IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

PETER W. HUKKA,	:	
Plaintiff	:	
	:	
Vs.	:	**No. 12-0775**
	:	
SHELLY JAYE WEYHENMEYER,	:	
Defendant	:	

Cynthia S. Yurchak, Esquire — Counsel for Plaintiff
Nicholas J. Masington, Esquire — Counsel for Defendant

DECISION & VERDICT

Matika, J. – June , 2014

Plaintiff, Peter W. Hukka, (hereinafter "Hukka"), commenced the instant action against the Defendant, Shelley Jaye Weyhenmeyer, (hereinafter "Weyhenmeyer"), challenging the validity of a deed and agreement of sale between the parties claiming there was a lack of delivery and lack of consideration of each document respectively. Accordingly, Hukka prays to the Court to set aside the deed and Agreement of Sale at issue in this matter. For the reasons stated within, the Court finds in favor of Weyhenmeyer and **denies** all relief requested by Hukka.

FINDINGS OF FACT

Based upon the testimony and evidence proffered at a non-jury trial on December 6, 2013, the Court makes the following findings: Hukka and Weyhenmeyer were involved in a romantic relationship where their union produced two children. During the course of

their relationship, and more specifically on October 8, 2003, Hukka and Weyhenmeyer jointly purchased a parcel of real estate, that being the subject property, located at 128 Lentz Trail, Jim Thorpe, Pennsylvania, (hereinafter "Lentz Trail Property"), for the sum of one hundred fifty-nine thousand, six hundred dollars ($159,600.00). In order to finance this purchase, the parties, Hukka and Weyhenmeyer, executed a mortgage in favor of Mauch Chunk Trust Company in the approximate amount of eighty-four thousand dollars ($84,000.00). Additionally, Weyhenmeyer contributed approximately ninety-nine thousand dollars ($99,000.00) of her own monies towards the purchase of this property and the subsequent repairs that were necessary. Upon finalizing the purchase of the Lentz Trail Property, the parties assumed residency in that property.

While the record is muddled as to the specifics, sometime in 2008 Hukka's and Weyhenmeyer's relationship started to deteriorate, so much so that the parties began the process of purchasing a separate residence in which Hukka would eventually reside. This real estate was situated at 105 Center Street, Jim Thorpe, Pennsylvania, (hereinafter "Center Street Property"). Initially, the agreement of sale for the Center Street Property bared both Hukka's and Weyhenmeyer's names as Weyhenmeyer was unsure if Hukka could obtain a mortgage on his own; however, Hukka's credit was adequate and accordingly, on September 23, 2008,

the parties executed an addendum to the original agreement of sale whereby Weyhenmeyer's name was removed.

Consequently, in September of 2008 monies were moved from various bank accounts and utilized as the down payment for the purchase of the Center Street Property. A ten thousand dollar down payment was the aggregate of two checks authored in the amount of five thousand each. The first check, tendered from the parties' joint checking account is dated September 7, 2008, and made out to Dugan Real Estate. Weyhenmeyer asserted that although the check was tendered from the parties' joint account, the funds for the check originated from her personal account. Evidence of such was proffered from statements from the joint account and Weyhenmeyer's personal account. The statement from Weyhenmeyer's personal account illustrates that a withdrawal of seven thousand six hundred fifty dollars ($7,650.00) occurred on September 8, 2008. On the same day, seven thousand five hundred dollars ($7,500.00) was deposited into the joint account. (Defendant's Exhibit 1).[1]

The second check, a treasurer's check, is dated September 24, 2008 and also made payable to Dugan Realty. Weyhenmeyer stated that the monies for this check came from her personal account as

[1] Another credit was also made on this same day into the joint account. This deposit was for two thousand five hundred dollars ($2,500.00). (Defendant's Exhibit 1). The funds for this deposit originated from Hukka's personal account. (Plaintiff's Exhibit 15).

well, with such declaration supported by the statement from her personal account. (Defendant's Exhibit 2).[2]

While the evidence is foggy as to when the actual sale of the Center Street Property occurred, what is clear is that the property was eventually purchased, and title to the property was placed in Hukka's name alone.

At around the same time the Center Street property was being purchased, the parties' relationship continued to dissolve as depicted by an e-mail from Weyhenmeyer to Hukka, dated September 8, 2008. This e-mail reads: "I [Weyhenmeyer] want to separate our assets. I don't want to live in fear that I will be sued for your deeds . . . . I am through . . . ." (Plaintiff's Exhibit 14). Notwithstanding the fact that the testimony offered to the Court was vague as to the nature of Hukka's and Weyhenmeyer's relationship and living arraignments from the date Hukka acquired the Center Street Property to the parties' ultimate separation, the Court was able to glean that there were periods of time when the parties attempted to mend their relationship and may have periodically resided together at the Lentz Trail Property. Ultimately though, the relationship ended in October of 2009, and Hukka eventually made the Center Street Property his permanent abode.

[2] Defendant's Exhibit 2 illustrates that Weyhenmeyer's bank charged her with a withdrawal of five thousand dollars on September 25, 2008.

Prior to the parties' abortion of their relationship and Hukka inhabiting the Center Street Property permanently, Weyhenmeyer approached him in the earlier part of 2009 in an attempt to divide the jointly held assets. Consequently, negotiations began which spanned several months and eventually culminated in the execution of two documents, one of which was titled: "Agreement RE: Division of Property," (hereinafter "Agreement of Sale"), and the other document being a deed to the Lentz Trail Property.[3]

The date of execution reflected on these documents is June 11, 2009. Although Weyhenmeyer's testimony as to the execution of the deed and Agreement of Sale is nebulous, and Hukka failed to even address the event of executing the two documents, the Court is able to determine that Weyhenmeyer took both the Agreement of Sale and deed to Attorney Kim Roberti's office for finalization. Thereafter, Weyhenmeyer presented both documents to Hukka who read the contents of them and acknowledged to her that the documents conformed to what they had agreed. Upon such acknowledgement, both Weyhenmeyer and Hukka went to the John Yurconic Agency in Lehighton to have the documents notarized. At the office of the notary and in her presence, Hukka and Weyhenmeyer signed the deed

[3] As avowed to by Weyhenmeyer, her rationale for executing these documents was Hukka's questionable conduct and the effect his conduct could have as it relates to her possessory interest in the Lentz Trail Property. Moreover, this alleged conduct was reprehensible enough for her to conclude that her relationship with Hukka must be no more, despite her previous attempts to revive the relationship.

and Agreement of Sale, and these documents were then notarized by Brenda L. Beck.

In the deed to Lentz Trail Property that Hukka executed, he conveyed all of his interest in the property to Weyhenmeyer. (Plaintiff's Exhibit 3). This conveyance was part of the parties' overall division of property as set forth in the Agreement of Sale. (Plaintiff's Exhibit 2).

In the Agreement of Sale, it recites that in consideration of ten thousand dollars ($10,000.00), and other valuable consideration, Hukka shall transfer his interest in the Lentz Trail Property to Weyhenmeyer. (Plaintiff's Exhibit 2). Additionally, the Agreement of Sale provides for the transfer of titles to certain personal vehicles owned by the parties. (*Id.*). However, as admitted to, Weyhenmeyer failed to tender the sum of ten thousand dollars to Hukka on June 11, 2009, and in fact, Weyhenmeyer never made said payment during the calendar year of 2009.[4]

Although both the Agreement of Sale and the Lentz Trail Property deed were signed and notarized, as stated above, Weyhenmeyer still desired to mend her relationship with Hukka; such was evident by various e-mails exchanged between the parties. (Plaintiff's Exhibit 8). Nevertheless, by the end of August, early

[4] Hukka did receive title to the vehicle identified in the Agreement of Sale, along with his personal belongings that were located at the Lentz Trail Property.

September of 2009, the obstacles in their relationship became too immeasurable and thus Weyhenmeyer sought to end the relationship. Despite writing to Hukka in an e-mail shortly after the execution of the Lentz Trail Property deed that: "[t]hat piece of paper will be stowed away. Hopefully FORGOTTEN[,]" Weyhenmeyer nonetheless recorded the deed on October 9, 2009. (Plaintiff's Exhibits 3, 7). Weyhenmeyer attested that at no time prior did she indicate to Hukka that she would **never** record the deed; nor were there any discussions between herself and Hukka in regards to conveying Hukka's interest back to him or destroying the deed itself.[5]

Subsequent to their separation, Hukka instituted this current action. After addressing various summary judgment motions filed by both sides, and the Court dismissing counts I and II of the complaint as being barred by the statute of limitations, there remains four causes of action in Hukka's legal pursuit against Weyhenmeyer. Plaintiff prays to this Court to set aside the deed to the Lentz Trail Property and declare the Agreement of Sale void on the basis that both documents lack consideration and were not delivered with the requisite intent necessary to be legally enforceable.

After considering each parties' proposed findings of fact and conclusions of law, the issues presented to the Court are now ripe

[5] It is noted Hukka handed over the two documents without any restriction as what was to be done with said documents, and most notably, the deed was silent as to whether it should be held in escrow or recorded.

for disposition and the Court will address, for clarity purposes, each cause of action.

CONCLUSIONS OF LAW

I. Deed to Lentz Trail Property Void for Lack of Delivery

Hukka's primary contention that the Court should set aside the deed to the Lentz Trail Property is that the deed was never intended to be delivered and thus rendered legally inoperative. Hukka buttresses his position by claiming that the email Weyhenmeyer sent him stating: "[t]hat piece of paper will be stowed away. Hopefully FORGOTTEN," is dispositive of the issue that neither he nor Weyhenmeyer intended the deed to be effective upon delivery. The Court, however, holds differently.

Delivery of a deed is necessary to render it legally operative. *Atiyeh v. Bear*, 690 A.2d 1245, 1251 (Pa. Super. Ct. 1997). Consequently, a conveyance of real estate by virtue of a deed will be set aside where the deed is not delivered. *Wagner v. Wagner*, 353 A.2d 819, 824 (Pa. 1976). "Whether there has been delivery of a deed depends on the intention of the grantor as shown by his words and action and by circumstances surrounding the transaction." *DiMaio v. Musso*, 762 A.2d 363, 365 (Pa. Super. Ct. 2000). (citations omitted).

Where a deed is acknowledged before a notary public as having been signed, sealed, and delivered, and physical possession of the deed by the grantee is shown, a presumption of an absolute and

unqualified delivery arises, unless by act, expression, or writing an indication to qualify the delivery is indicated. *Leiser v. Hartel*, 174 A. 106, 107 (Pa. 1934). The presumption can be rebutted with evidence that in fact no delivery was intended. *Fiore v. Fiore*, 174 A.2d 858, 859 (Pa. 1961).

In the case *sub judice*, the deed to the Lentz Trail Property, by which Hukka conveyed his interest to Weyhenmeyer, was signed by both parties, under seal, and duly acknowledged by a notary public, namely Brenda L. Beck of John Yurconic Agency. Moreover, after the deed was executed by both parties, it was placed in a safe at Weyhenmeyer's home, that being the Lentz Trail Property. Thus the Court concludes that Weyhenmeyer, the grantee, had physical possession of the deed.[6] Consequently, the Court finds Weyhenmeyer

[6] Hukka, through cross-examination of Weyhenmeyer, tried to assert that Hukka also resided at the Lentz Trail Property subsequent to the execution of the deed; thus, he had access to the safe and more notably the deed. Accordingly, Hukka argues that since Weyhenmeyer did not have exclusive possession of the deed, there was no delivery. Notwithstanding such argument, such exclusivity is not necessary to have a valid delivery of a deed. In *Cummings v. Glass*, 29 A. 848 (Pa. 1894), the Pennsylvania Supreme Court affirmed a jury's verdict that found there was a valid delivery of the deed in question. In *Cummings*, the deed at issue was found in a safe where the grantor kept certain papers, after the grantor's death. The safe was located at the grantee's residence where not only the grantee resided, but her family as well. Additionally, the safe was used by both the grantor and grantee, with both individuals having access to the safe. As the Cummings Court stated, "[grantee] had at all times free and unobstructed access to the safe in which the deed was ultimately found." *Id.* at 849.

The Cummings Court, in acknowledging that the grantor did not have exclusive possession of the deed, held, "[w]e cannot conceive that there could be any higher or stronger evidence of an intent on the part of [grantor] to convey this land to [grantee] than the fact that [grantor] caused to be prepared, and duly and deliberately executed, . . . a solemn deed for the same, which he duly acknowledged before a proper officer." *Id.* at 851. The Court further declared that but not for finding the deed in grantor's safe, "[t]here would be nothing to question the full legal efficacy of [the] deed . . . ." *Id.* Still, the Cummings Court rationalized, in affirming the jury's verdict, that the safe at

has established her necessary rebuttable presumption that the deed was delivered.

Hukka tries to defeat the presumption of delivery by asserting that any delivery of the deed he might have made was conditional and only made in an effort to avoid the possibility of being sued for certain actions he was alleged to have committed against another woman. Hukka offers an opinion authored by the Honorable Richard Webb in *Kusnir v. Nezowy*, 98-1416 (C.P. Carbon Cty. 2001) as validation for his position that the delivery of the deed he made to Weyhenmeyer was conditional, and that condition had not yet occurred triggering the operative nature of the deed. The Court nonetheless finds Hukka's reliance upon *Kusnir* misplaced.

The Court is cognizant that conditional delivery, or a delivery in escrow, is not a delivery to the grantee. *Stephenson v. Butts*, 142 A.2d 319, 321 (Pa. Super. Ct. 1958). However, the Court opines that there was no condition placed on the Lentz Trail Property deed as to render its delivery effective at a later point in time based upon the occurrence, or non-occurrence of an event.

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no time prior to grantor's death was in exclusive control of the grantor as the grantee had access to the safe and used said safe; thus, the Court concluded that the depositing of the deed in a safe located at grantee's home was entirely consistent with grantee's possession of the deed. Id.

Similarly, the facts presented to this Court establish that the deed at issue was placed in a safe located at Weyhenmeyer's residence. Further, Weyhenmeyer, like the grantee in Cummings, had access to this safe. The mere fact that Hukka occasionally spent a night at Weyhenmeyer's residence, and may have had access to the safe is of none significance. Therefore, the Court finds that Weyhenmeyer has set forth a prima facie case that the Lentz Trail Property deed was delivered to her.

If the Court were to accept Hukka's testimony as credible, which it does not,[7] Hukka only provided the Court with a reason as to why he transferred his interest in the Lentz Trail Property. Hukka's specific testimony as to why he conveyed his interest was the fear of losing the home to potential creditors; this is a reason for transferring one's interest, not a condition of delivery.[8]

Additionally, the Court discerns no conditional language in the deed, nor did Weyhenmeyer or Hukka testify as to a specific condition that would trigger the effectiveness of the deed. *See*, *Teacher v. Kijurina*, 76 A.2d 197 (Pa. 1950).

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[7] The Court does not find Hukka credible based upon him being impeached by a prior inconsistent statement he made at a previous hearing before the Honorable President Judge Roger Nanovic. At that hearing where the issue was whether the parties were common law husband and wife, Hukka, when questioned about the Lentz Trail Property deed did not indicate that the "possibility of being sued and potential creditors" was the reason why he transferred his interest in the subject property. Rather, he simply remarked that he wanted to make his "marriage" with Weyhenmeyer work, and thus he executed the deed. Now before this Court, Hukka testified to something completely different than his original reason.

Additionally, Hukka claimed that he did not realize that his execution of the Lentz Trail Property deed would divest his ownership in the property. The Court finds such statement to be entertaining at best since the deed specifically states: "grantors [Hukka and Weyhenmeyer] do hereby grant, sell and convey to the said grantee [Weyhenmeyer], her heirs and assigns." Plaintiff's Exhibit 3. Moreover, this was not Hukka's first time executing a deed to a property. *See*, Plaintiff's Exhibit 4.

[8] Weyhenmeyer herself reinforced this reason to transfer the property into her name only as evidenced by her testimony and actions. She avowed that she was genuinely concerned about potential litigation against Hukka and the affect this might have on their jointly held assets, especially in the light of protecting their children. Weyhenmeyer's testimony was bolstered by Plaintiff's exhibit 14 which is an email from her to Hukka stating she no longer wants to live in fear for his, Hukka's, deeds. *See*, Plaintiff's Exhibit 14.

Moreover, even if the Court were to accept Hukka's reason as to why he transferred his interest in the property as a condition, such condition would be legally void and unenforceable. Presumably, the "condition" that would trigger the legal effectiveness of the deed would be Hukka being sued for his alleged misdeeds and a judgment being entered against him. First and foremost, such transfer would create a fraudulent conveyance, and thus be void, especially considering Hukka stating that his subjective intent was to never transfer his interest in the property. *See*, 12 Pa.C.S.A. § 5101 *et seq.*; *Koffman v. Smith*, 682 A.2d 1282 (Pa. Super. Ct. 1996).

Second, unlike *Kusnir* where the deed was delivered upon the specific condition that if grantor shall not survive her travels the deed will then vest grantor's interest in the property to grantee, the deed before this Court has no specific definite condition. The "condition" claimed by Hukka of conveying his interest to avoid judgment creditors is not predicated upon the occurrence of, or non-occurrence of a single event. Rather, the alleged condition is an ongoing possibility that in reality could still be waiting to occur as of the date of this opinion.

Further, if the parties remained together, there is no restriction suggesting that the condition was for past conduct only. Thus, the "condition" could continue *ad infinitum*. This Court is unwilling to accept this alleged "condition" as a

condition necessary to render the deed inoperative as its occurrence is unknown and ongoing.

Lastly, Hukka, in his challenge that the parties did not intend the Lentz Trail Property deed to be effective upon delivery, directs the Court's attention to the e-mail where Weyhenmeyer expresses to Hukka that hopefully the deed will be stowed away forever. Additionally, Hukka points to the fact that since Weyhenmeyer did not record the deed immediately upon receiving it, this is clear and convincing evidence necessary to establish that there was no intent for the deed to be operative upon its delivery.

Notwithstanding Hukka's placement of importance that recording, or in this case not recording, has as it relates to delivery, such contention vastly misconstrues the purpose of recordation as it relates to deeds. The purpose of recording a deed is to give notice to the world of a conveyance of, or encumbrance on, real estate. *Reiter v. Kille*, 143 F. Supp. 590, 593 (E.D. Pa. 1956). "[R]ecording a deed is not essential to establish its validity; title to real estate may be passed by delivery of the deed without recording it." *Sovereign Bank v. Harper*, 674 A.2d 1085, 1092 (Pa. Super. Ct. 1996); *Graham v. Lyons*, 546 A.2d 1129, 1130 (Pa. Super. Ct. 1988). Moreover, the recording of the deed creates "[t]he strongest evidence of delivery." *Lewis v. Merryman*, 114 A. 655, 656 (Pa. 1921). Consequently, the Court

places zero importance on the fact that Weyhenmeyer did not record the deed shortly after receipt of it.

The *Merryman* Court stated that "the burden of overcoming the presumption resulting [from recording] was on [the grantor], who . . . must do so by clear, positive proof that no delivery was intended, and that [the grantee] was not authorized to record the instrument." *Id.* Here, the e-mail sent by Weyhenmeyer, and offered by Hukka, does not overcome the burden necessary to defeat the presumption of delivery, especially in considering that the deed was recorded. The e-mail does not establish either parties' intent as to the operative nature of the deed, and more importantly, the e-mail only expresses the grantee's, Weyhenmeyer, intent, where the focus of the Court's is, as it relates to delivery of a deed, upon the objective actions and expressions of the grantor, which is Hukka. The mere fact that Hukka might have subjectively not intended the deed to be effective is irrelevant particularly when compared to his objective manifestations of assent to transfer the deed to Weyhenmeyer. *See*, *DiMaio*, 762 A.2d at 365.

Accordingly, the Court must deny Hukka's request to set aside the deed based upon a lack of delivery.

II. Agreement of Sale Void for Lack of Delivery

Additionally, Hukka argues that the Agreement of Sale is void based on a lack of delivery. Likewise with his argument that the deed was void and should be set aside due to a lack of delivery, under this theory Hukka claims there was never any intent that the agreement was be legally effective either. Despite combining two legal principles, intent and delivery, as one element for the formation of a contract, such principles are not one and the same and thus the Court will address each separately.

Hukka titles this cause of action as: "Agreement Void – Lack of Delivery." For a contract to be enforceable all the essential elements must be present. Thus, the three elements of a valid contract are: 1) whether both parties manifested an intent to be bound by the agreement; 2) whether the terms of the agreement are sufficiently definite to be enforced; and 3) whether there was consideration. *Johnston the Florist, Inc. v. TEDCO Construction Corp.*, 657 A.2d 511, 516 (Pa. Super. Ct. 1995); *see also*, *Stelmack v. Glen Alden Coal Co.*, 14 A.2d 127, 128 (Pa. 1940)(The elemental aspects necessary to give rise to an enforceable contract are offer, acceptance, consideration, and mutual meetings of the minds.)

Before delving into these three requirements, what is noticeably not required to form a valid contract is delivery. In fact, the Supreme Court of this Commonwealth has stated that delivery of an agreement or writing for the sale of real estate is

not necessary. *Allen v. Mowry*, 122 A. 168, 169 (Pa. 1923)("We deem unnecessary an elaborate discussion of the question whether delivery of [a] writing for the sale of real estate is necessary under the statute of frauds. That question has been before this court in a number of cases, and we have uniformly held an actual delivery is not required.") Accordingly, to the extent Hukka contends there was no delivery of the agreement, this Court finds such argument irrelevant to the determination of whether the Agreement of Sale is valid and enforceable.

The Court feels it is necessary, prior to addressing what it believes is Hukka's genuine issue raised in this count, that being the intent to be legally bound to the contract, to touch upon the second and third elements of an enforceable contract. The second requirement of a valid contract is that the terms of the agreement are definite and sufficient to be enforceable. Hukka does not argue to the contrary and accordingly the Court finds the terms of the Agreement of Sale definite.

As to the third requirement of a valid contract that being adequate consideration, for the reasons stated in a subsequent section of this opinion the Court finds both parties have provided adequate consideration.

The first element of an enforceable contract is that all parties to the contract must manifest their respective intent to be legally bound by the terms of the contract. Hukka asserts there

was no "meeting of the minds" in respect to making the agreement legally effective; however, "[a] true and actual meeting of the minds is not necessary to form a contract." *Ingrassia Construction Co., Inc. v. Walsh*, 486 A.2d 478, 482 (Pa. Super. Ct. 1984)(citing 1 S. Williston, *Williston on Contracts* §§ 66, 94 (3d ed. 1957)). Thus, the courts need to examine the parties' objective manifestation of intent to determine whether the parties intended to enter into a contractual obligation. Accordingly, it is the parties' objective manifestation of intent that will determine whether a contract has in fact been formed. *Daniels v. Bethlehem Mines Corp.*, 137 A.2d 304, 308 (Pa. 1958); *Paull v. Pivar*, 53 A.2d 826, 828 (Pa. Super. Ct. 1947).

In examining the outward conduct of the parties, the Court finds both Hukka and Weyhenmeyer manifested their respective intent to be bound by the terms of the Agreement of Sale. The drafting and execution of the agreement took several months and many drafts. At no point prior to the execution of the agreement did either party express his or her desire to not have the Agreement of Sale legally enforceable upon its execution.

Moreover, in trying to ascertain the intent of the parties the Court can scrutinize the agreement itself. *See*, *Melton v. Melton*, 831 A.2d 646 (Pa. Super. Ct. 2003). In surveying the Agreement of Sale, any language to the effect that the agreement is not legally enforceable until a later date in time is noticeably

absent. Further, the last sentence of the agreement, located directly above both parties' signatures reads: "INTENDING to be legally bound, the parties execute this Agreement for the purpose set forth therein." Plaintiff's Exhibit 2. The outward and expressed actions and words of Hukka and Weyhenmeyer leads this Court to conclude the both parties intended to be bound by the terms of the agreement.

Hukka's claim that neither him nor Weyhenmeyer intended for the agreement to be operative is derived from a certain e-mail Weyhenmeyer sent him. The e-mail states in relevant part, "That piece of paper will be stowed away. Hopefully FORGOTTEN." Plaintiff's Exhibit 7. Even if the Court were to accept that the piece of paper referred to in the e-mail is the Agreement of Sale and not the deed to Lentz Trail Property, the e-mail, which is authored post the execution of the agreement, does not establish that the parties, and more importantly Weyhenmeyer since she sent the e-mail, intended the agreement to be effective at a later date.

Accordingly, the Court finds that both parties expressed an intent to be legally bound to the Agreement of Sale and consequently, Hukka's relief to void the agreement on the grounds of lack of delivery is denied.

III. Deed to Lentz Trail Property Void for Lack of Consideration

Hukka raises the claim that the deed issued by him to Weyhenmeyer transferring all of his interest in the Lentz Trail

Property is void on the basis that it lacked consideration. In setting forth this claim, Hukka contends he did not receive adequate consideration for transferring his interest in the property to Weyhenmeyer. Additionally, Hukka asserts that Weyhenmeyer failed to perform her obligation in tendering to him ten thousand dollars as agreed upon for his interest in the subject property. Moreover, the ten thousand dollars Weyhenmeyer claims to have tendered to Hukka constitutes past consideration. Consequently, Hukka prays to this Court to void the deed at issue.[9]

Briefly, as further discussed in the following section, consideration is a performance or return promise that is bargained for. *Stelmack v. Glen Alden Coal Co.*, 14 A.2d 127 (Pa. 1940). The general principle is that a conveyance will not be invalidated for partial or total failure of a party to comply with the agreement based upon the refusal to pay the sum agreed upon. *Maguire v. Wheeler*, 150 A. 882, 884 (Pa. 1930)(citing *Krebs v. Stroub*, 9 A. 469 (Pa. 1887)). The rationale is simple: the non-breaching party has a remedy to recover on, that being the contract between the parties. *McCreary v. Edwards*, 172 A. 166, 169 (Pa. Super. Ct. 1934).

[9] In this count, titled: "Deed Void – Lack of Consideration," Hukka sets forth various averments that speak more to an argument to void the Agreement of Sale for lack of consideration. Since Hukka has likewise raised that cause of action in a subsequent count, the Court will address the merits, or lack thereof that the deed conveyed from Hukka to Weyhenmeyer should be void for lack of consideration as raised in this count.

However, as the Pennsylvania Supreme Court stated, "such lack of value is to be considered in connection with other circumstances in determining whether fraud was practiced." *Maguire*, 150 A. at 884; *see also Pusic v. Salak*, 104 A. 751 (Pa. 1918). "Mere promises to do something made at the time of the execution, and not statements of existing facts which are untrue, do not constitute fraud, though they are not subsequently complied with." *Humphrey v. Brown*, 139 A. 606, 608 (Pa. 1927). "Inadequacy or want of consideration, although generally insufficient of themselves to invalidate a deed, will be credited with much respect by a court of equity where slight circumstances of fraud, oppression, or duress exist in order to invalidate a conveyance." *Teats v. Anderson*, 58 A.2d 31, 34 (Pa. 1946). However, "[n]othing short of evidence precise, clear, and indubitable can be allowed to overturn a written instrument." *Spritzer v. Pennsylvania R. Co.*, 75 A. 256, 259 (Pa. 1910).

At the non-jury trial, the testimony proffered by Hukka was devoid of any facts, or even allegations, that Weyhenmeyer frequently induced him into conveying his interest in the subject property or that he was under duress at the time he executed the deed.[10] Despite the Court overruling Weyhenmeyer's counsel

[10] The Court acknowledges that on November 26, 2012, Weyhenmeyer's summary judgment motion to counts one and two of the complaint was granted. Both counts derived from the claim that Weyhenmeyer fraudulently induced Hukka into executing the deed and Agreement of Sale respectively. Notwithstanding this Court's order dismissing both counts based upon the applicable statute of

objecting to testimony being offered as to the intent of Hukka in executing the deed to Lentz Trail Property, and more specifically why Weyhenmeyer told him he must execute the deed, Hukka's rendition of the purported events in question are left wanting insofar as proving that he was fraudulently induced or under duress at the time he executed the deed. A written instrument, such as a deed, is presumed valid except upon convincing testimony that the execution of such document was tainted with fraud, either actual or constructive. *Weir by Gasper v. Estate of Ciao*, 556 A.2d 819, 824 (Pa. 1989). The record is vacant as to any facts that would establish Weyhenmeyer falsely misrepresented a material fact to Hukka, and Hukka relied upon such fact to his detriment. *See*, *Eigen v. Textron Lycoming Reciprocating Engine Division*, 874 A.2d 1179 (Pa. Super. Ct. 2005). Thus, he has failed to present the Court with the requisite evidence that foul play, in the form of fraud, was committed by Weyhenmeyer.

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limitation, the order did not prohibit Hukka from presenting testimony and evidence that depicts fraud as it pertains to lack of consideration and its relationship to the issuance of the deed to Lentz Trail Property. "The purpose of any statute of limitation is to expedite litigation and thus discourage delay and the presentation of stale claims which may greatly prejudice the defense of such claims." *Ins. Co. of North America v. Carnahan*, 284 A.2d 728, 729 (Pa. 1971)(Emphasis by the Court.)

Accordingly, Hukka was within his purview to present testimony of fraudulent conduct on the part of Weyhenmeyer or facts to support the allegation he was under duress while executing the deed to Lentz Trail Property so long as such testimony was being offered for the purpose of establishing lack of consideration of the deed and not to prove a cause of action based upon fraud in the inducement of the deed.

Further, Hukka's testimony lacked facts that would support the conclusion that he was under duress at the time he executed the deed. Weyhenmeyer proclaimed that she, Hukka, and Attorney Kim Roberti convened several times leading up to the preparation and execution of the deed and Agreement of Sale. Moreover, the division of joint assets, which included the Lentz Trail Property, and the drafting of the necessary documents took several months.[11]

Consequently, and as a result thereof, the Court denies Hukka's request to void the deed to the Lentz Trail Property on the grounds of lack of delivery.

IV. Agreement of Sale is Void for Lack of Consideration

Hukka's last cause of action in seeking to set aside the deed to Lentz Trail Property is grounded upon the legal argument that the Agreement of Sale is void due to lack of consideration. In proffering such argument, Hukka raises two consideration

[11] The Court notes that undue influence based upon a confidential relationship can allow a Court in equity to set aside a deed; however, a confidential relationship between grantor and grantee, in and of itself, will not invalidate a deed. *Kalyvas v. Kalyvas*, 89 A.2d 819 (Pa. 1952). Accordingly, there is a presumption of undue influence where it is demonstrated that: 1) a person is in a confidential relationship with grantor; 2) received a substantial portion of grantor's property; and 3) grantor suffers from a weakened intellect. *Owens v. Mazzei*, 847 A.2d 700 (Pa. Super. Ct. 2004). Even if the Court were to accept that the first two elements apply, Hukka did not establish, and the Court does not believe he is of a weakened mind. Consequently, the Court does not find Weyhenmeyer exercised undue influence upon Hukka in causing him to execute the deed to Lentz Trail Property.

challenges: 1) lack of adequate consideration; and 2) past consideration.[12]

To form a valid contract, all the essential elements, including consideration must be present. *Commonwealth Department of Transportation v. First Pennsylvania Bank, N.A.*, 466 A.2d 753 (Pa. Cmwlth. Ct. 1983). Consideration is present where there is a bargained-for exchange by the parties to the contract. *Cobaugh v. Klick-Lewis, Inc.*, 561 A.2d 1248, 1250 (Pa. Super. Ct. 1989). The party claiming that the contract or agreement lacks consideration carries with him or her the burden of proof; thus,

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[12] Hukka, despite labeling this cause of action as a lack of consideration claim, avers that Weyhenmeyer never tendered the consideration as set forth in the Agreement of Sale and thus the agreement should be voided. The title and averments within this action are based upon two distinct causes of action: want of consideration and failure of consideration. There is a vast distinction between want and failure of consideration: want of consideration embraces transactions or instances where none was intended to pass, while failure of consideration implies that a valuable consideration, moving from promisor to promisee, was contemplated. *Necho Coal Co. v. Denise Coal Co.*, 128 A.2d 771, 772 (Pa. 1957). ("Failure of consideration occurs where the consideration bargained for does not pass, either in whole or in part, to the promisor."); *see also*, *Levine Estate*, 118 A.2d 741 (Pa. 1955).

For reasons stated within this section, Hukka is unsuccessful in his claim of proving lack of consideration as it relates to the Agreement of Sale. Rather, the more appropriate or viable cause of action would have been a failure of consideration or a breach of contract claim. Consideration fails, for example, when one party does not comply with a promise to leave permanent improvements intact, *M.N.C. Corp. v. Mount Lebanon Medical Center*, 509 A.2d 1256, 1259, when one party engaged in business in violation of a promise not to do so, *Shields v. Hoffman*, 204 A.2d 436, 438 (Pa. 1964), and when a husband whose wife has died is unable to fulfill her obligation to file a joint tax return, *Wolfsohn v. Solms*, 152 A.2d 237, 238 (Pa. 1959).

Similarly, Hukka contends, and Weyhenmeyer admits in part, that she, Weyhenmeyer, never tendered the agreed upon ten thousand dollars recited in the agreement. However, Hukka failed to plead an adequate breach of contract or failure of consideration claim, and thus this Court cannot consider such cause of action in its determination. *See*, *Steiner v. Markel*, 968 A.2d 1253 (Pa. 2009). Therefore, the Court can only consider Weyhenmeyer's alleged failure to tender the consideration set forth in the agreement as a superfluous fact that bears no importance as it relates to the agreement being void for a lack of consideration.

that party must "carry that burden up and over the formidable mountain of the presumption of consideration." *Selden v. Jackson*, 230 A.2d 197, 198 (Pa. 1967).

Adequate consideration is consideration that is equal or reasonably proportioned to the value of the consideration for which it is exchanged. *Estate of Beck*, 414 A.2d 65, 69 (Pa. 1980). Generally, the law and more specifically the courts will not enter into an inquiry as to the adequacy of consideration. *Thomas v. Thomas Flexible Coupling Co.*, 46 A.2d 212, 216 (Pa. 1946); *see also*, *Hillcrest Found v. McFeaters*, 2 A.2d 775, 778 (Pa. 1938)(citing Williston on Contracts (revised ed.), VOl. 1, sec. 115)("It is an elementary principle that the law will not enter into an inquiry as to the adequacy of the consideration.")) Accordingly, so long as the required bargained-for benefit is satisfied, the fact that the relative value or worth of the exchange is unequal is irrelevant. Thus, anything that fulfills the requirement of consideration will support a promise regardless of the comparative value of the consideration and the thing promised. *Corbert v. Oil City Fuel Supply Co.*, 21 Pa. Super. 80, 82 (1902)("The law pays no regard to the adequacy of consideration; if it is of some legal benefit to one party or injury to the other, though of the slightest kind, it is sufficient.")

Accordingly, this Court will not engage in such analysis to determine if Weyhenmeyer provided adequate consideration relative

to the consideration proffered by Hukka. The Court does find, however, that Weyhenmeyer gave sufficient consideration insofar as agreeing to pay ten thousand dollars, in conjunction with other things, for Hukka's interest in the Lentz Trail Property. Therefore, the Court finds Hukka's argument of lack of adequate consideration to be misguided as it relates to the law and the Court's function of evaluating consideration to a contract.

Hukka's second lack of consideration argument contends that Weyhenmeyer's consideration for the agreement, that being the ten thousand dollars, is actually past consideration and thus she has not furnished any valid consideration. Hukka's basis is that the ten thousand dollars she promised to pay him for his interest in the subject property is the same ten thousand dollars she tendered as the down payment for the Center Street Property. Accordingly, as Hukka argues, since those monies were furnished by Weyhenmeyer in 2008, she did not give any additional consideration for his interest in the Lentz Trail Property in 2009.

The Court does agree with Hukka that past consideration is not valid consideration to make the contract enforceable. The law of this Commonwealth is well established that past consideration, in effect, is no consideration at all because such consideration "confers no benefit on the promisor, and involves no detriment to

the promisee in respect of his promise." *Brightly v. McAleer*, 3 Pa. Super. 442, 445 (1897).[13]

Nonetheless, Hukka has failed to reach the summit of his burden of proof mountain in establishing that the consideration proffered by Weyhenmeyer was past consideration. The record is left wanting for evidence revealing that the ten thousand dollars Weyhenmeyer promised to pay Hukka for his interest in the Lentz Trail Property is the same ten thousand dollar down payment Weyhenmeyer tendered for the Center Street Property a year prior to the parties entering into the agreement. The only nexus this Court found between these two transactions is that they both center around a ten thousand dollar figure. Hukka's testimony made no reference that there was any connection between the two promises. If Hukka, or Weyhenmeyer for that matter, stated that the ten thousand dollars Weyhenmeyer was to pay Hukka for his interest in the subject property was in actuality the ten thousand dollars she previously tendered for the down payment on the property Hukka was residing in and thus he, Hukka, was not expecting to receive the ten thousand dollars recited in the Agreement of Sale, then Hukka might have established Weyhenmeyer's

[13] The textbook law school example of past consideration is: while walking down the street, Rebecca steps into a hole and sprains her ankle. John sees Rebecca fall and rushes to her aid. John then takes Rebecca to her apartment and nurses Rebecca back to health. Subsequently, in a show of gratitude, Rebecca promises to pay John five hundred dollars for the care he gave her. Thus, Rebecca's motivation for making such promise is the past benefit that John gave to her. In essence Rebecca's promise it is a moral obligation to compensate John.

consideration was past consideration. However, such was not the case and the Court is unwilling to make the case for Hukka on the mere coincidence that the two transactions in question revolve around the same monetary number.

Moreover, if Hukka truly believed in his past consideration cause of action, then consequently he should not have expected nor sought the ten thousand dollars recited in the Agreement of Sale. For past consideration to be a viable claim in this matter, Hukka needed to testify that the ten thousand dollars Weyhenmeyer was to tender to him as set forth in the agreement was already tendered in the form of the down payment to the Center Street Property. Thus, Weyhenmeyer would not be furnishing any additional consideration for Hukka's interest in the Lentz Trail Property since she has already tendered the ten thousand dollar down payment a year prior to the parties entering into the Agreement of Sale. Nonetheless, the crux of Hukka's past consideration claim is that he has not received the monies bargained-for as opposed to proving to the Court that such money was never expected to be received by him.[14]

Since neither Hukka nor Weyhenmeyer testified that Weyhenmeyer's ten thousand dollar promise to pay Hukka for his

[14] Alternatively stated, if Weyhenmeyer's consideration was truly past consideration, Hukka would have stated in open court that he conveyed his interest in the Lentz Trail Property based upon Weyhenmeyer's action of tendering the down payment for the Center Street Property; however, this did not occur.

interest in the Lentz Trail Property as set forth in the Agreement of Sale was in reality already paid in the form of a ten thousand dollar down payment for the home that Hukka currently resides in, Hukka, having the burden of proof, has not proven his past consideration claim. With only an inference and no facts to support the inference that the two transactions are connected, the Court is unwilling to void the Agreement of Sale based upon the legal principle of past consideration.

Accordingly, the Court enters the following order:

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA
CIVIL DIVISION

PETER W. HUKKA,	:	
Plaintiff	:	
	:	
Vs.	:	**No. 12-0775**
	:	
SHELLY JAYE WEYHENMEYER,	:	
Defendant	:	

Cynthia S. Yurchak, Esquire — Counsel for Plaintiff
Nicholas J. Masington, Esquire — Counsel for Defendant

VERDICT

AND NOW, to wit, this _____ day of June, 2014, this matter having come before the Court for a Non-Jury Trial, the Court finds **IN FAVOR** of Defendant, Shelly Jaye Weyhenmeyer, and **AGAINST** Plaintiff, Peter W. Hukka. Pursuant to Pa. R.C.P. No. 227.4, the Prothonotary shall, upon praecipe, enter judgment on the verdict if no motion for post-trial relief has been filed under Pa. R.C.P. No. 227.1 within ten (10) days after the filing of this verdict.

BY THE COURT:

_____
Joseph J. Matika, J.