

CAUSE NO. 2022-12155

SHONDA MEYER, Plaintiff,	§	IN THE DISTRICT COURT
	§	
V.	§	270TH JUDICIAL DISTRICT
	§	
ALLAN HOPKINS, Defendant.	§	OF HARRIS COUNTY, TEXAS

PLAINTIFF SHONDA MEYER'S RESPONSE TO DEFNDANT ALLAN HOPKINS' AMENDED MOTION FOR TRADITIONAL SUMMARY JUDGMENT

Plaintiff Shonda Meyer ("Meyer" or "Plaintiff") files her Response to Defendant Allan Hopkins's ("Hopkins" or "Defendant") Amended Motion for Traditional Motion for Summary Judgment on Plaintiff's claims of breach of contract, negligent misrepresentation, and unjust enrichment (the "Motion") and would respectfully show this Court the following:

Introduction

1. Defendant alleges that he is entitled to a traditional summary judgment on Plaintiff's claims of breach of contract, negligent misrepresentation, and unjust enrichment. However, Defendant only addresses Plaintiff's breach of contract claim in his Motion. Defendant wholly fails to identify which element of Plaintiff's negligent misrepresentation or unjust enrichment claim that he allegedly negates. Accordingly, Defendant's Motion must be denied in connection with Plaintiff's cause of action for negligent misrepresentation and unjust enrichment. Meyer maintains that Hopkins has failed to meet his burden of being entitled to a traditional summary judgment on Plaintiff's breach of contract claim.

2. Meyer was involved in a relationship with Hopkins beginning in 2004 and continuing until 2018. However, Meyer and Hopkins were never married, never agreed to be married, never lived together as wife and husband and did not hold themselves to others as a married couple. During their relationship, Meyer and Hopkins lived in several locations which

were owned by Meyer, including residences in Indiana and Wyoming. Hopkins did not contribute to mortgage, property taxes, maintenance or other living expenses associated with Meyer's residences.

3. In 2008, Meyer and Hopkins were spending a significant amount of time in Houston, Texas working as consultants. Accordingly, Meyer located a suitable residence which could be used by herself and Hopkins while working in Houston. This residence was located at Commerce Towers, 914 Main Street, Unit 1212, Houston, Texas 77002 (the "Property"). It was agreed between Meyer and Hopkins that this residence would be shared by them while they resided in Houston. In April 2008, the Property was purchased solely in Hopkins' name; however, Meyer contributed to the down payment for the Property in the form of the earnest money deposit.

4. From April 2008 until early 2018 Meyer and Hopkins used the Property while they lived and worked in Houston during different periods of time over those years. Additionally, they continued to live at Meyer's properties in Indiana and Wyoming. While the Property was solely in the name of Hopkins and the mortgage was paid by Hopkins, Meyer contributed to the maintenance and upkeep of the Property; including, initially furnishing the entire Property and for the general upkeep of the Property.

5. In early 2018, Meyer and Hopkins decided to end their relationship. During this process, the parties agreed on several items related to financial issues between them as result of the relationship ending. One of the issues was the disposition of the Property and Meyer's financial interest in the Property. The parties agreed that Hopkins would remain living in the Property until he decided that he no longer wished to use the Property. The Parties agreed that they each had a 50% equitable interest in the Property and that upon Hopkins leaving the Property Meyer would have the right of first refusal to purchase his interest in the Property and assume all expenses

moving forward in connection with the Property and that Meyer would be repaid for her payment of the earnest money to purchase the Property

6. In December 2021, Hopkins sold the Property to a third-party without notice to Meyer and in breach of the agreement that Hopkins had with Meyer regarding her right of first refusal to purchase the Property. Hopkins has also failed to pay Meyer for the amount that he agreed would be repaid to her for her payment of the earnest money for the purchase of the Property or for her 50% equitable interest in the Property; accordingly, Hopkins is in breach of their agreement in connection with the Property. For the reasons set forth below, Hopkins's Motion must be denied.

Summary Judgement Evidence

7. Plaintiff intends to rely upon the proof attached hereto to support her Response and incorporates by reference as if all such proof is fully set forth. Based on this proof, Plaintiff asserts that Defendant has failed to meet his evidentiary burden to be entitled to a traditional summary judgment on Meyer's causes of action and that Meyer's has provided at least a scintilla of evidence on each element of her causes of action.

Exhibit 1 Affidavit of Shonda Meyer

Exhibit 2 HUD Statement

Summary Judgment Standard

8. The standard for reviewing a traditional summary judgment is well established. *Nixon v. Mr. Prop. Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985); *McAfee, Inc. v. Agilysys, Inc.*, 316 S.W.3d 820, 825 (Tex. App.--Dallas 2010, no pet.). The movant has the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c). In deciding whether a disputed material fact issue exists precluding

summary judgment, evidence favorable to the nonmovant will be taken as true. *Nixon*, 690 S.W.2d at 548-49; *In re Estate of Berry*, 280 S.W.3d 478, 480 (Tex. App.--Dallas 2009, no pet.). Every reasonable inference must be indulged in favor of the nonmovant, and any doubts resolved in its favor. *City of Keller v. Wilson*, 168 S.W.3d 802, 824 (Tex. 2005).

9. Courts disregard all conflicts in the evidence and accept the evidence favoring the nonmovant as true. *Great Am. Reserve Ins. Co. v. San Antonio Plumbing Supply Co.*, 391 S.W.2d 41, 47 (Tex. 1965). Furthermore, Courts indulge every reasonable inference from the evidence in favor of the nonmovant and resolve any doubts in its favor. *American Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 425 (Tex. 1997).

Arguments & Authorities

A. Negligent Misrepresentation and Unjust Enrichment

10. While Defendant's Motion claims that he is seeking summary judgment on Plaintiff's claims for negligent misrepresentation and unjust enrichment, Defendant wholly fails to address either of these causes of action. Defendant does not identify which element of either cause of action in which he alleges that he conclusively establishes, via traditional summary judgment evidence, that there is no material issue of fact on any specific element. Accordingly, Defendant's Motion for Traditional Summary Judgment on Plaintiff's causes of action for negligence misrepresentation and unjust enrichment must be denied.

11. Defendant asserts that the negligent misrepresentation is in connection with the contract for the sale of the Property; however, this assertion is incorrect. Plaintiff's negligence misrepresentation and unjust enrichment claims are based upon Hopkins agreement that Meyer had a 50% interest in the Property and Meyer's right of first refusal to purchase the Property, not upon any agreement to sell the Property to Meyer. Meyer justifiably relied on Hopkins'

representation that she had a 50% interest in the Property in her negotiations of the financial decoupling of the parties.

12. Again, Defendant has failed to conclusively establish that there is no material issue of fact on a specific element of either negligence misrepresentation or unjust enrichment in connection with his representation and agreement that Meyer had a 50% interest in the Property. Accordingly, Defendants' motion for summary judgment on these causes of action should be denied.

B. Breach of Contract

13. Defendant asserts that he is entitled to a traditional summary judgment on Plaintiff's breach of contract claim because (1) there was no valid offer; (2) there was no acceptance, and (3) there was no mutual assent between the parties. Motion at pp. 4-8. Plaintiff denies that there was not a valid offer, that was no clear acceptance of an offer, or that there was no mutual assent or meeting of the minds.

14. In fact, there were at least three (3) distinct offers and acceptances which the parties clearly had a meeting of the minds. These three (3) distinct agreements were: (1) that each party had a 50% equitable ownership in the Property; (2) Meyer would be paid back the money she paid towards the earnest money for the Property when the Property was sold; and (3) Meyer would have the first option or a right of first refusal to purchase Hopkins' 50% equitable interest in the Property.

15. To begin, Hopkins and Meyer made an agreement that each would be a 50% equitable owner in the Property. On April 30, 2018, when the parties were discussing what was to be done with the Property, Hopkins **unprompted** stated "I understand that you did all the work to find this place. I then paid for it, so i [sic] believe we're in it 50/50." Exhibit 1 to Motion, April

30 Email string. In response to Hopkins statement that he believed the parties were in the Property 50/50, Meyer responded “Agreed.” *Id.* This is an unambiguous offer and acceptance in connection with the ownership of the Property between the Parties.

16. Hopkins stated that “they were in the Property 50/50” because for almost ten (10) years, Hopkins and Meyer had shared the Property while living in Houston, Exhibit 1. While Hopkins paid for the Property, except for the earnest money/escrow payment which was paid by Meyer, Meyer at her own expense furnished the Property and paid for the overwhelming majority of the maintenance and upkeep of the Property during this entire period. *Id.* This is in juxtaposition to when Hopkins would stay at properties owned by Meyer where he did not contribute to the maintenance or upkeep of those properties. *Id.* Thus, pursuant to the agreement reached on April 30, 2018, regarding shared ownership of the Property, Meyer is entitled to at least 50% of the sales proceeds from the Property, as an equitable interest owner.

17. Secondly, the parties reached an agreement for Hopkins to pay Meyer back the \$3,500.00 she paid towards the earnest money for the purchase of the Property. Defendant asserts in his Motion that he “paid the down payment, all mortgage payments, all property taxes and all mortgage payments” in connection with the Property. Motion at p. 1.

18. However, this statement is demonstrably false. Upon purchase of the Property, Meyer paid \$3,500.00 towards the Property. Exhibits 1 & 2. Hopkins confirms this point in his email to Meyer on April 30, 2018 at 7:07 am. Exhibit 1 to Plaintiff’s Motion, April 30, 2018, Email string. The parties are discussing issues surrounding the Property, including price and Hopkins states “When the time comes that I move, we’ll need to discuss more details on this: total amount paid back (loan, interest, etc.). **Sub off of course escrow** etc. . . .” *Id.*(emphasis added).

19. Meyer confirms this fact in her reply email at 9:20 am on April 30, 2018, in which she states in response to Hopkins' statement "Sub off of course escrow etc. ." Meyer states "**Agreed. I want this payback**, no matter what we end up doing." *Id.* (emphasis added). In connection with the sale of the Property, Hopkins failed to pay back the escrow payment of \$3,500.00 that Meyer made towards the purchase of the Property. Exhibit 1. For this reason alone, summary judgment must be denied on Plaintiff's breach of contract claim.

20. Third, Hopkins made a valid offer to Meyer for a right of first refusal or on purchasing his 50% of the Property at the time he decided to no longer reside at the Property which was accepted by Meyer and the parties clearly had a meeting of the minds on Meyer's right of first refusal. On April 30, 2018, in discussing options in connection with the disposition of the Property, Hopkins selects "Plan B" which provides that Hopkins would remain in the Property until he decides he no longer will use the Property as his residence. Exhibit 1 to Plaintiff's Motion. In discussing what would occur once he decided to no longer use the Property as his residence the parties agreed that they would discuss those issues "When the time comes that I move." *Id.*

21. Specifically, in an email on April 20, 2018, at 4:13 pm Hopkins states "I'm figuring we will work out condo details when that time comes." *Id.* In response to that email at 9:21 pm on April 30, 2018, Meyer responds:

OK. I am fine with working out the final details on the condo later, because we don't need to step through a bunch of what if scenarios now, since we don't know what our situations will be in the future. That being said, do you have any concerns on anything below mentioned in that regard or are you good with everything at this point?

Id. (emphasis added). Hopkins responds at 10:05 pm on April 30, 2018, with the following, "I'm good with movers and financial stuff, then like u [sic] said **we will work out condo things when it comes up.**" *Id.* (emphasis added)

22. Accordingly, as of 10:05 pm on April 30, 2018, you had an offer by Hopkins of an offer of first refusal with regard to the disposition of the Property when he moved out, an acceptance by Meyer of the offer of first refusal and mutual assent that the parties work out the details on the disposition of the Property at the time Hopkins decided to no longer use the Property as his residence. Meyer would not have agreed to the overall resolution of the financial settlement she reached with Hopkins but for his agreement that she had a 50% interest in the Property and a right of first refusal. Exhibit 1.

23. It is without dispute that Hopkins breached this agreement with Meyer when he surreptitiously sold the Property in December 2022 without notice to Meyer. Hopkins did not inform Meyer that he was placing the Property on the market to be sold. *Id.* Hopkins did not offer Meyer an opportunity to purchase his 50% equitable interest in the property. *Id.* Hopkins did not attempt to work out the issues surrounding the Property as he agreed to do in 2018. *Id.* Accordingly, Hopkins breached the agreement with Meyer in connection with the disposition of the Property and her right of first refusal and summary judgment must be denied.

Conclusion

24. Defendant Hopkins has failed to conclusively negate at least one element on each of Plaintiff Meyer's causes of action, in fact he did not even address two of the causes of action negligent misrepresentation and unjust enrichment. Accordingly, Defendant's Motion for Traditional Summary Judgment must fail.

Respectfully submitted,

COLVARD LAW GROUP, PC

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ATTORNEY FOR PLAINTIFF

SHONDA MEYER

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of July 2023, a true and correct copy of the above foregoing instrument was served upon all counsel of record in accordance with the Texas Rules of Civil Procedure, Rule 21a.

/s/ Todd H. Colvard

Todd H. Colvard

Unofficial Copy Office of Marilyn Burgess District Clerk