

Fraud and Equity
By
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Rule 4:50-1 provides that upon motion with briefs the court may relieve a party from a final judgment or order on the grounds of fraud, misrepresentation, or other misconduct of an adverse party. In the context of family law, this rule may be relied upon to set aside a Final Judgment of Divorce, which incorporates a Settlement Agreement. Relief for any reason allowed by the rule rests in the sound discretion of the trial court, controlled by established principles.ⁱ However, the standard imposed by the jurisprudence of the courts of this State, impose a difficult burden on the movant to set aside a settlement. There are several ways in which a settlement agreement can be attacked under Rule 4:50-1: perjured testimony, material misrepresentations of fact, defective service, improperly procured foreign judgment, and subsequent changes in statutory law. However, to set aside an agreement based on fraud the facts of the case must reek of a gross inequity. Rule 4:50-1 "requires proof of exceptional and compelling circumstances" as it is "[d]esigned to balance the interests of finality of judgments and judicial efficiency against the interest of equity and fairness. [T]o establish the right to such relief, it must be shown that enforcement of the order or judgment would be unjust, oppressive or inequitable."ⁱⁱ A party is entitled to a plenary hearing on her motion where the evidence shows the existence of a genuine issue of material fact that she is entitled to relief.ⁱⁱⁱ However, relief under this rule is granted sparingly and is generally fact specific. A trial judge's decision whether to allow or deny such relief on one of the six specified grounds in Rule 4:50-1 will be left undisturbed by a reviewing court unless it results from a clear abuse of discretion.^{iv}

In Wiengarten,^v the Appellate Division granted leave to appeal to consider whether a party was entitled to discovery of evidence protected by the attorney-client privilege. However, in considering the matter, the panel set forth the elements of establishing fraud sufficient to set aside a matrimonial settlement agreement. The Court stated,

[I]n order to obtain judicial relief here she will have to prove that his fraudulent conduct in failing to disclose the true value of the assets was the basis of her decision to accept an agreement which was not fair and equitable. ... She also will have to show that she was not otherwise aware of the husband's undervaluation of the assets or that she would have been likely to secure such information but for

the husband's actions... Likewise, a crucial inquiry might be whether the wife was aware of the husband's alleged fraudulent conduct at the time she signed the agreement, and communications with her attorney bearing on that issue are certainly relevant to this inquiry. For example, she may have indicated to Diamond that, although she was aware of the potential value of the estate, she had settled because of a desire to amicably resolve their dispute as quickly as possible. Thus, to the extent the attorney's testimony is necessary to the husband's defense and is relevant to the issues raised by the wife's application, if the information sought is not available from another source, the attorney client privilege should be deemed to have been waived...^{vi}

In other words the test under Rule 4:50-1, requires that the movant establish the following: 1) The fraudulent conduct was the basis of the party's decision to accept an agreement which was not fair and equitable; and, 2) the party seeking relief could not have otherwise discovered the deception because of the fraudulent behavior. This is an almost insurmountable burden, which necessitates the reliance, by the savvy practitioner on more than just one ground for relief in making an application to set aside a negotiated family law agreement.

"Equitable principles are the guide in administering relief to determine whether in the particular circumstances justice and equity require that relief be granted or denied."^{vii} Equitable remedies are simply judicially imposed remedies to which a party might not otherwise be entitled. The parties behave in such a manner that the court can infer a legal obligation upon which relief can be granted. A substantial part of the common law of quasi contract and equitable remedies comes from family law cases. At common law, the husband was responsible for the necessities of his spouse and children, although not for the support of a bastard child. A husband could not legally refuse to provide necessities to his wife and children and thus was bound to this duty. If necessary goods or services were provided to his wife or minor children by a third party, the law made the husband answerable to the provider for the value of the goods or services. The husband could not justly retain the value of the benefit conferred. These types of cases were treated as *quasi* contract cases rather than simply being designated as family law cases. More recent *quasi* contract cases include such family matters as disputes between unmarried cohabitants or disputes between parents about jointly held property or child support.

There are several equitable theories upon which relief can be granted. Equitable relief can be granted on the theory of constructive trust, resulting trust, quasi-contract and unjust enrichment. While each cause of action has distinguishable elements they all have one common element, namely, that a gross inequity would occur if the relief sought was not granted. Indeed, in many cases it appears as though the Courts of this state have bent over backwards to grant relief to a petitioner who had no remedy at law, in order to affect a just result. These remedies should be used in conjunction with a request to set aside or reform a final agreement, so as to put forth the full spectrum of relief that a court can grant to a litigant.

In order to obtain equitable relief there need not be a contract. Indeed, the absence of an express agreement appears to buttress a claim for equitable relief, whereas an express contract tends to bar such relief. In R.B. Ventures, Ltd.,^{viii} the Court held that in order to recover on a *quantum meruit* theory, the plaintiff must prove that: the defendant was enriched; such enrichment was at the plaintiff's expense; and the circumstances were such that in equity and good conscience the defendant should compensate the plaintiff. The Court added that claims for unjust enrichment or *quantum meruit* do not hinge on the existence of an agreement, oral or otherwise. In Lightfoot,^{ix} the Court declined to imply an agreement under the unjust enrichment theory where there is a valid express agreement between parties that explicitly covers the same specific subject matter for which an implied agreement was sought. Unjust enrichment applies wherever justice requires compensation to be given for property or services under a contract, and no remedy is available by an action on the contract; a right of recovery under the doctrine of unjust enrichment is essentially equitable, its basis being that in a given situation it is contrary to equity and good conscience for one to retain the benefit that has come to the person at the expense of another.

The case of Annunziata,^x highlights the sometimes unusual circumstances under which equitable relief is sought. A class action was brought on behalf of owners whose buried their pets on property set aside for that purpose by an animal hospital operated by defendant. The plaintiffs sought a permanent injunction against removal of any of the pet remains or use of the property in question for purposes other than that of a pet cemetery. The Trial Court held that the plaintiff's were not entitled to relief. Plaintiffs testified that the owner/defendant told them that the pet cemetery would be there forever. When the defendant later notified the plaintiffs that the property would be sold and that if they did not collect the

remains of their deceased pets within a stated period of time the remains would be deemed abandoned, the plaintiffs filed suit. The plaintiffs' complaint sought relief on a number of theories including unjust enrichment and implied contract. The Court could not find a basis to imply a contract based on what the parties said to each other. Unjust enrichment did not apply, because the defendants were paid only a nominal fee for the service, which could not be deemed to require the maintenance of the pet cemetery into perpetuity.

While not a family law case, although pet owners may beg to differ, Annunziata should be read to make three important practice tips for asserting equitable claims. First, the injustice must be more than simply not fair. A gross injustice must occur to obtain equitable relief from the Courts. Second, the consideration must be more than nominal. Third, take a kitchen sink approach. Do not just ask for relief on the grounds of constructive trust. A practitioner should plead all equitable relief grounds upon which could possible apply.

In Wajda,^{xi} the plaintiff was 15 when she married defendant who was 21. They divorced 20 years later, but immediately reconciled and continued to live together as husband and wife without remarrying for nearly ten years until they finally separated. The issue which required the consideration of equitable claims was whether retirement benefits acquired during a period of cohabitation after a divorce are subject to equitable distribution under the equitable distribution statute or some other non-statutory equitable remedy. The plaintiff sought distribution of the pension under the concept of "quasi-contract or a contract implied in law, i.e., a constructive contract, which, of course, is not a contract but a formula to prevent unjust enrichment or unconscionable benefit or advantage. It is a legal fiction which rests on the equitable principle that what a person ought to do the law supposes that person to have promised to do [citations omitted] and that person shall not be allowed to enrich himself unjustly at the expense of another."^{xii}

The court acknowledged that during the ten-year period of reconciliation the wife contributed to the welfare of defendant in every way that a wife would have indirectly contributing to the ability of the husband to earn the pension and annuity through his labors. According to the Court, the wife would not have been entitled to the distribution of the retirement funds since the period in question was prior to the Divorce Reform Act. Citing Rothman,^{xiii} and Tucker,^{xiv} the court found that the wife in Wajda could not have relied on the equitable remedies of quasi-contract, resulting trust and constructive trust, to distribute the pension even if the parties had been married. The

court opined, "If equitable remedies were not available to redistribute property acquired during a marriage how can they now be available to redistribute property acquired during cohabitation without marriage? Since the right to the equitable allocation of property acquired during a marriage required an act of the Legislature, there is no jurisprudential basis for a court to reallocate property acquired during cohabitation without marriage."^{xv}

In Carr,^{xvi} the Supreme Court of New Jersey held that a plaintiff-wife, whose right of equitable distribution abated because of the pretrial death of her spouse and who was not entitled to an elective share of his estate was entitled to assert a claim against the marital estate based on equitable principles. The Court concluded that both the equitable distribution statute and probate code supported the position that "a spouse may acquire an interest in marital property by virtue of the mutuality of efforts during marriage that contribute to the creation, acquisition, and preservation of such property. This principle, primarily equitable in nature, is derived from notions of fairness, common decency, and good faith."^{xvii} The Supreme Court was "convinced that these laws do not reflect a legislative intent to extinguish the property entitlements of a spouse who finds himself or herself beyond the reach of either statute because the marriage has realistically but not legally ended at the time of the other's death."^{xviii}

The appropriate equitable remedy was a constructive trust.^{xix} "When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee."^{xx} In addition, the Court recognized that a claim based on quasi-contractual obligations may lie, "not based on the actual intent of the parties," but to "ensure that one party has not been unjustly enriched, and the other unjustly impoverished, on account of their dealings."^{xxi} In short, a constructive trust should be used to prevent unjust enrichment. In Carr, the result of denying the wife relief would have been great. The marital property devolving to Mr. Carr's estate included the share beneficially belonging to Mrs. Carr, therefore, if the Court had not granted equitable relief to Mrs. Carr then she would have been denied all relief at law.

While the decision in the Carr case was pending another equitable claim relating to the death of a party to a divorce proceeding was raised in the matter of Kruzdlo.^{xxii} On December 27, 1988, plaintiff/husband instituted a divorce action and defendant filed an answer and counterclaim. A pendente lite order was entered on December 7, 1989 setting forth the various rights and obligations of the parties. On March 26, 1990,

plaintiff died testate leaving his estate to his sister, Rose Krzdlo. With a trial date pending defendant, on April 2, 1990, filed a motion to dismiss the complaint and a cross-motion was filed on behalf of Rosalie Krzdlo, executrix of the estate of the decedent, seeking to file and serve an amended complaint in this matter to allege a cause of action for an interest in the marital assets of the parties under the theories of constructive trust, resulting trust, quasi-contract and unjust enrichment. The trial court was thus left to decide, whether the executrix of the estate of the decedent may amend the complaint to allege equitable grounds for relief. In the interim the decision in Carr was rendered. In Krzdlo, the Court held that a surviving spouse who has contributed to amassing the marital property and is a party to the former marriage should be able to assert claims based on equitable principles against the former marital estate. "However, it would be patently unfair, unjust and contrary to all notions of justice to permit heirs who are complete strangers to the marriage to assert such claims. The fact that an heir may not be entitled to share in the marital property is not necessarily unjust." ^{xxiii}

The case of Sheridan, ^{xxiv} is often cited for the proposition that if one cannot prove the client's case without having one or more of the parties testify to criminal activities, then the matter should submit to binding arbitration with one of the esteemed retired Judges. The court in Sheridan held that, "equity is an impermissible forum for the division of marital property primarily purchased with funds from illegal activities. A court of equity, as a court of conscience, can never permit itself to become party to the division of tainted assets nor can it grant the request of an admitted wrongdoer to arbitrate such a distribution. It is clear our court decisions reinforce this very principle: A court of equity can never allow itself to become an instrument of injustice." ^{xxv} However, a less noted aspect of Sheridan was the court's determination that the State of New Jersey and the United States of America should be given the opportunity to intervene in the divorce action and assert their respective rights. In order to give the governments the opportunity to do so the Court placed the parties' assets in trust. "In this state, courts will not allow wrongdoers to enrich themselves as a result of their own criminal acts at the expense of an innocent party. In such a situation "... Equity raises a constructive trust which it imposes on the property in question because of the unreasonable mode of its acquisition & thereby prevents unjust enrichment of the wrongdoer ..." ^{xxvi} Here the court found that a non-party was entitled to equitable relief in order to protect the interests of the non-party.

While the circumstances in the Sheridan case may have been egregious enough to arouse the indignation of the Court, the decision can be useful in more common situations. For example, if the parents of one of the parties in a divorce action made a significant contribution to the purchase or sustenance of the marital home, a request can be made that the property or the proceeds be placed in a trust until the rights of the third party are determined. Alternatively, the various equitable tools used by the court can be requested in a case where a party is claiming fraud or misrepresentation.

Sometimes equitable relief is pre-determined by the manner in which the legal question is framed. In Kozlowski,^{xxvii} the Court answered the following question: "Is there any remedy available under our law for a woman who has devoted 15 or more years living with a man, for whom she provided the necessary household services and emotional support to permit him to successfully pursue his business career and for whom she has performed housekeeping, cleaning and shopping services, run the household, raised the children, her own as well as his, all without benefit of marriage; a woman who was literally forced out of the household with no ongoing support or wherewithal for her survival?" Additionally, the Kozlowski decision provides a comprehensive discussion of the equitable remedies contemplated by the Court.

The plaintiff, Ms. Kozlowski, argued that she was entitled to a share of the assets accumulated during her relationship with the defendant, based on partnership and joint venture theories; she further requested the value of services rendered, based upon express, implied or quasi-contract theories; and, the plaintiff requested the value of support for the rest of her life, also based upon express, implied or quasi-contract.

The court addressed each of the plaintiff's requests in turn. Applying the test for a partnership as set forth in Fenwick,^{xxviii} which are: 1) agreement; 2) sharing profits and losses; 3) ownership and control of the partnership's property and business, community of power; 4) rights upon dissolution; and, 5) the conduct of the parties towards third persons, among others, the Court held that the elements were not satisfied. In short, the plaintiff was denied 'equitable distribution' for the period of co-habitation. The Court also held that the plaintiff's claim for payment for services rendered "was satisfied by the value of the weekly support, clothing, trips, vacations, medical benefits and jewelry defendant provided for her."^{xxix}

The plaintiff's request for future support was not denied. The trial Judge determined that the testimony of the plaintiff was more credible and found that "the proofs indicate that she

asked him specifically about her financial situation should he predecease her, in response to which he assured her he would arrange to provide for her for the rest of her life. I am satisfied that defendant's present argument, that his obligation to provide for her was to cease if they separated, is an afterthought and was neither stated nor intended when the new agreement was reached in 1968."^{xxx} Moreover, the parties' agreement that the defendant would provide for the plaintiff for the rest of his life did not violate the Statute of Frauds.

Equitable remedies are available to a party upon the death of the other party, when the parties are not married but contract to provide for each other forever, and to the Court at will. Are parties entitled to equitable relief in a normal divorce? Another line of cases deals with the issue of pre-marital property purchase in contemplation of marriage. In Coney,^{xxxⁱ} the Court held that property acquired in "contemplation of marriage" and therefore subject to equitable distribution, is pre-marital property (personal or real), which one or both marital parties acquired prior to the marriage but made joint contributions to before the marriage.

Relying on Kozlowski, the Court found that the contract "was not expressed but certainly implied by all of the actions of the parties."^{xxxⁱⁱ} "But even assuming that the property is not equitably distributable under the statute, there are other remedies available under the facts of this case to achieve the same result. These remedies may be stated as (1) resulting trust, (2) constructive trust, (3) quantum meruit, (4) quasi-contract, and (5) transmutation."^{xxxⁱⁱⁱ} A resulting trust is where one party purchases property with consideration furnished in whole or in part by the other party with the intention by the title holder to hold the title in trust for the party providing the consideration. Reviewing cases from across the country the court discussed the doctrine of transmutation. "Transmutation is another judicially created doctrine where the courts are willing to go beyond the basic stricture of statutory classification of separate and marital property, where the strictures would lead to inequitable results. According to this theory, property that once was classified as separate or non-marital can be transmuted into marital property when the spouse with title represents to the other spouse that the property will be shared."^{xxx^{iv}} The Court held, "There appears to be no reason why such equitable remedies, which are available to parties who cohabitated but did not marry, are not also available to those parties who ultimately married, as in the case at bar."^{xxx^v}

Although the court rules clearly provide for relief from a final judgment on the ground of fraud or misrepresentation the practitioner needs to remember that the vast majority of family

part cases are resolved by agreement. To overcome the higher burden of setting aside a negotiated settlement, fraud or misrepresentation is not likely to be enough depending on the facts of the case. Relying on equitable remedies and presenting the facts and circumstances of the case in a compelling manner is an approach far more likely to yield success for the client. The scrappy practitioner will look outside the traditional or oft cited family law cases to find support for their client's position. However, to be successful one must remember that equitable relief will only be granted to prevent a great injustice, the consideration must be more than nominal, and that pleading multiple causes of action is essential.

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ⁱ Hodgson v. Applegate, 31 N.J. 29, 37 (1959)

ⁱⁱ Harrington v. Harrington, 281 N.J.Super. 39, 48 (App.Div.1995)

ⁱⁱⁱ Barrie v. Barrie, 154 N.J.Super. 301, 303-04 (App.Div.1977), certif. denied, 75 N.J. 601(1978.)

^{iv} Hodgson, at 37; Shammas v. Shammas, 9 N.J. 321, 329 (1952)

^v Wiengarten v. Wiengarten, 234 N.J.Super. 318 (1989)

^{vi} Id., at 327-28.

^{vii} Shammas v. Shammas, 9 N.J. 321, 328 (1952)

^{viii} R.B. Ventures, Ltd. v. Shane, 112 F.3d 54 (2d Cir. 1997)

^{ix} Lightfoot v. Union Carbide Corp., 110 F.3d 898 (2d Cir. 1997)

^x Annunziata v. Millar, 241 N.J.Super. 275 (Ch.Div.1990)

^{xi} Wajda v. Wajda, 239 N.J.Super. 248 (App.Div.1989)

^{xii} Id., at 255.

^{xiii} Rothman v. Rothman, 65 N.J. 219 (1974)

^{xiv} Tucker v. Tucker, 121 N.J.Super. 539 (Ch.Div.1972)

^{xv} Wajda, at 256.

^{xvi} Carr v. Carr, 120 N.J. 336 (1990)

^{xvii} Id., at 349.

^{xviii} Id., at 349-350.

^{xix} Id., at 351.

^{xx} Id.

^{xxi} Id., at 352.

^{xxii} Kruzdlo v. Kruzdlo, 251 N.J.Super. 70 (Ch.Div.1990)

^{xxiii} Id., at 73.

^{xxiv} Sheridan v. Sheridan, 247 N.J.Super. 552 (Ch.Div.1990)

^{xxv} Id., at 556.

^{xxvi} Id., at 567, citing Jackson v. Prudential Ins. Co. of America, 106 N.J.Super. 75 (LawDiv.1969)

^{xxvii} Kozlowski v. Kozlowski, 164 N.J.Super. 162, 170 (Ch.Div.1978)

^{xxviii} Fenwick v. U.C.C. of N.J., 133 N.J.L. 295 (E.&A.1945)

^{xxix} Kozlowski, at 176.

^{xxx} Id., at 177.

^{xxxi} Coney v. Coney, 207 N.J.Super. 63 (Ch.Div.1985)

^{xxxii} Id., at 74.

^{xxxiii} Id.

^{xxxiv} Id., at 76.

^{xxxv} Coney, at 75.