

APN# _____

Recording Requested by/Mail to:

Name: THOMAS J. GILL

Address: 9438 ASHBURY CIRCLE UNIT 101

City/State/Zip: PARKER, CO 80134

Mail Tax Statements to:

Name: _____

Address: _____

City/State/Zip: _____



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KAREN ELLISON, RECORDER

APPLICATION OF FOREIGN JUDGMENT

Title of Document (required)

------(Only use if applicable)-----

The undersigned hereby affirms that the document submitted for recording contains personal information as required by law: (check applicable)

Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)

Judgment – NRS 17.150(4)

Military Discharge – NRS 419.020(2)

Thomas J. Gill

Signature

THOMAS J. GILL

Printed Name

This document is being (re-)recorded to correct document # _____, and is correcting

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SEP 10 2015

Douglas County
District Court Clerk

Ninth Judicial District Court
Douglas County, Nevada

FILED

NO. _____

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BOBBIE R. WILLIAMS
CLERK

D. GOELZ DEPUTY

Thomas Joseph Gill,)
)
Plaintiff,)
)
-vs-)
)
Cathryn Marie Cowan,)
)
Defendant.)

CASE NO. 15 CV 0229

DEPT. NO. 2

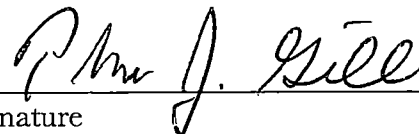
APPLICATION OF FOREIGN JUDGMENT

COMES NOW Plaintiff, Thomas J. Gill, and hereby files his Foreign Judgment pursuant to NRS 17, specifically NRS 17.350, and registers an exemplified copy of the Judgment, attached hereto as Exhibit "1" as follows:

(Title of document) RULING AND JUDGMENT ORDER from the (name of court) Third Judicial District Court of (County and State of Court) Woodbury, Iowa, signed by the Honorable (Judge's name) Mary Jane Sokolovske and filed on 08/25/2015.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 8th day of September, 2015.



Signature
Thomas J. Gill
9438 Ashbury Circle Unit 101
Parker, Colorado 80134
Pro Se

STATE OF IOWA, WOODBURY COUNTY, ss.

I, AMY BERNTSON, Clerk of the Iowa District Court, in said County, do hereby certify that the foregoing is a true, compared and perfect transcript of

LACV163118 THOMAS JOSEPH GILL VS CATHERINE MARIE COWAN

RULING AND JUDGMENT ORDER FILED 8/25/2015

As the same appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in Sioux City, Iowa, in said County, this 28TH day of AUGUST, A. D., 2015.

Amy Berntson
Clerk of District Court

STATE OF IOWA, WOODBURY COUNTY, ss.

I, **JOHN D ACKERMAN**, one of the Judges of the Iowa District court, in the THIRD (3-b) Judicial District of said State, composed of the Counties of Crawford, Ida, Monona, Plymouth, Sioux and Woodbury do hereby certify that AMY BERNTSON, who has given the preceding certificate, was, at the time of so doing, the Clerk of the Iowa District Court, in WOODBURY County, in said District, duly qualified as such, that he is the proper custodian of the records of said Court, and the proper officer to give such certificate and that the same is in due form of law.

Witness my hand, at Sioux City, Iowa, this 28TH day of AUGUST, A.D., 20 15.

John D Ackerman
Judge District Court, Third Judicial District

STATE OF IOWA, WOODBURY COUNTY, ss.

I, AMY BERNTSON **JOHN D ACKERMAN** Clerk of the Iowa District Court, in said County, do hereby certify that the Honorable **JOHN D ACKERMAN** who has given the preceding certificate, was, at the time of so doing, one of the Judges of the Iowa District Court, of the THIRD Judicial District of said State, duly commissioned and sworn, to all whose acts as such, full faith and credit are and ought to be given.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, Sioux City, Iowa, in said County, this 28TH day of AUGUST, A. D., 20 15.

Amy Berntson

Clerk of District Court

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

THOMAS JOSEPH GILL,

Plaintiff,

vs.

CATHERINE MARIE COWAN,

Defendant.

CASE NO. LACV163118

RULING AND JUDGMENT ORDER

On the 20th day of August, 2015, this matter came before the court for a bench trial. The plaintiff appeared in person and with his attorney, Dennis Ringgenberg. The defendant appeared in person and pro se. The matter was stenographically reported by Kara Holland.

At issue in this matter is the plaintiff's claim for the return of a ring or its cash equivalent from the defendant and for certain labor and material costs associated with the remodel of a home and the profit from the home's sale.

The plaintiff testified on his own behalf. The defendant also testified on her own behalf.

The court, being duly advised and having reviewed the evidence, finds as follows:

The plaintiff, Thomas Joseph Gill, (hereafter Thomas) currently resides in Parker, Colorado. The defendant, Cathryn Marie Cowan, (Cathryn) currently resides in Nevada.

In 2008, Thomas and Cathryn met on an online dating site. Thomas was residing in South Sioux City, Nebraska, and Cathryn was living in Memphis, Tennessee. In February 2009, Cathryn decided that she would move to the Sioux City area.

Cathryn obtained an apartment but shortly thereafter moved into a house with Thomas who then was living in South Sioux City, Nebraska. Thomas was married at the time but was in the process of a divorce.

Thomas testified that in February 2011 Cathryn gave him an engagement ring. Thomas stated that he accepted her proposal. Cathryn denies that he did.

On March 18, 2011, Thomas and Cathryn went to Riddle's Jewelry and selected a ring for Cathryn. The ring was valued at \$4,379.00 before tax. Thomas purchased the ring by making a down payment of \$935.00. He further traded in two other rings valued at \$600.00. Thomas ultimately paid the remaining balance of \$3,098.90. This amount included tax in the amount of \$263.90.

Thomas gave the ring to Cathryn as an engagement ring. The record overwhelmingly supports that the ring was an engagement ring (see Exhibit 6 and Exhibit 2). Thomas testified that potential wedding dates were discussed as well as locations for the wedding.

On or about December 10, 2012, the engagement was broken. Cathryn requested that Thomas leave the home they were sharing. Thomas had asked for the ring to be returned to him after the separation. Cathryn did not return the ring and admitted at trial that she still possessed the ring.

In 2009, Thomas was employed by the City of Sioux City as a civil engineer. As a requirement of his employment with the City, Thomas was required to maintain a residence in Iowa. Thomas and Cathryn began looking for homes together. Thomas and Cathryn worked with a Realtor to secure a home.

Thomas and Cathryn found an available house for purchase at 225 Lindenwood Place in Sioux City, Iowa. The house was in need of a significant remodel and landscaping. A decision was made to purchase the house, and the house was purchased for \$179,000.00. The deed was put in Cathryn's name only. A mortgage was secured with mortgage payments of \$1,500.00 per month. No evidence was offered as to any down payment that may have been made.

Thomas testified that at the time of the house purchase he was still in the process of a divorce. He testified that did not want his name on the deed as his ex-spouse might try to make a claim on the house in his divorce. Thomas stated that he and Cathryn entered into an agreement that each would be responsible for one-half of the mortgage and utilities. Thomas and Cathryn would live together in the house in anticipation of their marriage.

Cathryn testified that she considered Thomas a tenant who paid her rent of \$950.00 plus an additional amount for utilities. She does not believe that Thomas has any interest in the house.

Thomas stated that there was an agreement that he and Cathryn would share in the house. He did move into the residence with Cathryn and, almost immediately upon moving into the residence, began making improvements. He landscaped the outside, employing both his own labor and buying the landscaping materials. He also remodeled the interior of the residence and did the majority of the work himself. He also purchased materials for the remodel. Thomas also sided the majority of the outside of the residence with new siding and soffit. Thomas did acknowledge that Cathryn also purchased materials for the remodel.

After the parties' separation, Cathryn eventually offered the house for sale. On April 28, 2014, she sold the house for \$245,000.00. Cathryn claimed that she sold the house at a loss to her in the amount of \$56,420.19. She claimed that she contributed a little over \$98,000.00 to the remodeling of the house. Upon cross-examination however, her claim of \$98,000.00 was challenged when it was found that she made an error in her calculations by stating an expense of \$41,000.00 instead of the actual expense of \$43.25. Additionally, Cathryn included in her claim monies paid to an individual for yard maintenance after Thomas moved out. Cathryn offered no proof of her contribution to the house remodel.

CLAIM FOR THE RETURN OF THE ENGAGEMENT RING

Thomas is requesting that the engagement ring he gave to Cathryn be returned to him in light of the broken engagement.

In the case Fierro v Hoel, 465 N.W.2d 669, the Court of Appeals stated:

An engagement ring given in contemplation of marriage is an impliedly conditional gift. The jurisdictions which have considered cases dealing with the gift of an engagement ring uniformly hold that marriage is an implied condition of the transfer of title and that the gift does not become absolute until the marriage occurs.¹ See Annotation, *Rights in Respect of Engagement and Courtship When Marriage Does Not ensue*, 46 A.L.R.3d 578 (1972). One court explained,

Where a gift of personal property is made with the intent to take effect irrevocably, and is fully executed by unconditional delivery, it is a valid gift inter vivos. Such a gift is absolute and, once made, cannot be revoked. A gift, however, may be conditioned on the performance of some act by the donee, and if the condition is not fulfilled the donor may recover the gift.

We find the conditional gift theory particularly appropriate when the contested property is an engagement ring. *The inherent symbolism of this gift forecloses the need to establish an express*

condition that marriage will ensue. Rather, the condition may be implied in fact or imposed by law in order to prevent unjust enrichment.

Brown v. Thomas, 127 Wis.2d 318, 379 N.W.2d 868, 872 (App.1985) (citations and footnote omitted; emphasis added). Like the *Brown* court, in a contested property case involving an engagement ring given in contemplation of marriage, we hold there is no need to establish an express condition that marriage will ensue. A party meets the burden of establishing the conditional nature of the gift by proving by a preponderance of evidence that the gift was given in contemplation of marriage.

Once we recognize an engagement ring is a conditional gift, the question still remains: who gets the gift when the condition is not fulfilled? The obvious answer is the gift must be returned to the donor.

Thomas has carried his evidentiary burden on his claim and is entitled to the return of the engagement ring or its value from Cathryn.

CLAIM FOR ONE HALF OF THE PROCEEDS OF THE HOUSE SALE FOR LOSS OF
PROFIT

Thomas has pled three theories of recovery: contract, unjust enrichment, and joint venture. The court will focus on the theory of unjust enrichment in reaching this claim of the plaintiff.

In the case, State of Iowa, Department of Human Services, ex. rel. Palmer v Unisys Corporation, 637 N.W. 2d 142 the Supreme Court stated:

The doctrine of unjust enrichment is based on the principle that a party should not be permitted to be unjustly enriched at the expense of another or receive property or benefits without paying just compensation. *Credit Bureau Enters., Inc. v. Pelo*, 608

N.W.2d 20, 25 (Iowa 2000). Although it is referred to as a quasi-contract theory, it is equitable in nature, not contractual. See *Iowa Waste Sys., Inc. v. Buchanan County*, 617 N.W.2d 23, 29 (Iowa Ct.App.2000). It is contractual only in the sense that it is based on an obligation that the law creates to prevent unjust enrichment. See *id.* at 29-30.

The doctrine of unjust enrichment serves as a basis for restitution. *Smith*, 325 N.W.2d at 94. It may arise from contracts, torts, or other predicate wrongs, or it may also serve as independent grounds for restitution in the absence of mistake, wrongdoing, or breach of contract.¹ See 1 Dobbs, § 4.1(1), at 553.

Recovery based on unjust enrichment can be distilled into three basic elements of recovery. They are: (1) defendant was enriched by the receipt of a benefit; (2) the enrichment was at the expense of the plaintiff; and (3) it is unjust to allow the defendant to retain the benefit under the circumstances.

Thomas has established that he contributed significantly in the form of labor and materials to the improvement of the house at 225 Lindenwood Place. Thomas did so based upon his expectation that he and Cathryn would continue to reside therein as a married couple. The engagement, however, ended, and the couple separated with Thomas leaving the home and Cathryn remaining.

Cathryn was able to sell the house at a price significantly greater than the purchase price. The improvements that Thomas made to the house contributed to her ability to obtain the higher price. Should Cathryn retain all of the profit from the sale, she would do so at Thomas's expense. Thomas is entitled to recover one-half of the profit Cathryn obtained through the sale, which is \$51,300.00 (See Exhibit 12).

JUDGMENT

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Thomas Joseph Gill is awarded the engagement ring. If the ring is not locatable, he is awarded judgment against Cathryn Marie Cowan in the amount of \$4,633.90, which is the purchase price of the ring.

IT IS FURTHER ORDERED Thomas Joseph Gill is awarded judgment against Cathryn Marie Cowan in the amount of \$25,650.00.

IT IS FURTHER ORDERED that court costs are assessed to Cathryn Marie Cowan.

SO ORDERED.



State of Iowa Courts

Type: OTHER ORDER

Case Number
LACV163118

Case Title
GILL, THOMAS J VS. COWAN, CATHERINE M

So Ordered

Mary Jane Sokolovske

Mary Jane Sokolovske, District Court Judge,
Third Judicial District of Iowa