LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Nov. 22, 2017 Case No. 13CV180421

MICHAEL C. LYON, *et al.*
Plaintiff

John K. Lind
Plaintiff's Attorney

VS

KELLI L. MARQUARD, *et al.*
Defendant

Cara L. Santosuosso
Defendant's Attorney

This matter is before the Court on the following outstanding Motions and briefs in opposition:

Plaintiff's Motion For An Order Of Possession, filed July 8, 2013;
Plaintiff's Motion To Release Property Held By Receiver, filed August 23, 2017;
Plaintiff's Motion For Court To Decide Motion Earlier Filed On July 8, 2013;
Defendant's Motion To Allow Receiver To Release Defendant's Personal Property To Defendant, filed January 5, 2015; and
Defendant's Second Motion For Summary Judgment, filed April 7, 2015.

THE COURT RULES AS FOLLOWS:

Plaintiff's Motions For An Order Of Possession and To Release Property Held By Receiver are both well-taken and hereby GRANTED.

Defendant's Motion To Allow Receiver To Release Defendant's Personal Property To Defendant is well-taken and hereby GRANTED.

Defendant's Second Motion For Summary Judgment is GRANTED in part and DENIED in part.

IT IS SO ORDERED. See Judgment Entry. No Record.

JUDGE D. Chris Cook

cc: Lind, Esq.
Santosuosso, Esq.
Gemelas, Esq.
Digirolamo, Esq.
Hallett, Esq.

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INTRODUCTION

This matter is before the Court on the following outstanding Motions and briefs in opposition:

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Telephonic status conference had on October 30, 2017; non-oral hearing had on the Motions on November 22, 2017.

PROCEDURAL HISTORY

For reasons that are unclear and mandate an apology from the Court, this case in general, and these Motions in particular, have languished for years. It is inexcusable that multiple motions should remain pending without disposition for over four (4) years. The Court apologizes to the parties and assures all that such will not be the case going forward.

STANDARD OF REVIEW – WEDDING RINGS

The general rule regarding gifts *inter vivos* is that once a thing has been given and the title to it has, by such gift, been transferred, it cannot be reclaimed by the donor. Stated another way, when a gift *inter vivos* is once perfected by delivery and acceptance, it is irrevocable. *Bolen v. Humes* (1951), 94 O App 1.

Engagement rings, however, have traditionally presented the courts with a conundrum regarding the parties' possessory rights when an engagement ring is given and accepted, but the marriage is cancelled.

Obviously, parties to an engagement can agree as to whether the engagement ring is a revocable gift that must be returned to the donor if the marriage never takes place. *McIntire v. Raukhorst* (1989, 9th Dist.), 65 O App 3d 728.

Ohio authority, however, is split as to return of an engagement ring in the absence of an agreement. A series of cases hold that an engagement ring is a conditional gift which must be returned to the donor if the condition of marriage is not fulfilled. *McIntire, supra*: see also, *Patterson v. Blanton* (1996), 109 O App 3d 349; *Lyle v. Durham* (1984), 16 O App 3d 1. In addition, the court in *Wilson v. Dabo* (1983), 10 O App 3d 169, held that a gift made in contemplation of marriage is a conditional gift and the Heart Balm Act, codified at R.C. 2305.29 ("Civil liability for certain amatory actions abolished.") "permits recovery based on the equitable principle of unjust enrichment."

Other Ohio courts have disagreed, finding that the ring did not need to be returned after the donor unjustifiably ended the engagement. *Wion v. Henderson* (1985), 24 O App 3d 207; *Coconis v. Christakis* (1981), 70 Misc 29, 435 NE 2d 100.

Nevertheless, the more widely held view in Ohio, and in particular, the Ninth District, is that gifts made in contemplation of marriage most typically exemplified by an engagement ring, may be recovered by the donor if the marriage does not ensue, regardless of which party may be at fault regarding the termination of the engagement. *McIntire*, *supra*.

The Ninth District notes in *McIntire* that, in declining to follow the rule in other jurisdictions, whereby a court must establish whether or not the donor of an engagement ring was at fault in the termination of the engagement prior to granting replevin of the ring, the "no-fault" rule eliminates the need for a trial court to engage in the often impossible task of establishing blame in the emotionally complex context of an engagement to be married. The Court stated, "Not only does this rule of law establish a 'bright-line' . . . but the rule also eliminates the need for a trial court to attempt the often impossible task of determining which, if either, party is at fault."

Accordingly, the law in the Ninth District regarding the replevin of an engagement ring (or its value) if given and accepted in contemplation of marriage is clear as enunciated in *McIntire*. In the absence of an agreement to the contrary, "the engagement ring was a conditional gift . . ." which must be returned to the donor upon termination of the agreement regardless of fault. *McIntire, supra.*

STANDARD OF REVIEW – PERSONAL PROPERTY AMONG PERSONS WHO COHABITATE

". . . [P]alimony is not recognized by Ohio statute or common law, and Ohio does not permit a division of assets or property based on cohabitation. See *Lauper v. Harold,* 23 Ohio App.3d 168, 170, (1985). Our state has steadily retreated from recognizing property interests in romantic relationships. For instance, amatory causes of action were abolished in 1978 through R.C. 2305.29, see also: *Strock v. Pressnell,* 38 Ohio St.3d 207, (1988), and common-law marriages were prohibited in Ohio by statutory amendment after October 10, 1991. (RC 3105.12(B)(1).)" *Williams v. Ornsby,* 131 Ohio St.3d 427, 436 (2012).

STANDARD OF REVIEW – SUMMARY JUDGMENT

The standard of review for summary judgment in Ohio is well-settled. In *Slinger v. Phillips,* 9th Dist. Medina No. 13CA0048, 2015-Ohio-357, at ¶9, the Ninth District stated, "This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). 'We apply the same standard as the trial court, viewing the facts in the case in the light most favorable to the non-moving party and resolving any doubt in favor of the non-moving party.' *Garner v. Robart,* 9th Dist. Summit No. 25427, 2011–Ohio–1519, ¶ 8."

Pursuant to Civ. R. 56(C), summary judgment is appropriate when: (1) No genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317, 327, (1977).

To succeed on a summary judgment motion, the movant bears the initial burden of demonstrating that there are no genuine issues of material fact concerning an essential element of the opponent's case. *Dresher v. Burt,* 75 Ohio St.3d 280, 292, (1996). If the movant satisfies this burden, the nonmoving party " 'must set forth specific facts showing that there is a genuine issue for trial.' " *Id.* at 293, quoting Civ. R. 56(E).

Recently, the Ninth District Court of Appeals noted, "Summary judgment proceedings create a burden-shifting framework. To prevail on a motion for summary judgment, the movant has the initial burden to identify the portions of the record demonstrating the lack of a genuine issue of material fact and the movant's entitlement to judgment as a matter of law. *** In satisfying this initial burden, the movant need not offer affirmative evidence, but it must identify those portions of the record that support her argument. ***

Once the movant overcomes the initial burden, the non-moving party is precluded from merely resting upon the allegations contained in the pleadings to establish a genuine issue of material fact. Civ. R. 56(E). Instead, it has the reciprocal burden of responding and setting forth specific facts that demonstrate the existence of a 'genuine triable issue.' *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449, 663 N.E.2d 639 (1996)." *McQuown v. Coventry Township,* 9th Dist. Summit No. 28202, 2017-Ohio-7151, at ¶ 10. See also: *Bank of New York Mellon v. Bridge,* 9th Dist. Summit No. 28461, 2017-Ohio-7686, at ¶ 8.

ABBREVIATED STATEMENT OF PERTINENT FACTS

Plaintiff, Michael C. Lyon ("Lyon") and Defendant, Kelli L. Marquard ("Marquard"), entered into a romantic relationship sometime in 2010. The parties eventually became engaged to marry and Lyon purchased and delivered to Marquard a wedding ring ("The Ring") in contemplation of this union.

As the relationship progressed, Lyon and Marquard eventually moved in together and had a baby born in 2012. They purchased a lot of real estate together in Avon, Ohio but it was titled solely in Marquard's name. They purchased vehicles together; shared expenses; and Marquard worked for Lyon's company, separate Defendant, MGM, Inc. ("MGM").

For reasons that are in dispute, and not particularly relevant, the parties "broke-up" in April, 2013. They were unable to amicably resolve their financial and property issues that had become comingled and intertwined, including the disposition of The Ring. This (and other) litigation followed.

ANALYSIS

Because the parties' pending motions overlap and are often inter-related, the Court has designated the outstanding issues as follows, to wit, and will address them *seriatim*:

THE WEDDING RING

Perhaps the easiest issue to resolve in this convoluted quagmire of censorious litigation is disposition of The Ring. Lyon gave The Ring to Marquard as a gift in contemplation of marriage – a marriage that never occurred. Why the marriage never occurred, who was at fault for the "break-up," or who called it off is of no accord.

The Ring, while clearly a gift, was conditioned upon the occurrence of the marriage. When the marriage was called off, the condition failed and Lyon was entitled to the immediate return of the ring.

The Ninth District Court of Appeals could not be more clear on this issue, "In the absence of an agreement to the contrary, the engagement ring was a conditional gift . . ." which must be returned to the donor upon termination of the agreement regardless of fault. *McIntire, supra.* Neither party has argued that there was any "agreement to the contrary."

Accordingly, it is hereby ordered that the Receiver, who currently bails The Ring, shall immediately and forthwith return The Ring to Lyon.

THE PERSONAL PROPERTY

Both parties have moved the Court for return of their personal property or chattels. As previously noted, when Lyon and Marquard broke-up, they were unable to amicably distribute items of personalty that they had acquired throughout the relationship.

Like in any relationship, some of the property was brought to the affair, some was acquired as gifts, either to the "couple" or individually, some was gifted to each-other, and some was jointly purchased.

Attached to Lyon's Motion for return of his property as Exhibit "1," are five (5) pages of almost completely illegible, single-spaced items including a "silver cheese grater," a "plastic pitcher," and a "black garbage bag w/5 rugs."

Similarly, in Marquard's Motion for return of her property as Exhibit "B," she too itemizes pages and pages of single-spaced household items (admittedly in a more legible format) that this Court, or Heaven Forbid, a jury, is supposed to determine ownership.

Marquard lists keepsakes such as a "wine opener," a "large cutting board," and a "medium size mixing bowl."

For reasons that defy comprehension, this Court, in the General Division of the Lorain County Court of Common Pleas, finds itself adjudicating, for all intents and purposes, a

divorce case. If only Lyon and Marquard had entered holy matrimony, this matter would be pending on the fourth floor of this auspicious courthouse, not the seventh – but I digress.

In all seriousness, there is no practical, feasible, or realistic way for the Court or a jury to determine who owns or is entitled to all of this property. It would literally take weeks, if not months, for the trier of fact to listen to evidence regarding hundreds of mundane household items of nominal, if any, actual value. This Court will not devote its time, energy, or resources - or the time, energy, or resources of a jury, to such an endeavor.

Instead, the Court will order a remedy fashioned from those more experienced in such matters (such as domestic relations judges) to resolve this dispute. The Receiver shall create a legible, numbered list ("The List") of all items currently in his possession. Once The List is completed, the parties will meet with the Receiver (and their counsel, if they wish), flip a coin, then alternatively select items from The List. Lyon, as Plaintiff, shall call "Heads" or "Tails." If he wins, he picks first – if not, Marquard picks first. The parties shall go through the entire list until all items have been selected. The Receiver will then deliver each parties property to its respective recipient and the Receivership will terminate.

Accordingly, both parties Motions for return of their property are well-taken and hereby GRANTED. All parties are ordered to facilitate the process noted above without delay.

DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT

In Marquard's Second Motion For Summary Judgment, she argues that she is entitled to judgment as a matter of law on the following claims, to wit:[1]

UNJUST ENRICHMENT – THE LINCOLN NAVIGATOR AND PERSONAL POSSESSIONS

Marquard urges that she is entitled to remuneration for expenses she incurred relative to her leasing of a 2011 Lincoln Navigator ("The Lincoln") vehicle that ". . . both Lyon and Marquard had use of . . . during the period that they were cohabitating." This Court disagrees.

[1] Marquard's first claim deals with The Ring. As that claim has already been disposed of, it will not be revisited.

The *voluntary* acquisition of a vehicle by Marquard for both her and Lyon's use does not render Lyon liable for the expenses she incurred thereto. The parties were in a relationship and Lyon's permissive use of The Lincoln resulted more from Marquard's gratuitous generosity than a contractual agreement. Similarly, a claim in equity will not stand to attach liability to a partner in a romantic relationship simply because the relationship has ended.

Romantically involved parties who cohabitate, like Lyon and Marquard, engage in an almost daily exchange of their property and money for the stable, efficient, loving, operation of their household.

This Court is mindful of a particularly adroit Magistrate who once wrote, "As I have often indicated to the parties in cases such as this, this court has heard many of these types of cases over the years; usually, it is after the relationship goes south and the "magic" comes to an end that one of the parties, feeling aggrieved, sues his or her ex-paramour for these types of "relationship expenses/loans." *Gregory v. Shaw,* Lorain Municipal Court, Case No. 13CVF00216, (6/3/2014).

"Obviously, these 'expenses/loans' are really nothing more than continuously exchanged gifts between the parties. Further, even when one party has a colorable claim for remuneration, it is often next to impossible for the court to apportion damages and/or rationally valuate these domestic exchanges."[2] *Gregory, supra.*

In addition to the above, Lyon argues in his response brief that his company, MGM, made the down payment "and all of the loan payments" on The Lincoln and that it was used for MGM's business, not their personal use.

In the absence of an agreement relative to The Lincoln, and the competing affidavits, summary judgment on this issue is inapposite and therefore DENIED.

RETENTION OF MARQUARD'S PERSONALTY

Marquard also argues that she is entitled to "the value of her property" that Lyon has refused to give her that is currently in possession of the Receiver. This argument is misplaced. The property at issue was bailed with the Receiver because there is a legitimate dispute as to its ownership.

As the Court has already dispensed with the disposition of the property having found a legitimate dispute as to its ownership, Marquard is not entitled to damages for its loss of use during the pendency of this action.

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[2] See also: *Hernandez v. Engle,* Lorain Municipal Court, Case No. 08CVI00265 (9-7-08).

INDEMNIFICATION AND ALTER EGO LIABILITY

Marquard argues here that in the event that she is liable to Defendant, Third-Party Plaintiff, Carnegie Residential Development ("Carnegie"), on Carnegie's breach of contract claims, she should be indemnified by Lyon. She may be right.

But, it is too early to tell. Only if Carnegie is successful against Marquard will this issue become ripe. As such, the Court holds ruling on this issue in abeyance.

PIERCING MGM's CORPORATE VEIL

Marquard next argues that Lyon should be held accountable ". . . for any and all wrongful actions of MGM . . ." I agree.

For cause, Marquard cites this Court to the Ohio Supreme Court's seminal decision on the issue, *Belvedere Condominium v. R.E. Roark*, 67 Ohio St.3d 274 for the standard of review and posits a compelling number of reasons that corporate immunity should be discarded. Marquard points out the facts that Lyon is the sole board member of MGM, Lyon holds board meetings with himself when needed, Lyon alone selects and directs MGM's business, and, most importantly, "No corporate formalities are observed."

Tellingly, Lyon has no response to these allegations nor does he present any evidence through his affidavit or otherwise to show that MGM is, in fact, a properly situated and operated corporate entity as opposed to his alter ego.

Lyon's main argument in opposition is that there is nothing in Ohio law to suggest that a closely-held corporation cannot be owned by one person. This is true. But Marquard also advances the alter ego argument that goes unchallenged.

A review of the facts at bar on this issue clearly demonstrate, as a matter of law, that MGM and Lyon are one-and-the-same. As such, Marquard's Motion For Summary Judgment on this issue is well-taken and hereby GRANTED.

LYON/MGM's UNLAWFUL INTERFERENCE WITH CONTRACTS

Next, Marquard argues that Lyon unlawfully interfered with her efforts to sell the Avon, Ohio real estate through Carnegie to an unidentified "third-party buyer." The gravamen of this allegation is that due to the litigation filed by Lyon, Marquard could not transfer the property in violation of the contract with Carnegie.

Lyon counters that his suit(s) have not caused Marquard to be in breach of the Carnegie contract but only placed it "in limbo" until this litigation is concluded.[3]

The Court agrees with Lyon. First, this suit can hardly be deemed frivolous given the Court's disposition of The Ring. Second, there are many collateral consequences of civil litigation. Lyon did nothing directly or affirmatively to interfere with Marquard's efforts to sell the Avon, Ohio property. There is no evidence that Lyon "intentionally procured the contract's breach" or that Marquard has any "resulting damages" due to the delay. *Siegel v. Arter Hadden,* (1999), 85 Ohio St.3d 171.

As such, Marquard's Motion For Summary Judgment for unlawful interference with contract is not well-taken and DENIED.

ABUSE OF PROCESS AND FRIVOLOUS CONDUCT

In this, Marquard's final summary judgment argument, she alleges that Lyon "perverted" these proceedings for an improper, ulterior motive, to wit: "to cause financial and emotional distress to his ex-girlfriend and mother of his young child . . ."

These allegations are without merit.

First, as noted *supra,* Lyon's case has merit, as least as far as The Ring goes. Marquard's insistence on keeping a $13,400.00 engagement ring after the wedding was called-off was legally inexcusable given the status of the law in the Ninth District.

As for the balance of the propriety of Lyon's claims, only time will tell. If Lyon is unsuccessful in this suit, Marquard will be free to renew her Civ. R 11 and/or RC 2323.51 allegations, but for now, they are premature.

Finally, the Court notes that Marquard alleges that Lyon's suit has been brought to cause her "emotional distress," yet, there is no claim for intentional infliction of emotional distress. As for the claim of "financial distress," this assertion, while undoubtedly true, can be advanced in almost *any* civil litigation lawsuit. Lawyers and litigation are expense. So are counter-claims and cross-claims – all filed by Marquard.

The Motion For Summary Judgment as to abuse of process and frivolous conduct is not well-taken and DENIED.

[3] Another example of "Justice Delayed is Justice Denied."

CONCLUSION

After review of the pleadings, Affidavits, depositions, and other Civ. R 56(E) materials, and consideration of the relevant statutes and case law supplied by the parties, the Court rules as follows:

Plaintiff's Motions For An Order Of Possession and To Release Property Held By Receiver are both well-taken and hereby GRANTED.

Defendant's Motion To Allow Receiver To Release Defendant's Personal Property To Defendant is well-taken and hereby GRANTED.

Defendant's Second Motion For Summary Judgment is GRANTED in part and DENIED in part, as noted *supra*.

IT IS FURTHER ORDERED, that the parties forthwith coordinate with the Receiver in order to comply with the procedure to disburse all of the personalty currently being held by the Receiver and that the Receiver thereafter submit a final invoice to the parties to be paid equally.

IT IS FURTHER ORDERED, that the Court's Trial Order of October 31, 2017 remains in full force and effect and that the trial date of January 29, 2018 will not be continued ABSENT EXTRAORDINARY CAUSE.

IT IS SO ORDERED.

JUDGE D. Chris Cook