proven by even a preponderance of the evidence" (6T31:4-5). The Court concluded, "I do not believe there has been any undue influence exercised by John or Arlene" (6T23:4-5).

Plaintiffs assert in their brief that undue influence is presumed once a confidential relationship is found, but Defendants here successfully rebutted the presumption. Defendants respectfully request that the reviewing Court leave these findings and conclusions of the Trial Court undisturbed. The Trial Court reached its conclusions after a careful and documented review of the facts.

SECOND POINT: THE TRIAL COURT CORRECTLY FOUND THAT TILLBROOK LEGALLY AND EQUITABLY BELONGS TO DEFENDANT JOHNNY CUETO (6T34:22-23).

Plaintiffs further assert that if compelled to sell, the Defendants should not be allowed to keep any equity that may have accrued in Tillbrook. Plaintiffs point to no case law to support that claim either.

The relevant facts were adduced at trial:

- Nine years ago Francisco Matos found a house in Florida that he wanted to rent but the owner, a personal friend, wanted to sell it, not rent it (6T12:23-25).
- Francisco could have moved elsewhere, but he wanted this particular house and it was not for rent (6T14:13-15).
- By all accounts Francisco's memory has been declining in recent years such that he does not recall the details of this transaction (6T10:21-11:1).
- There was no contemporaneous documentation such as emails, texts or letters that the Court could use to reconstruct what the understanding was at the time, or that might support Plaintiffs' allegations of wrongdoing (6T13:14-18).
- Johnny Cueto testified at trial that Francisco asked Johnny if he would buy the Florida property as an investment (2T36:5-12). Johnny understood Francisco to be asking him because no one else in the immediate family had the credit rating or income level necessary to secure a mortgage (1T99:3-8, 2T48:21-49:15).
- Johnny did not have the cash for the down payment and closing costs, however, and that was when Francisco offered to contribute $50,000.00 in cash (6T25:3-5).

- Johnny was not "just a boyfriend" as Plaintiff's brief alleges (Pb7). The Matos family knew Johnny Cueto because they lived in the same blue collar neighborhood of West New York when Noel, Arlene and Johnny were growing up (2T71:1-11).
- Furthermore, at this point Johnny Cueto had been living with Arlene Matos for three years, and they were engaged (3T67:16-24).
- The Court further found that at some risk to himself Johnny took out a mortgage for the Florida house which impacted his personal credit and his finances (6T19:2-6).
- Johnny Cueto was able to document to the Court's satisfaction that all of the $50,000.00 transfer was used to pay expenses related the Florida property that Francisco wanted to live in but not buy (6T13:22-23).
- Johnny purchased the Florida property for the elderly Matos's to live in, as requested (Pa201).
- The Court further found that shortly thereafter when the elderly Matos's health began to fail, it was Johnny who arranged to sell the Florida house, located an affordable condominium to buy for his in-laws to live in near his home in Crystal Springs, arranged

for a 1031 Exchange to roll all the equity from the Florida home into the New Jersey purchase, qualified again for a mortgage and purchased of the condominium that we are referencing here as "Tillbrook" (6T19:2-6).

- The Court also noted in the record that Johnny Cueto owns Tillbrook and has born the responsibility of paying the mortgage, taxes and homeowner's association fees for six and a half years (6T:19:7-9, Pa280).
- The Court further noted that while the taxes and homeowner's association fees have increased over that time period, Johnny Cueto has not increased the $1,500.00 monthly payment from the elderly Matos's (6T19:8-11).
- The Court found that because Defendants did so, "Francisco and Ramona have had a safe and secure place to live in and to stay" (6T25:15-16). The Court further found that this "situation arose out of a family relationship to have Mom and Dad close by in a safe place" (6T26:15-16).
- The Court found that as to both the Florida house and Tillbrook, Johnny Cueto could document a negative cash flow. In other words, he and Arlene Matos, his wife, were and are contributing

money every month to the carrying costs of the elderly Matos's home (Pa269, 2T52:6-14).

- And the Court rejected explicitly the notion first put forth in the Verified Complaint and argued at trial that Francisco thought he was the owner. The Court noted that Francisco didn't sign closing papers, didn't apply for a mortgage, "never put his neck out on the line in terms of risk, which is what you do when you take on a mortgage" (6T30:19-23). He didn't assume all the additional responsibilities, headaches and chores "that are not fun" (6T30:23-25). The Court found no basis for Plaintiffs' claim that Francisco thought he owned either the Florida house or Tillbrook (6T30:16-31:2).

Therefore, as to whether Francisco and Ramona have or had an equity interest in either home, the Court found that Plaintiffs placed nothing on the record from which such a conclusion could be drawn (6T24:21-25).

The facts cited above support one conclusion: that Johnny Cueto's name is on the Tillbrook deed because he is the owner. Plaintiffs believe this to have been an error on the part of the Trial Court, but they do not cite to any opposing testimony at trial in support of their position.

Based on all these findings of fact, the Court rightly concluded that title to the condominium belonged to Johnny Cueto because he has assumed all the risk and paid all the bills (6T31:17-18). Defendants respectfully request that the reviewing Court not disturb the Trial Court's findings of fact or conclusions of law as to whom Tillbrook belongs.

> THIRD POINT: THE TRIAL COURT CONCLUDED THAT $50,000.00 SHOULD BE RETURNED TO FRANCISCO MATOS UNDER A THEORY OF RESTITUTION, NOT UNJUST ENRICHMENT, AND DID NOT USE THE LAW OF JOINT VENTURES TO REACH THAT CONCLUSION (6T34:22-23).

Throughout this litigation, the Court and the parties struggled to characterize in legal terms what the parties had undertaken nine years ago. Had either side availed themselves of an attorney when Francisco Matos and Johnny Cueto put their heads together to find a way to purchase the Florida property, this task would have been so much easier.

They didn't, and to further complicate matters, the Court found based on witness testimony at trial that Francisco Matos no longer had the ability to recall details from nine years ago (6T10:21-11:1).

Defendants admit that they did initially argue that the $50,000.00 transfer was a gift based on the Gift Letter signed by both Johnny Cueto and

Francisco Matos and entered into evidence (Pa213). However, Defendants pointed out in their closing argument that when the facts elicited at trial were married to the law on gifts, the only legal conclusion that could be drawn was that the transfer was not a gift (5T63:12-19).

Rather, Defendants argued that the transfer was a conditional gift, relying on the Supreme Court case, Sipko v. Koger, 214 N.J. 364 (2013). In Sipko, a father had gifted to his son a share of his very successful business. Id. at 367. Sometime later, the son wanted to marry a woman that the father rejected. Ibid. The father attempted to revoke the transfer of the business share. Ibid.

The Supreme Court found that the father had attached no conditions to the gift at the outset and could not do so retroactively. Id. at 377.

Under the present facts, Johnny Cueto testified that he never for a minute thought he could do what he wanted with the $50,000.00 check from Francisco Matos (2T36:17-22). Johnny Cueto understood that the money was to be used to help him buy the house selected by Francisco for the benefit of the elderly Matos's (2T36:22-37:7).

Defendants argued at the conclusion of the trial that the transfer of $50,000.00 from Francisco Matos to Johnny Cueto was a conditional gift

under Sipko (5T63:13-19). Furthermore, the condition had been fulfilled. Every night for the last nine years the elderly Matos's had a warm, dry roof over their heads because their son-in-law, Johnny Cueto, had bought not one but two homes for their benefit (5T63:22-64:5).

The Trial Court, however, rejected Defendants' conditional gift argument, finding no facts in the record in support of that theory beyond Defendant's testimony (6T24:10 to 16).

The Trial Court further found that nothing in the record created at trial indicated that any thought was given to what should happen to the $50,000.00 when the elderly Matos's no longer needed a place to live (6T24:10-11; 6T28:22-24).

The Trial Court did at that point characterize the undertaking as a, "not-carefully-thought out joint venture" (6T24:15-16).

It was dicta.

The Court at another point described the plan as, "a concocted, quasi joint venture" (6T21:23).

It was dicta.

The Court did not lay out the elements of a joint venture or marry the facts elicited at trial to joint venture law to reach a conclusion. The Court never requested that the parties brief the Court on joint ventures, because it was dicta. Again, had attorneys been involved at the outset, we would have a clearer idea legally of what the original intent was, but they weren't and we don't. So the Court resorted to referencing the plan as a kind of joint venture.

The Court went on to state that because no proofs at trial established convincingly that the $50,000.00 was a gift or a conditional gift or anything else, the condominium should be sold and Francisco or Francisco's estate should get the $50,000.00 back at sale (6T34:22-23).

The Court took advantage of the opportunity to expand on its findings and conclusions at the hearing for the Motion to Stay after Judge McGovern handed down his decision. The Court explained that his findings on the record on July 31, 2023 were cut short because the Spanish court interpreter on hand for the benefit of the elderly Matos's had another engagement (7T11:20-12:2).

The Trial Court stated at the September 14, 2023 hearing:

> So the thought process behind my decision, which you may already understand, but I'll just say it for emphasis, was effectively an equitable remedy to restore the *status quo ante*, A-N-T-E, to return the $50,000.00 back to Mr. and Mrs. Matos. I think that was the primary objective of the litigation, secondary to

> the objective of having the Court determine that the Tillbrook residence was the property of Mr. and Mrs. Matos, Senior, a proposition which I rejected for equitable reasons, which I believe I placed on the record.
>
> [7T14:15-25]

In his concluding remarks the Trial Court stated, "The equitable remedy of restitution has been applied and is set forth in the judgment" (7T30:12-13). Nowhere does the Court state that the $50,000.00 must be returned to Francisco Matos based on a finding of unjust enrichment. Plaintiffs' argument that the Court improperly applied the theory of unjust enrichment must fail.

As noted above, the Court also found at the July 31, 2023 hearing that Plaintiffs placed no proofs on the record at trial in support of their repeated claims that the equity in Tillbrook belonged to Francisco Matos (6T24:21-25). Plaintiffs on appeal point to no error of the Trial Court in this finding. Therefore, Plaintiffs argument as to the equity must fail.

Plaintiffs rely on Moses v. Moses, 140 N.J. Equity 575 (Court of Errors and Appeals, 1947). While Moses v. Moses discusses at length the various equitable remedies of express trusts, resulting trusts and constructive trusts and the statute of frauds as they existed in the common law in 1947, the facts in Moses are inapposite. In Moses a general contractor transferred land into his wife's name so that he could expand credit available to him to develop those

properties. Id. at 577. The Moses marriage foundered, and a lawsuit resulted. Ibid.

The Moses summary of equitable remedies at common law is dense, and Plaintiffs never show us how it applies to our facts such that it would require a reversal of the Trial Court. Arguably, Moses *was* a joint venture, but we have no such business purpose in the record before the Court in this appeal. The only conclusion to draw is that Moses does not apply in our case.

Defendants respectfully request that this reviewing Court find that the Trial Court reached its conclusions based on a theory of restitution not unjust enrichment and did not rely on the law of joint ventures in reaching its conclusions. On that basis, Defendants request that this Court leave undisturbed the Trial Court's findings of fact and conclusions of law.

> FOURTH POINT: THE TRIAL COURT CORRECTLY DISMISSED THE BREACH OF FIDUCIARY DUTY COUNT AT SUMMARY JUDGMENT BECAUSE DEFENDANTS WERE NEVER FIDUCIARIES FOR THE ELDERLY PARENTS (Pa37-38).

Defendants believe that Plaintiffs' Fourth Point may be addressed by this Court under R.2:11-3(e)(1)(E).

Plaintiff Noel Matos in his deposition, acknowledged that Johnny Cueto and Arlene Matos were never fiduciaries for Francisco and Ramona Matos (Pa378, Noel Matos Dep. 59:18-60:11).

Furthermore, Plaintiffs' Count for Breach of Fiduciary Duty was easily dismissed by the Court on Summary Judgment below where the Court wrote:

> A confidential relationship existed between Plaintiffs and Defendants on account of their familial relationship. However, it is undisputed that there was no formal agreement entered between the parties that would establish a formal fiduciary duty between the parties. Moreover, while Plaintiffs argue that Johnny's superior knowledge and skill in financial dealings establishes a fiduciary duty throughout his dealings with Plaintiffs, it is undisputed that at no point did Johnny act as a real estate broker, Plaintiffs' financial planner, or hold the power of attorney on Plaintiffs' behalf. As such, this Court finds that no fiduciary duty existed between the Defendants and Plaintiffs.
>
> [Pa37-38]

Plaintiffs point to nothing adduced at trial that would lead to a reversal of the Judge's conclusion a year earlier.

Finally, Plaintiffs reference the "long standing precedent" in New Jersey law that a confidential relationship gives rise to "fiduciary like responsibilities triggering constructive trusts" (Pb25). Plaintiffs cite to no law in support of this proposition. Had such a precedent existed, the Court below would surely have known it, and Plaintiffs would have cited to it. As it is, no law supports

this conclusion. Defendants believe this issue can be addressed under R. 2:11-3(e)(1)(E).

CONCLUSION

In conclusion, Defendants respectfully request that this Court leave undisturbed the findings of fact and conclusions of law of the Trial Court including, but not limited to, the following issues:

1. Plaintiffs did not establish the occurrence of a wrongful act that would trigger the need for the Trial Court to impose a constructive trust on the Tillbrook condominium owned by Johnny Cueto;
2. Defendants rebutted the presumption of undue influence by clear and convincing evidence;
3. Proofs adduced at trial establish that Johnny Cueto, whose name is on the deed, is the rightful owner of Tillbrook;
4. $50,000.00 should be returned to Francisco Matos, subject to the conditions of the Trial Court's Order entered August 4, 2023 under the equitable theory of restitution; and

5. The claim of fiduciary breach was rightly dismissed because the Defendants never served as fiduciaries for the elderly Matos's.

Revised as directed by Court Clerk's Letter of December 22, 2023:

Nancy Heslin Reading
Attorney for Defendants/Respondents,
Johnny Cueto and Arlene Matos Cueto

January 21, 2024
Date

Superior Court of New Jersey

Appellate Division

Docket No. A-003996-22T1

FRANCISCO MATOS, RAMONA MATOS, and NOEL MATOS, as ATTORNEY IN FACT, *Plaintiffs-Appellants,* vs. JOHNNY CUETO and ARLENE MATOS (now ARLENE MATOS CUETO), *Defendants-Respondents.*	:	CIVIL ACTION ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, SUSSEX COUNTY DOCKET NO.: SSX-L-19-21 Sat Below: HON. WILLIAM J. MCGOVERN III, J.S.C.

REPLY BRIEF ON BEHALF OF PLAINTIFFS-APPELLANTS

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PRELIMINARY STATEMENT

This Reply Letter Brief is offered on the behalf of Appellants. If the decision of the lower court were to be affirmed, the ramifications on public policy would be most deleterious. The Respondents argue that the lower court was correct, despite that dearth of supporting case law in its decision, ignoring precedent, and misapplying the burden of proof. The ramifications of the lower court decision are as follows. The lower court made three important findings. They are 1) - that a confidential relationship existed between John Cueto and Arlene Matos Cueto on one side and Fransisco Matos and Ramona Matos on the other; 2) - that *no gift* was made by Francisco Matos of $50,000 to John Cueto, despite a bank gift letter, and despite testimony of the Defendants that it was an engagement gift, as they recalled during trial; and 3) - That the "non-gift" of $50,000.00 had to be returned to Francisco Matos and Ramona Matos because it was the obtained as a form of unjust enrichment, the remedy for which is restitution. Where the court below failed was that it did not cover the entire transaction with a constructive trust, but *defacto* covered only the $50,000,00 with a constructive trust. It also made a determination that the house was to be either bought by Plaintiffs, or sold by Defendants, with the Defendants keeping all the gain, except for $50,000.00, despite Plaintiffs Francisco and Ramona Matos having paid for the vast majority of all carrying

costs throughout, as detailed in the main brief. Neither party argued that this was a joint venture, or plead for a dissolution of some form of a partnership. The court failed to see anything wrong with what John Cueto had concocted, and never shifted the burden of proof onto the Defendants, which the law said must happen once it is determined that a confidential relationship exists, as argued in the main brief.

This lower court decision wrongly rewards conduct of someone in the power position within a confidential relationship. This terrible precedent would encourage deception and invite fraudsters to take their chances at fleecing a weaker, less educated party, or an older frailer party. The only penalty under this logic would be to give back some smaller portion of the unjust enrichment, and to keep the majority under this misguided application of the law. There would be no downside to guile and deception. The Court below made a finding of confidential relationship between the elder Matos Plaintiffs and the Defendants, but it applied the law as if there was no such relationship, and put the entire burden on Plaintiffs. Many courts in the past with greater wisdom than the author of this Reply determined that the burden should be on the enriched party within a confidential relationship to prove that he or she is entitled to the benefit, not for the fleeced party to have to prove that they are entitled to their own money as if there had been no confidential

relationship dealings. Here, the only proof that Defendants offered was self-serving testimony, devoid of empirical evidence.

When we look at the health and well-being of the parties, we see that Mr. Cueto is younger and well educated, while Francisco is old, frail and uneducated. To blind oneself to the reality that the old man was taken advantage of, is another flu-like symptom that the lower court's opinion would infect upon our jurisprudence.

Another central issue, is whether it was better and in the interests of Francisco Matos for him to own his own home when that home was being purchased with his own money, or to allow John Cueto to own it. The answer is an obvious yes, it was better for Francisco to own the home he paid for with his own money. No "tenant" in their right mind would give a future landlord the down-payment on a property so that they could rent and never gain equity or even a tax deduction. It is pure sophistry for the Respondents to argue that the steady unchanging rent was better for the elderly Plaintiffs than to own their own home. Had professionals been consulted at the time of the formation of this warped deal, such as a lawyer, real estate broker and accountant, then at least Francisco Matos could have made a well-informed decision, but none were.

PROCEDURAL HISTORY

The Appellants rely upon the Main Brief for Procedural History and incorporate herein for reference.

STATEMENT OF FACTS

The Appellants rely upon the Main Brief for the Statement of Facts and incorporate herein for reference.

ARGUMENT

1. Respondents misinterpret Massa v Laing, 160 N.J. Super. 443; 390 A.2d 624; 1977 N.J. Super. (App. Div. 1977) which cites the standard for contesting a will, while here we are dealing with an alleged *inter vivos* gift that the Court found did not exist and awarded unjust enrichment and restitution; Additionally, the Massa court did not have a finding of a confidential relationship, as we have a finding in the present case, rendering that case inapposite. (Pa1, Pa8, Pa10, 6T31-42)

The Respondents reliance on *Massa* is misplaced. That case deals with a will, and there was neither a finding, nor a discussion of whether a confidential relationship altered the analysis, as the lower court found here. Whether one existed in that case, or should have been argued and considered, we can only speculate. The reality is that the Court in *Massa* spent no time analyzing that issue. Therefore, we again point to *Pascale.* In *Pascale v. Pascale*, 549 A. 2d 782, 113 N.J. 20 (1988) NJ Supreme Court 1988, the Court enunciated the rule

as to how one should analyze a case with confidential relationships and gifts of substantial assets.

> *In respect of an inter vivos gift,* ***a presumption of undue influence*** *arises when the contestant proves that the donee dominated the will of the donor*, Seylaz v. Bennett, 5 N.J. 168, 172 (1950); Haydock v. Haydock, 34 N.J. Eq. 570, 574 (E. & A. 1881), ***or when a confidential relationship exists between donor and donee,*** In re Dodge, supra, 50 N.J. at 227; Mott v. Mott, 49 N.J. Eq. 192, 198 (Ch. 1891). 30 ***In explaining the reason for the presumption of undue influence when the donee enjoys a confidential relationship with the donor, we have stated that "[i]ts purpose is not so much to afford protection to the donor against the consequences of undue influence exercised over him by the donee, as it is to afford him protection against the consequences of voluntary action on his part, induced by the existence of the relationship between them, the effect of which upon his own interests he may only partially understand or appreciate."*** [In re Dodge, supra, 50 N.J. at 228 (quoting Slack v. Rees, 66 N.J. Eq. 447, 449 (E. & A. 1904)).] With respect to a will, to create a presumption of undue influence the contestant, by comparison, must show the existence not only of a confidential relationship, but also "suspicious circumstances," however "slight." Haynes, supra, 87 N.J. at 176. Without proof of suspicious circumstances, a confidential relationship will not give rise to the presumption in the testamentary *31 context. 5 N.J. Practice, Clapp, Wills & Administration § 62, at 224-28 (3d ed. 1982). **Underlying the absence of a requirement of showing suspicious circumstances with an inter vivos gift is the belief that a living donor is not likely to give to another something that he or she can still enjoy. Id. at § 62, at 226 n. 15. 31 When the presumption of undue influence arises from an inter vivos gift, the donee has the burden of showing by clear and convincing evidence** ***not only that "no deception was practiced therein, no undue influence used, and that all was fair, open and voluntary, but that it was well understood."*** In re Dodge, supra, 50 N.J. at 227 (quoting In re Fulper's Estate, 99

> N.J. Eq. 292, 302 (Prerog. Ct. 1926)); accord Slack, supra, 66 N.J. Eq. at 449; Mott, supra, 49 N.J. Eq. at 198. *Id* at pp 5-7 (*emphasis supplied*)

Therefore, when the instant case is viewed through the prism of *Pascale*, and we have a finding of both a confidential relationship and unjust enrichment (because no gift was intended) the burden of proof should have been on the Defendants, John Cueto and Arlene Matos Cueto. The very absence of documentation should have made it apparent that John Cueto had zero support for his claim of ownership by the use of Francisco Matos's money, obtained through a confidential relationship. The lower court failed to place the burden on the Defendants and therefore came to the wrong decision on the law. Its decision should be reversed insofar as giving both the entire legal and equitable title to the elder Plaintiffs.

The respondent continually mischaracterizes the findings of the lower court, because the court below held that there was no gift, yet Respondent continually refers to the $50,000.00 as a willing gift from Francisco Matos. When opposing counsel argues that this deal left him well positioned in terms of Medicaid, there is absolutely no proof in the record of any such thing. It is pure deflection and fabrication. As cited in the main brief, no experts of any kind were hired at the formation of the dealings, such that no opinion like that

was ever rendered to so advise Francisco Matos. (Pa 334). These dealings were therefore not well understood.

Respondent also takes numerous self-serving statements made by the Defendants, and attempts to utilize them as uncontested findings, despite the fact that the lower Court never adopted each and every statement or utterance as a finding of fact. It is most disingenuous that the Respondents keep trying to "re-try" the case, when they did not Cross-Appeal and ask for the findings to be overturned or augmented or altered.

A finding of Unjust Enrichment, which the lower court found, means by definition that the Defendants did something unjust and that the court determined it had to reverse same and rectify. Furthermore, Appellants are in even a stronger position under *Pascale*, because the lower Court ruled that there was no gift. In effect, by awarding unjust enrichment to the plaintiff below, it was reversing an improper "taking" by John Cueto from Francisco Matos. Therefore, again, something was indeed wrong with the unfair dealings between the parties, necessitating the imposition of a constructive trust. Somehow the lower court got part of the analysis right, but missed the bigger picture and failed to protect the asset that rightfully belonged to Francisco and Ramona Matos.

If the $50,000.00 was not a gift, why did the lower court implicitly allow the ownership of the house as a gift to John Cueto, who used unjustly obtained money to buy it, taken from Francisco Matos? That is another illogical result of the court's decision. We also ask that the Court review the trial transcripts as it may wish to see that the defendants were most disingenuous in their testimony. John Cueto was merely an agent for Francisco Matos in the purchase, and his own testimony said the only thing he could do with the $50,000.00 was to buy a house for Francisco Matos. (2T 34-37). The court only relied on John Cueto's self-serving testimony, which is wrong. That in no way should translate into him becoming the "owner". Once the lower court found unjust enrichment and that no gift was made, and that all occurred within a confidential relationship, ***as findings of fact,*** it simply misapplied the law. The illogical result of John Cueto having been found liable for unjust enrichment, and not being the recipient of a gift, but being rewarded with ownership of the home, despite being in a confidential relationship, is obviously wrong.

2. The Court below erred when it found that Plaintiffs failed to prove undue influence because it never shifted the burden of proof to the Defendants, as it was supposed to as a matter of law. The Defendants should have had the burden of proving there was no undue influence by clear and convincing evidence, not the other way around. (6T31:4-5; Pa1-7; 6T31-42; Pa28)

This point is already discussed in the Appellant's main brief. What we stress again is that it is pivotal that the law requires that the burden of proof be shifted to the donee, as was stated in *Pascale*, *supra*. That would be "donee" in this case was John Cueto. We know that no documents exist that detail the nature of the transaction or agreement or understanding, if any, between John Cueto and Francisco Matos. (6T-13, 21-22). John Cueto admitted that he was supposed to use the $50,000.00 to buy a home for Francisco Matos. (T2 34-37). How can this be turned into a scenario where he becomes an owner of the house paid for by Francisco Matos, especially when the Court found that no donative intent existed? Suppose you give a friend a credit card, and say that you don't know how to buy the right computer, and tell her to go pick it out, but you will pay. The computer is still yours, not hers. Why is this any different? It shouldn't be. John Cueto took advantage of Francisco Matos, an old man with a 6th grade education. If John Cueto has the burden of proof, he can't prevail because he cannot come up with anything to corroborate his self-serving testimony. He cannot be the rightful owner because he was at most an agent, and because there was no paperwork detailing his deal with Francisco.

There was no use of a lawyer or a real estate broker or a mortgage broker to educate Francisco Matos on the nature of the deal. Most importantly, John Cueto's "gift" argument ***was rejected*** by the lower Court. In other words, when we parse out the difference between John Cueto claiming he had to buy a house for Franciso, with Francisco Matos's money, and the notion that that same house would belong to John Cueto, we see that his only claim that the house was to be his, was his self-serving testimony that the money and the house ***was to be a gift for him***. Yet, the lower court correctly rejected that notion. ***A fortiori***, therefore, the Defendants should lose their cause in its entirety and the house must go to Francisco Matos, the rightful owner.

3. The court did indeed invoke Joint venture theory and restitution is the remedy for unjust enrichment (Pa1-7; 6T12:31-42; Pa31)

This also was discussed in the Appellant's main brief. But what we want to focus on here is the sophistry and disingenuous arguments made by respondents. Firstly, the Court already ruled that (6T 12) that while the monthly payments looked like rent, they were not rent, but more akin to a joint venture agreement as opposed to a landlord-tenant agreement. At Pa 7, the court said that it partially granted Plaintiff's claim for unjust enrichment, and equity demanded reimbursement, which is restitution. Therefore, again the Respondents are engaging in sophistry. Therefore, Respondents misstate the

law when they say that restitution theory is different from unjust enrichment. Rather, it is the remedy for unjust enrichment, each are sides on the same coin. The lower Court found at T6 line 15:25 nothing nefarious, or untoward, or suspicious that John Cueto bought the house with money taken from Francisco Matos. This is an absurd result, because the Court later found unjust enrichment. We must ask, what standard of law did the Court use to determine that? A finding of fact, based upon a misapplication of law, is reversible error. The opinion cites no law whatsoever. Appellant believes that the Court wrongly placed the burden on the Appellants, when it was supposed to place the burden on the Respondents, as discussed in the main brief. The lower Court also used tortured logic to arrive at a "joint venture" hypothesis to try to fit a square peg into a round hole. The decision must be reversed.

4. The Court incorrectly found the legal and equitable title belonged to John Cueto because it failed to impose a constructive trust as warranted by law (6T31:17-18).

This topic was addressed in the Appellants' main brief. See discussion there about *Moses v. Moses, 140 N.J. Eq. 575 (Court of Errors and Appeals, 1949)*. What we want to add here is that the lower Court was somewhat on the right track, as it identified unjust enrichment, but missed the big picture, which was that Francisco Matos paid for everything, and John Cueto did him a disservice by usurping title, when he was only supposed to act as an agent for

purchase. The constructive trust that it did impose, by defacto award of restitution, simply did not go far enough. The way it stands, based upon the lower court's decision, Francisco has no equity, and the lower court decision calls for him to be evicted by May of 2024. How can that possibly be a just result, and a result that doesn't trumpet to all fraudsters to come and settle in New Jersey? The illogic of this decision allows for that individual, in a position like John Cueto was in, to continually take money from the weaker party, meaning Francisco Matos (as he did with $50,000, with money to pay off his car loan, and then with monthly increments of $1500 for many years, as detailed in the main brief). Once the Court determined that it was not a gift, the Court then wrongly decided that only the $50,000.00 was unjust enrichment ***instead of all of the money taken by Johnny Cueto***. There is a reason that the burden of proof is shifted to the recipient of the money to prove by clear and convincing evidence, meaning John Cueto. That is because the law presumes undue influence, once a confidential relationship is established, and the party that has to refute it, and has the burden, is the recipient of the money. Here quite clearly, the lower court incorrectly placed the burden on Francisco Matos and the Plaintiffs below. Not one court decision in cases cited by defendant claims that an individual must prove he wanted to be at the

closing, or sign real estate closing papers, as the lower court suggests, (6T 13) to prove his claim of being a rightful owner.

5. The Court ignored legal precedent when it dismissed the claim for breach of fiduciary duty in the Summary Judgment motion because as discussed in the main brief, a confidential relationship creates duties akin to fiduciary ones, and a breach of a confidential relationship triggers the imposition of a constructive trust. (Pa36-38)

This issue was fully explained in the Appellant's main brief. What we add here is namely that Respondent's brief distorts the law and hides the reality that fiduciary-like obligations can arise by means other than a written power of attorney. There is voluminous precedent on actions by the parties involved and through relationships which create and trigger obligations akin to fiduciary ones and also trigger constructive trusts just like agreements the written with pen on paper.

CONCLUSION

Appellants should prevail on this Appeal, as the case was incorrectly decided on the law below at trial.

Respectfully submitted,

/s/ Robert G. Ricco

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