

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

RESOURCE PROPERTIES XLIV, INC.,	:	March Term, 2000
Plaintiff	:	
	:	No. 3750
v.	:	
	:	Commerce Program
GROWTH PROPERTIES, LTD., et al.	:	
Defendants	:	Control No. 051524

OPINION

Resource Properties XLIV, Inc. has filed suit against Growth Properties, Ltd., LLOT, Inc., Growth Properties, Ltd.-LLOT General Partnership and Sheridan Associates based on equitable subrogation and quantum meruit/unjust enrichment. LLOT, Inc. and Growth Properties, Ltd.-LLOT General Partnership have filed Preliminary Objections. For the reasons set forth in this Opinion, this Court has issued a contemporaneous Order sustaining the Preliminary Objections as to the count of equitable subrogation and overruling the Preliminary Objections as to the count of quantum meruit/unjust enrichment.

Pennsylvania law holds that until the creditor is fully paid, subrogation will not be permitted. Stofflett v. Kress, 342 Pa. 332, 336, 21 A.2d 31, 33 (1941); Hagans v. Constitution States Service Co., 455 Pa. Super. 231, 240, 687 A.2d 1145, 1149 (1997) (holding that “subrogation presupposes an actual payment and satisfaction of a debt or claim by the entity asking to be subrogated”).

Resource argues in its Memorandum of Law that the Second Note has been satisfied by the \$2,200,000.00 collateral and by the Foreclosure Action, upon which judgment was entered on June 22, 2000. However, nothing in the Complaint speaks to this fact, with the only references to the

Foreclosure Action referring to the use of the Collateral to “reduce” the principal balance and accrued interest on the Second Note. Consequently, the Complaint does not allege that the entire debt has been satisfied, nor does it include allegations that would allow the Court to infer such. Thus, the Preliminary Objections have been sustained as to Count I on this ground, and Plaintiff is granted twenty days to file an amended pleading.

BY THE COURT:

JOHN W. HERRON, J.

Dated: July 24, 2000

**THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

RESOURCE PROPERTIES XLIV, INC.,	:	March Term, 2000
Plaintiff	:	
	:	No. 3750
v.	:	
	:	Commerce Program
GROWTH PROPERTIES, LTD., et al.	:	
Defendants	:	Control No. 051524

ORDER

AND NOW, to wit, this 24th day of July, 2000, upon consideration of Defendants LLOT, Inc.'s and Growth Properties Limited-LLOT, Inc. General Partnership's Preliminary Objections to Plaintiff Resource Properties XLIV, Inc.'s Complaint and any responses thereto and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby ORDERED and DECREED that the Preliminary Objections are SUSTAINED as to Count I - Equitable Subrogation and OVERRULED as to Count II - Unjust Enrichment/Quantum Meruit. The Plaintiff is directed to file an amended pleading within twenty days of this Order.

BY THE COURT:

JOHN W. HERRON, J.