SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARBARA JAFFE **PART** IAS MOTION 12EFM
Justice

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INDEX NO. 160797/2017

C. BAXTER,

MOTION DATE

Plaintiff,

MOTION SEQ. NO. 001

- v -

SANDRA CAMPOS, **DECISION AND ORDER**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8 - 51
were read on this motion for summary judgment.

By notice of motion, plaintiff moves pursuant to CPLR 3212 for an order granting him summary judgment on his complaint, and pursuant to CPLR 3211(a)(7) for an order dismissing defendant's counterclaims or, alternatively, granting him judgment on the counterclaims. He also seeks an order directing defendant to return immediately certain chattel, and awarding interest on their value and amount of their depreciation, if any, and awarding him compensatory and punitive damages based on defendant's fraud. Alternatively, he requests an award of damages in the amount of the value of the chattel at issue, or all monies, profits and gains that defendant obtained or will obtain in the future as a result of her unjust enrichment. Defendant opposes.

I. COMPLAINT (NYSCEF 11)

Beginning in 2006, plaintiff and defendant embarked on a romantic relationship, splitting their time between their respective homes in Connecticut and Manhattan. Possessions were moved between the two residences for their mutual use and enjoyment, including artwork and a Steinway piano, without transfer in title. Defendant purchased a 2008 Lexus, which he registered in his name and for which he paid taxes, and he permitted plaintiff to drive it.

In or about November 2013, the parties became engaged. Together they shopped for a ring and plaintiff purchased one for defendant. In or around January 2014, he presented her with the ring which was appraised at $24,000. In February 2014, defendant sent plaintiff a Valentine's Day card containing a picture of her displaying a diamond ring on her left ring finger, with the pre-printed language on the card providing "Today Tomorrow Always." (NYSCEF 21). Plaintiff also added defendant to his health insurance plan and listed her as his domestic partner. By email dated March 5, 2014, defendant told plaintiff in the course of discussing their future plans:

> You have asked me numerous times in the past couple of weeks whether or not I see myself being able to move from NYC. Yes, I can. You have asked me numerous times whether or not I see being able to pull kids out of schools in a year. Yes, I can. You have asked me if I want to marry you and be in the same home and city. Yes, I do.

(NYSCEF 23).

During 2014 and 2015, the parties' relationship continued with periods of conflict and reconciliation. In December 2015, in the course of discussing the continuation of their relationship, the parties agreed that title to the Lexus would be transferred to defendant with the proviso that she transfer it back should their relationship end. Defendant also agreed to return the engagement ring in the event a marriage did not ensue.

Between December 2015 and April 2016, the parties continued discussing their relationship. Then, in July 2016, defendant asked plaintiff about the return of her personal property stored at plaintiff's house. Plaintiff agreed to permit her to retrieve it whenever she wished. While plaintiff preferred to continue the relationship, he told defendant that if she ended it, she would have to return his property, including the piano, engagement ring, and artwork, and resolve the ownership of the Lexus.

In October 2016, defendant told plaintiff that she needed to move her furniture and artwork from his home and inquired into the cost of the piano with a view toward purchasing it from him. Plaintiff gave her a copy of the sales receipt for it.

In November 2016, plaintiff informed defendant that he had arranged for movers to return defendant's belongings to her and asked that she return his piano and artwork at the same time. Defendant agreed to return the artwork and told plaintiff that she would obtain an appraisal for the piano. In December 2016, plaintiff returned defendant's property to her.

In July 2017, at defendant's suggestion, the parties spent a week of vacation together with their respective children. They argued during the vacation but did not resolve whether the relationship would continue. Without telling plaintiff, defendant had traded in the Lexus for a new, more expensive model.

By September 2017, plaintiff realized that defendant was not genuinely interested in continuing the relationship. On October 20, 2017, he formally asked her to return his property, and offered to sell the piano to her for $8,000. Defendant counter-offered to buy it for $4,000, which plaintiff rejected and he told her to return the piano and the rest of his property, preferably before Thanksgiving. Defendant replied that as the piano was a gift, plaintiff should sell it to her for $4,000. She also asserted that plaintiff had promised certain art to her daughter as a birthday present. A few weeks later, defendant returned plaintiff's artwork to her, but to date has refused to return the engagement ring, the piano, and the car.

Plaintiff asserts claims against defendant for replevin related to the piano and engagement ring, for conversion of the piano, ring, and car, for unjust enrichment based on her retention of these chattels, and for fraudulent inducement related to the car in that defendant materially misrepresented her intent to continue her relationship with plaintiff, that she did not intend to

continue it, and that absent the misrepresentation, on which plaintiff justifiably relied, he would not have transferred title to the car to her. Plaintiff also seeks an injunction prohibiting defendant from selling or otherwise disposing of the piano and ring.

II. ANSWER AND COUNTERCLAIMS (NYSCEF 5)

Defendant denies plaintiff's allegations and asserts that plaintiff gifted the car to her, and upon the conclusion of their relationship, the car was transferred to defendant's name for her to assume responsibility for it. She also denies that the ring was an engagement ring or that the parties were ever engaged, or that she was required to return any of the property given to her by plaintiff as gifts. In defense to the fraudulent inducement claim, defendant states that the parties' relationship was over by the time plaintiff transferred to her title to the car.

In support of her counterclaims, plaintiff alleges that: (1) throughout the parties' relationship, plaintiff regularly gave her and her children gifts; (2) the parties jointly selected for purchase various artwork and it was their intention that it be jointly owned even though it would be located in plaintiff's home; (3) in October 2015, defendant ended the parties' relationship and there had been no reconciliation; (4) the parties did not vacation together in July 2017; and (5) plaintiff has repeatedly and unsuccessfully attempted to restore the relationship. She asserts a counterclaim for a constructive trust given the joint purchase of the artwork, intent that it be mutually owned and enjoyed, and her demonstration that the parties intended joint ownership based on plaintiff's statements and conduct, on which she reasonably relied. She thus spent time, money, and effort in selecting the artwork. Moreover, she maintains that plaintiff thereafter took custody of the artwork under circumstances creating a fiduciary relationship, and it is just and equitable that a constructive trust be imposed for 50 percent of the artwork's value. Defendantd also contends that plaintiff converted their joint property, including artwork and real property.

III. MOTION FOR SUMMARY JUDGMENT

A. Ring

The parties dispute whether the ring was given in contemplation of marriage. Plaintiff relies on defendant's February 2014 Valentine Day card and her March 5, 2014 email as evidence that she had agreed to marry him, and that, therefore, the ring was given in contemplation of marriage.

Defendant relies on an email sent March 6, 2014 in which plaintiff summarizes a conversation had with defendant the night before during which they discussed retaining someone to, among other things, help them decide if they should get back together. (NYSCEF 24). In an email dated December 10, 2015, plaintiff states that the parties "need to move forward together getting engaged and getting married. Or need to part permanently and completely unwind any remaining items between [them] and have permanent closure." (NYSCEF 46). In the same email chain, plaintiff writes "if we choose to move forward together, we would get engaged. Immediately, like before holidays, I have a special ring which I've had for some time now (actually think it is in your home) and a special place I've had in mind forever. Just wanted to let you know concrete timing given some of our past interactions." (*Id.*). Defendant argues that the ring is unrelated to an engagement (NYSCEF 44), and that the appraisal does not reflect that it is an engagement ring (NYSCEF 20).

Pursuant to New York Civil Rights Law § 80-b, a party may recover chattel, money or securities, or the value thereof, if the sole consideration for their transfer was a contemplated marriage which did not occur.

In her March 5, 2014 email, defendant expressed an agreement to marry plaintiff and before that, in her 2014 Valentine Day card to him, she prominently displayed a diamond ring on

her left ring finger. This evidence constitutes, *prima* facie, that the ring was given to her in contemplation of marriage. That property is given in contemplation of marriage does not mean that the marriage will occur. Here, as in many relationships, parties who at one time contemplate marriage may change their minds. Whether defendant's eventual reservations indicate that she had never contemplated marriage, notwithstanding the aforementioned Valentine Day card and March 5, 2014 email, is a jury question. (*See Glachman v Perlen*, 159 AD2d 553 [2d Dept 1990] [although plaintiff may seek to recover gifts gave in contemplation of marriage, parties' affidavits regarding circumstances under which gifts were given preclude summary judgment]).

B. Piano

While it is undisputed that plaintiff purchased the piano, it had always been at defendant's home, and while defendant offered to buy it from plaintiff, she also contemporaneously notified plaintiff that she believed the piano had been a gift to her and her children. (NYSCEF 35, 36). Consequently, defendant's offer to purchase the piano constitutes *prima facie* evidence that it had not been a gift, and her assertion that it had been a gift raises an issue of fact for trial. (*See e.g.*, *Meseonznik v Govorenkov*, 36 Misc3d 1240[A], 2012 NY Slip Op 51763[U] [Sup Ct, Kings County 2012] [summary judgment denied as plaintiff's conversion claim was dependent on his version of facts which was disputed by defendant]; *Lichtman v Gibbons*, 2007 WL 2176232 [Sup Ct, New York County 2007] [triable issues existed as to whether property was given to defendant during parties' relationship or obtained through conversion]).

C. Car

Similarly, the facts underlying defendant's alleged conversion of the car and/or fraudulent misrepresentations concerning it are disputed, and depend on the parties' intentions

and credibility, which may not be resolved on summary judgment. (*See e.g., Revell v Guido*, 124 AD3d 1006 [3d Dept 2015] [defendant's explanations for conduct and assertion that representations were not misrepresentations presented factual and credibility issues for jury to resolve]).

D. Dismissal of counterclaims

As plaintiff's motion to dismiss defendant's counterclaims is based on his assertion that defendant cannot prove them, it is insufficient to meet his *prima facie* burden. (*Hairston v Liberty Behavioral Mgt. Corp.*, 157 AD3d 404 [1st Dept 2018], *lv dismissed* 31 NY3d 1036 [defendant's reliance on perceived gaps in plaintiff's proof insufficient to establish entitlement to summary judgment]).

E. Injunction

As plaintiff does not demonstrate his *prima facie* entitlement to summary judgment, he also fails to establish that he is likely to succeed on the merits of his claims and that, thus, an injunction is warranted. There is also no indication that defendant plans or is about to dispose of the property at issue here. (*See e.g., Nassau Regional Off Track Betting Corp. v Gloria R. Keily Revocable Trust*, 86 AD3d 597 [2d Dept 2011] [plaintiff failed to demonstrate by clear and convincing evidence that there was likelihood of success on merits and it would suffer irreparable harm if injunction not granted]).

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment is denied in its entirety; and it is further

ORDERED, that the parties appear for a preliminary conference on June 5, 2019 at 2:15 pm at 60 Centre Street, Room 341, New York, New York.

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3/7/2019
DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION		
	☐	GRANTED	☒ DENIED	☐	GRANTED IN PART	☐	OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐	REFERENCE