

COBB COUNTY, GA
FILED IN OFFICE

**IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA**

09 JUN -3 PM 3:38

EVELYN P. GAUSE,)
)
 Plaintiff,)
)
 v.)
)
 RONALD D. GAUSE,)
)
)
 Defendant.)

Jay C. Stephens
COBB SUPERIOR COURT CLERK

CIVIL ACTION FILE NO.
07-1-5927-28

ORDER

The above styled case comes before the Court on the Defendant, Ronald D. Gause's Motion for Summary Judgment. The Court having considered the arguments of counsel for the parties, Defendant's Motion and Brief in Support thereof, and Plaintiff's Response and Brief in Support thereof, as well as the supporting Affidavits filed by both parties, depositions filed with the Court, and all other matters of record, the Court makes the following findings:

FINDINGS OF FACTS:

The Plaintiff contends that Defendant made a verbal promise to her and her husband that if they moved into the house located at 961 Beech St., Marietta, GA 30062, and paid the taxes, mortgages and upkeep on the house that when the mortgage was paid off, Defendant would convey to Plaintiff and her husband legal title to the property. The Defendant contends that he made a verbal promise to Plaintiff and her husband that if they moved into the house, paid the taxes, mortgages and upkeep on the house, that he

would convey to Plaintiff and her husband a life estate in the real property. Plaintiff and her husband did in fact move into the house and lot described above and have maintained exclusive possession of that property for over forty-five years. There is no dispute between the parties that a promise was made but there is a genuine issue of material fact to be determined by the jury as to the terms of that promise.

CONCLUSIONS OF LAW:

The Plaintiff has alleged causes of action under O.C.G.A § 23-2-131 Specific Performance of an Oral Contract; O.C.G.A. § 23-2-132 Enforcement of an Oral Promise; Promissory Estoppel and Constructive Trusts. The Court finds that each of these claims are viable claims under Georgia Law and would have application depending upon what findings are made by the jury acting as the trier of fact.

The Court finds that there is a genuine issue as to one or more material facts, therefore, Defendant is not entitled to Judgment as a matter of law.

IT IS HEREBY ORDERED, that the Defendant's Motion for Summary Judgment is DENIED.

This 2nd day of June, 2009.



C. LATAIN KELL,
JUDGE, SUPERIOR COURT
COBB JUDICIAL CIRCUIT

IN THE SUPERIOR COURT OF COBB COUNTY
STATE OF GEORGIA


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the within and foregoing order (Civil Action File No. 07-1-5927-49) upon all parties by sending a true and correct copy through the Cobb County Mail System addressed to the following:

Andrew M. Beal, Esq.
Lamar K. Mitchell, Esq.
Andrew M. Beal, P.C.
7 Lenox Pointe
Atlanta, GA 30324

Albert E. Jones, Esq.
P.O. Box 4125
Marietta, GA 30061

This 3rd day of June, 2009.


Natalie C. Bloodworth
for
C. LaTain Kell, Judge
Superior Court of Cobb County
Cobb Judicial Circuit