

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

BARBARA HOWARTH,	:	February Term 2010
Plaintiff,	:	
v.	:	No. 2089
STEPHEN HILL and DEEP SIX	:	
LABORATORY, INC.,	:	COMMERCE PROGRAM
Defendants.	:	
	:	

ORDER

AND NOW, this 22nd day of March 2011, after an assessment of damages hearing, it hereby is **ORDERED** that judgment is entered in favor of plaintiff Howarth and against defendant Hill on the claim for unjust enrichment and in favor of Deep Six Laboratory, Inc. and against plaintiff Howarth. Defendant Hill shall be responsible to pay one half of the home equity line of credit beginning April 2011 until paid in full.

A judgment is entered against Howarth and in favor of Hill and Deep Six Laboratory for breach of fiduciary duty and resulting trust.

Plaintiff's request for attorney fees is denied. Plaintiff's request for cost is denied without prejudice to file in accordance with Philadelphia Local Rule 227.5 a Bill of Costs.

BY THE COURT,

MARK I. BERNSTEIN, J.

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Plaintiff,	:	
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STEPHEN HILL and DEEP SIX	:	
LABORATORY, INC.,	:	COMMERCE PROGRAM
Defendants.	:	
	:	

OPINION

This action was instituted by plaintiff Barbara Howarth (hereinafter “Howarth”) and defendants Stephen Hill (hereinafter “Hill”) and Deep Six Laboratory, Inc. Howarth and Hill cohabitated and raised their child together for many years. In January 2005, Howarth and Hill made a joint decision to open a small tattoo art establishment. On October 15, 2005, Howarth and Hill established Deep Six Laboratory, Inc., a corporation. The corporation was incorporated and registered with the Department of State of the Commonwealth of Pennsylvania, Corporation Bureau. Hill is the president of the corporation and owns one hundred percent of the shares. The business was and is located at 2451 Grant Ave, Philadelphia, Pa. Hill signed the lease for the property. Howarth and Hill orally agreed that Howarth would receive \$700.00 per week as her share of the profits of Deep Six Laboratory and for her help in managing the business and finances.

After establishing the business in the fall of 2005, Howarth and Hill applied for a home equity loan. As collateral for the loan, Howarth and Hill used the property located at 6732 Jackson Street, Philadelphia, Pa. which they jointly own as joint tenants with right of survivorship. At the time of applying for a home equity loan, a mortgage existed on the property for \$45,600.00. Howarth and Hill were approved for a home equity loan with a limit of

\$72,900.00. A portion of the funds from the home equity loan were to be used for Deep Six Laboratory including but not limited to furniture, rent.

From the time the business was opened until January 2, 2010, Howarth worked at the business daily. On January 2, 2010, Hill stopped paying Howarth \$700.00 a week, barred Howarth from entering the tattoo business and stopped making payments on the home equity loan. Howarth continued to make the monthly payments on the home equity loan and the mortgage.

On February 17, 2010, Howarth instituted this action by writ of summons against Hill and Deep Six Laboratory. On February 23, 2010, Hill and Deep Six Laboratory were served with a writ of summons. Howarth subsequently filed a complaint on April 30, 2010 alleging breach of fiduciary duty, unjust enrichment and resulting trust. On May 3, 2010, Hill was served with the complaint. On May 4, 2010 Deep Six Laboratory was served with the complaint. On December 7, 2010, Howarth filed a motion for default judgment against Hill and Deep Six Laboratory for failing to answer the complaint. The motion for default was served upon Hill and Deep Six Laboratory on December 20, 2010. On February 7, 2011, the court, having received no response to the motion, entered an order granting the motion for default judgment against Hill and Deep Six Laboratory. The court also ordered an assessment of damages hearing for March 9, 2011.

On March 9, 2011, Hill appeared at the assessment of damages hearing without legal representation. During the hearing the court heard testimony and received evidence.

DISCUSSION

The equitable doctrine of *quantum meruit* involves a class of obligations imposed by law, regardless of the intention or assent of the parties for reasons dictated by justice and is based on

the concept that no one who benefits by the labor and materials of another should be unjustly enriched thereby. To avoid such unjust enrichment, the law implies a promise to pay a reasonable amount for the labor and materials furnished, even absent a specific contract.¹

A claim of *quantum meruit* raises the issue of whether a party has been unjustly enriched, and in order to prove such claim a party must successfully prove the elements of unjust enrichment.²

The elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. Whether the doctrine applies depends on the unique factual circumstances of each case and whether the defendant has been unjustly enriched.³

Here, the record evidence demonstrates that Howarth conferred a benefit upon Hill by applying for the home equity loan to benefit Deep Six Laboratory and by continuing to make payments on the loan, when Hill stopped. Hill accepted the benefits and is being unjustly enriched by wrongfully withholding payments on the loan and allowing Howarth solely to make payments on a loan used to benefit his business. Hill's acceptance of the benefit without any payment of value constitutes unjust enrichment. As such, this court finds in favor of Howarth and against Hill on the claim for unjust enrichment. Hill is fifty percent responsible for the home equity loan and is directed to make one half the monthly payments until paid in full. As for the claims of breach of fiduciary duty and resultant trust, the court finds in favor of Hill and Deep Six Laboratory and against Howarth since no evidence was presented that Howarth is or was an owner or shareholder of Deep Six Laboratory.

¹ Bednar v. Marino, 435 Pa. Super. 417, 426, 646 A.2d 573, 578 (1994).

² Mitchell v. Moore, 729 A.2d 1200, 1202 n.2 (Pa. Super. 1999).

³ Styer v. Hugo, 422 Pa. Super. 262, 619 A.2d 347, 350 (Pa. Super. 1993).

Howarth submitted a certification of counsel fees and court costs. Howarth claim for attorney fees is denied. The American Rule provides that a litigant cannot recover counsel fees from an adverse party unless there is express statutory authorization, clear agreement of the parties or some other established exception.⁴ Here, there is neither statutory authority nor agreement of parties permitting an award of attorney fees. As such Howarth is not entitled to attorney fees.

Howarth also requested an award of court costs, \$762.88. This request is denied without prejudice for Howarth to file in accordance with Philadelphia Local Rule 227.5 a Bill of Costs.

Conclusion

The court finds in favor of Howarth and against Hill on the claim for unjust enrichment. Hill is responsible to pay one half the monthly payments for the home equity loan beginning April 2011 until paid in full. As for the claims for breach of fiduciary duty and resultant trust, the court finds in favor of Hill and against Howarth. Howarth failed to prove that she is the owner or shareholder of Deep Six Laboratory. Howarth's request for attorneys fees and costs is denied.

BY THE COURT,

MARK I. BERNSTEIN, J,

⁴ Snyder v. Snyder, 533 Pa. 203, 212, 620 A.2d 1133 (1993).