

that the tests he ran on plaintiff bore negative results. This finding also applied to Dr. Von Holfe's tests on a breast mass plaintiff had complained of. After Dr. Von Holfe completed his tests in October 1980, he told plaintiff that he would not need to see her for another three months. This "medical" testimony certainly refutes any possibility that plaintiff was immediately sensing death in January 1981.

IV.

Plaintiff's second cause of action is that defendant holds plaintiff's realty and personalty under a constructive trust. The court agrees with plaintiff, at least in regard to the realty and the proceeds of the Southern Bancorp instrument described herein.

*Handwritten initials/signature*

A constructive trust arises in equity when it becomes unconscionable for the present holder of property to retain a beneficial interest in it. Beatty v. Guggenheim Exploration Co., 225 N.Y. 380, 122 N.E. 378 (1919). It is a remedy to prevent unjust enrichment, and the court believes that defendant would become unjustly enriched if he were allowed to keep a beneficial interest in the realty and the proceeds of the Southern Bancorp note. The evidence clearly indicates that plaintiff intended to keep a sort of communal interest in this property and receive a portion of the rental income. The evidence shows plaintiff communicated this intent to defendant. Defendant accepted the conveyances, thereby representing that he would comply with this condition. The court sympathizes with defendant's anguish over the fact that his father is now a woman, but cannot allow him to "cut off" plaintiff whether defendant's motives are sincere or not. This is not a situation of mere disappointed expectation, but a serious set of circumstances where some very valuable property has been transferred following a representation that the transferee would repose some control in the transferor. Under the doctrine

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