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IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
CIVIL DIVISION

KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FLORIDA
CIVIL COURTS
Receipt # 2626281

NINA PASHTENKO
Plaintiff,

v.

Case No.: 2013-CA-007347-NC

VALENTIN PASHTENKO,
CYNTHIA PASHTENKO, et al.,
Defendant's.

FINAL JUDGMENT

This matter came before this Court for trial November 2, 2020 through November 6, 2020. Substantial post-trial judicial labor has been expended as well, including the November 24, 2020 Hearing on Plaintiff's Motion for Leave to Amend the Pleadings to Conform to the Evidence [DIN 548], which was resolved by Order dated December 1, 2020 [DIN 554], and analysis of the Post-Trial written Closing Argument of Plaintiff Part I, filed December 7, 2020 [DIN 556], the Post-Trial Closing Argument of Cynthia Pashtenko (hereinafter sometimes referred to as "Cynthia") filed December 14, 2020 [DIN 561], the Post-Trial Closing Statement of Valentin Pashtenko (hereinafter sometimes referred to as "Valentin"), filed December 14, 2020 [DIN 562], and Part II of Plaintiff's Closing Argument filed December 21, 2020 [DIN 566]. This Court orally pronounced preliminary findings on December 28, 2020, but clarified that a final determination would follow. To the extent that there is any inconsistency or variance between that oral pronouncement and this Final Judgment, this Final Judgment shall control as the Court's final determination.

Plaintiff is traveling on her Second Amended Verified Complaint filed on September 22, 2017 [DIN 189] (hereinafter the "SAVC"). Cynthia Pashtenko is traveling on her Amended Counterclaim and Crossclaim filed August 3, 2020 [DIN 475]. This Court, being fully advised in the premises, makes the following findings of fact and legal conclusions:

1. Plaintiff, Nina Pashtenko (hereinafter sometimes referred to as “Nina”) is 83 years old at present.
Nina is the mother of Valentin and the former mother-in-law of Cynthia.
2. Dissolution of marriage proceedings between Valentin and Cynthia transpired in Case Number 2013-DR-005854-SC in the Circuit Court for Sarasota County, Florida (hereinafter the “Family Law Case”) which resulted in Final Judgment of Dissolution of Marriage entered August 13, 2015. The parties have consented to this Court taking judicial notice of all matters in this civil case (hereinafter the “Civil Case”) for purposes of the Family Law Case, and have consented to this Court taking judicial notice of all matters in the Civil Case and the Family Law Case for purposes of the Civil Case.
3. The undersigned Judge presided over a portion of the Family Law Case and observed (i) profound destructive conflict between Valentin and Cynthia, and (ii) Valentin and Cynthia have a demonstrated history of putting their own interests ahead of the interests of their children. The Court also concluded that there was abusiveness demonstrated from Valentin toward Cynthia in the context of their marital relationship which caused Cynthia to characterize that her marriage to Valentin as “a living hell.”
4. The evidence reflects that Cynthia has a Master’s Degree in education and has worked as a teacher, a bank teller, and a care provider for the elderly. Valentin has a Doctorate Degree in strategic business management, and taught strategic business management at the university level.
5. Plaintiff is not a native English speaker and she has difficulty understanding certain legal terms and financial matters, especially in written English documentation. Nevertheless, Plaintiff and her late husband “George”, who died in 1994, were diligent workers who were highly adept at saving and accumulating assets from their modest income. Such assets included (i) a home on Potter Road in North Haven, Connecticut, (ii) an investment property on Covert Road in Philadelphia, Pennsylvania, and (iii) FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) in cash, all of which belonged to Plaintiff upon George’s death in 1994.

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6. Plaintiff loaned substantial funds to Valentin for purposes which included, without limitation, education, vacation, and the purchase of vehicles.¹ Valentin failed to repay such loans, for which Plaintiff sought and obtained a Partial Summary Judgment (“PSJ”) against Valentin on May 29, 2020 [DIN 460] in the amount of \$383,385.83 on Count IX of the SAVC. The Court notes that Valentin failed to appear for the hearing on the PSJ and raised no defense.
 7. On or about February 27, 2004, Plaintiff acquired the property at 2066 Jameson Avenue, North Port, Florida 34286 (hereinafter the “Jameson Property”), by Deed recorded March 8, 2004, as Instrument Number 2004042388, Public Records of Sarasota County, Florida. Nina was induced to place the Jameson Property in the names “Nina Pashtenko, an unremarried widow, and Valentin Pashtenko and Cynthia Pashtenko, husband and wife, as joint tenants with right of survivorship”, by the representations of Valentin and Cynthia that if she did so, Valentin and Cynthia would provide Nina with uninterrupted care, comfort, and support in Nina’s home for the remainder of Nina’s lifetime (hereinafter referred to as the “Lifetime Care Obligation”). Nina testified that the promise of such Lifetime Care Obligation being carried out by Valentin and Cynthia was “very important” to her. The testimony also reflected that Nina placed the Jameson Property in joint names with Valentin and Cynthia out of a sense of fear, that if she did not do so, Nina might one day be forced to live in a convalescent center. While Cynthia denied ever making such a promise, the Court found that testimony unreliable. Mr. Essenson effectively impeached her with prior deposition testimony, and this Court finds Cynthia made that promise. Nina provided all of the funds for the acquisition of the Jameson Property.
 8. On or about May 23, 2006, Nina acquired the property at 4675 Kenoska Street, North Port, Florida 34288 (hereinafter the “Kenoska Property”), by Deed recorded June 1, 2006, as Instrument Number

¹ This Court makes no final determination regarding which of those loans would be “non-marital” liabilities.

2006101152, Public Records of Sarasota County, Florida. Valentin and Cynthia repeated the promise to Nina contained in the Lifetime Care Obligation as an inducement to Nina to include them in the title of the Kenoska Property, and Nina thereupon included them in such title. Nina provided all of the funds and all of the creditworthiness for the acquisition of the Kenoska Property.

9. Throughout her testimony, Nina asserted that Cynthia alone pressured her to transfer title as set forth above. The Court found that testimony unreliable. Any suggestion by Nina that Valentin did not influence her actions is unreasonable. The Court finds that the evidence persuasively established that Valentin, not Cynthia, was the architect of this enterprise, and that Valentin participated in pressuring Nina.
10. After George's death, Cynthia and Valentin sought, and Plaintiff then reposed in them, individually and collectively, substantial trust and confidence to assist Plaintiff with her business and financial affairs. In particular, Nina required assistance with regard to business and financial matters involving documentation written in English. Cynthia and Valentin had accepted such trust and confidence reposed in them by Nina and, at all times pertinent to this case, agreed to act to protect Nina's personal well-being as well as Nina's interests in connection with Nina's business and financial affairs. Nina engaged in this relationship with Valentin and Cynthia both out of trust and out of fear. Unfortunately, as acknowledged by Valentin, he and Cynthia failed utterly in their responsibility to protect Nina's personal well-being, as well as Nina's interests in her business and financial affairs.
11. In 2008 and 2009, Valentin and Cynthia (primarily Valentin) convinced Nina to invest her cautiously and prudently accumulated assets (life savings) in the acquisition of properties located at 1252 Jonah Drive, North Port, Florida 34289 (hereinafter the "Jonah Property"), 3209 Penelope Terrace, North Port, Florida 34286 (hereinafter the "Penelope Property"), 3304 Morchester Lane, North Port, Florida 34286 (hereinafter the "Morchester Property"), 3439 Eagle Pass Street, North Port, Florida 34286

(hereinafter the “Eagle Pass Property”), 3942 Oconto Avenue, North Port, Florida 34286 (hereinafter the “Oconto Property”), and 2223 South Salford Boulevard, North Port, Florida 34287 (hereinafter the “Salford Property”).

12. The Penelope Property, Jonah Property, and Morchester Property were first placed in the names of Nina, Valentin, and Cynthia, but were subsequently transferred by Quit-Claim Deeds into the names of 3209 Penelope, LLC, a Florida Limited Liability Company (hereinafter “Penelope”), 1252 Jonah, LLC, a Florida Limited Liability Company (hereinafter “Jonah”), and 3304 Morchester, LLC, a Florida Limited Liability Company (hereinafter “Morchester”).² The Eagle Pass Property, the Oconto Property, and the Salford Property were acquired in the names of 3439 Eagle Pass, LLC, a Florida Limited Liability Company (hereinafter “Eagle Pass”), 3942 Oconto, LLC, a Florida Limited Liability Company (hereinafter “Oconto”), and 2223 Salford, LLC, a Florida Limited Liability Company (hereinafter “Salford”), respectively.³ Eagle Pass, Jonah, Morchester, Oconto, Penelope, and Salford are hereinafter collectively referred to as the “Limited Liability Companies” or the “LLCs”.
13. As stated above, while Nina testified that Cynthia repeatedly asked her to sell her North Haven, Connecticut property and her Philadelphia, Pennsylvania property, and invest the proceeds from such sales, as well as her other personal funds in the acquisition of the LLC Properties, the overall evidence demonstrates that Valentin primarily organized the plan to convince Nina to invest her assets in the LLC Properties. The Court finds it unreasonable to believe that Nina would not thoroughly consult with Valentin, and defer to his experience.

² The Morchester Property was first quit-claimed back to the original grantor, which thereafter executed Corrective Deeds conveying this property to 3304 Morchester LLC.

³ The Eagle Pass property, the Jonah property, the Morchester property, the Oconto property, the Penelope property, and the Salford property are hereinafter sometimes collectively referred to as the “LLC Properties”. One additional property was acquired at 7594 Wexford Street, North Port, Florida 34287 (hereinafter the “Wexford Property”) in the name of 7594 Wexford, LLC, a Florida Limited Liability Company. The Wexford Property has been sold and is not directly pertinent to Plaintiff’s or Cynthia’s claims in this matter.

14. Nina testified that she contributed nearly FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for the acquisition of the LLC Properties. That testimony was supported by (i) Plaintiff's Exhibit "79", the Minutes of the Meeting dated June 3, 2011, and by (ii) the calculation of purchase price based on the documentary stamp taxes paid as shown on the Deeds to the LLC Properties. These Deeds were admitted in evidence as Plaintiff's Exhibit "3" (Penelope Property), Plaintiff's Exhibit "4" (Jonah Property), Plaintiff's Exhibit "5" (Oconto Property), Plaintiff's Exhibit "6" (Morchester Property), Plaintiff's Exhibit "7" (Eagle Pass Property), and Plaintiff's Exhibit "8" (Salford Property). Trial testimony demonstrated that Valentin and Cynthia did not contribute any funds to the acquisition of the LLC Properties.⁴

15. Significant to this Court's analysis, the evidence persuasively established that Valentin and Cynthia (i) agreed to Nina's requirement that the drafts of the LLC Operating Agreements (prepared and circulated by Valentin) be modified by contemporaneous written documentation to reflect that the "primary purpose" of each of the LLCs was first to repay Nina FIFTY PERCENT (50%) of her initial investment in acquiring each such LLC Property together with EIGHT PERCENT (8%) interest thereon out of net Operating profits of each such LLC (which, with other terms hereafter described is hereinafter referred to as "Nina's Mandatory Repayment Agreement"), and (ii) agreed that they would look after Nina's interests in the LLCs as further consideration for Nina (a) furnishing the funds to

⁴ Although Cynthia claimed a labor contribution to LLC equity, no documentation was submitted, either in the form of receipts for materials, time records, or otherwise to substantiate such claim. The Court agrees with Plaintiff that unquantified personal labor cannot serve as a basis for establishing an equity ownership in real property (Castetter v. Henderson, 113 So. 3d 153, 155 (Fla. 5th DCA 2013)). The Court also agrees that Plaintiff's citations to Simon v. Safelite Auto Glass, 943 F. Supp 261 (E.D.N.Y. 1996) and Bloomberg v. USAA Casualty Ins. Co., 790 So. 2d 1061, 1067 (Fla. 2001), accurately reflect the law applicable to judicial estoppel, which prevents Cynthia from claiming a contribution to LLC equity based on purported work that she allegedly performed on the LLC Properties. The Adult Function Report Cynthia submitted under oath to the Social Security Administration (Plaintiff's Ex. "97") served as the predicate for the social security award, retroactive to 2005, based upon the adjudication of Cynthia's total and permanent disability. Plaintiff's Exhibit "97" documented Cynthia's inability to perform the labor she claimed as a basis for the equity contribution. Judicial estoppel is also pertinent to the Court's determination that Constructive Trusts should be established in Nina's favor over all LLC properties and interests so as to prevent unjust enrichment of Valentin and Cynthia under the facts of this case.

acquire the LLC Properties and (b) furnishing Valentin and Cynthia with a contingent opportunity to become LLC equity owners, if Valentin and Cynthia satisfied their personal commitments⁵ under Nina's Mandatory Repayment Agreement and operated the LLCs in such a manner as to enable the LLCs to generate the net operating profits required to accomplish the financial component of Nina's Mandatory Repayment Agreement. The financial component of Nina's Mandatory Repayment Agreement required that Nina be repaid FIFTY PERCENT (50%) of her investment in the LLCs with EIGHT PERCENT (8%) interest thereon within EIGHT (8) years from the acquisition of each LLC property.

16. Nina's Mandatory Repayment Agreement also incorporated (i) incremental payment requirements and (ii) cross-default provisions, such that if any LLC (a) failed to repay FIFTY PERCENT (50%) of the amount Nina advanced for the acquisition of that LLC Property (with agreed interest) within eight years or (b) failed to repay TWENTY FIVE (25%) of the amount Nina advanced for the acquisition of that LLC Property (with agreed interest), within five years of its acquisition, out of operating profits of that respective LLC, then Valentin and Cynthia would forever forfeit the right to become equity owners in all of the LLCs. Nina's Mandatory Repayment Agreement was both a written contract and an oral agreement whose terms were confirmed in writing by various LLC Minutes admitted in evidence, including not only the organizational Minutes of Eagle Pass⁶, Jonah⁷, Morchester⁸, Oconto⁹, Penelope¹⁰, and Salford¹¹, but also by subsequent LLC Minutes, most notably, Plaintiff's Exhibit "73",

⁵ Valentin and Cynthia's personal obligations in connection with Nina's Mandatory Repayment Agreement included the promise of Valentin and Cynthia that (i) they would not remove any funds from the bank accounts of the respective LLCs, other than for operating expenses, until Nina had been repaid her FIFTY PERCENT (50%) investment in the LLCs with agreed upon interest and that (ii) the repayment was to be accomplished by Valentin, Cynthia, and Nina going together to the bank where the LLC accounts were maintained and drawing a cashier's check payable to Nina for each such LLC repayment.

⁶ Plaintiff's Ex. "117".

⁷ Plaintiff's Ex. "67".

⁸ Plaintiff's Ex. "52".

⁹ Plaintiff's Ex. "56".

¹⁰ Plaintiff's Ex. "67".

¹¹ Plaintiff's Ex. "61".

the LLC Minutes dated November 15, 2009. Plaintiff's SAVC alleges that each of the Limited Liability Companies had a Composite Operating Agreement consisting of the original signed Operating Agreement for such LLC, the organizational Minutes of such LLC, and subsequent Minutes confirming LLC actions and that Cynthia and Valentin breached both the (i) oral version of Nina's Mandatory Repayment Agreement and (ii) the written version of Nina's Mandatory Repayment Agreement embodied in the written Composite Operating Agreements.

17. At the time of the filing of Plaintiff's original Verified Complaint on October 14, 2013 (DIN 3), the Operating Agreements of the LLCs were not in Plaintiff's possession and Plaintiff alleged that they had been removed without authorization from Plaintiff's home at 2066 Jameson Avenue by Cynthia on or about July 24, 2013, and from the home Cynthia shared with Valentin (the Kenoska Property) on or about July 25, 2013. During the course of the case, substantial LLC documentation was recovered from two locations at the Salford Property (one in a trash can and the second in recycling bin(s) underneath a trailer), as well as from a location at the Big Jim's storage facility on Toledo Blade Boulevard in North Port, Florida. As originally plead, Counts I through VI sought the reestablishment of the Operating Agreements of Eagle Pass, Jonah, Morchester, Oconto, Penelope, and Salford which were attached to Plaintiff's Verified Complaint and Amended Verified Complaint in the unexecuted forms which had been circulated, as referenced above, at or about the time of each LLC formation by Valentin for consideration by Cynthia and Nina (Plaintiff's Exhibits "54", "58", "60", "63", "69", and "71"¹²).

18. Subsequent to trial, the Court granted Plaintiff's Motion to Amend Pleadings to conform to the evidence, resulting in the addition of Counts I(A) through VI(A) of the SAVC seeking declaratory judgment and alleging, (in the alternative, to the original Counts I through VI) that the signed original

¹² Exhibits "63" and "69" were not received as evidence.

Operating Agreements of the LLCs (Plaintiff's Exhibits "53", "57", "59", "62", "68", and "70") were the true and correct original Operating Agreements, which, together with the organizational Minutes and subsequent Minutes, constituted the Composite Operating Agreements of the respective LLCs. The Court has determined that the existence and enforceability of such signed Operating Agreements and Composite Operating Agreements has been established at trial.

19. Cynthia alleged at trial that all of the Operating Agreements and LLC Minutes were manufactured by Valentin subsequent to Cynthia leaving Valentin on July 25, 2013 and that the first objection raised by Nina to Cynthia removing funds from LLC accounts did not occur until after July 25, 2013. The contents of the LLC Minutes, the verification of the Operating Agreements by Cynthia, as hereinafter described, and the sheer volume of trial documentation are all inconsistent with this claim by Cynthia.
20. Plaintiff's Exhibit "110B", pages 130 through 169 and the Exhibits reveal that Cynthia identified her signature on the Operating Agreements of 1252 Jonah, LLC¹³, 2223 Salford, LLC¹⁴, 3209 Penelope, LLC¹⁵, 3304 Morchester, LLC¹⁶, 3439 Eagle Pass, LLC¹⁷, and 3942 Oconto, LLC¹⁸. In comparing these deposition exhibits with the signed original Operating Agreements for 3439 Eagle Pass, LLC¹⁹, 1252 Jonah, LLC²⁰, 3304 Morchester, LLC²¹, 3942 Oconto, LLC²², 3209 Penelope, LLC²³, and 2223 Salford, LLC²⁴, the Court finds that Cynthia authenticated her signature and those of Valentin and Nina on the Operating Agreements of all of the LLCs. The Court therefore determines, as sought as

¹³ Ex. "110B" at 130:1-23 and 136:10-24.

¹⁴ Ex. "110B" at 144:13 - 148:25.

¹⁵ Ex. "110B" at 151:2 - 152:15.

¹⁶ Ex. "110B" at 155:14 - 157:21.

¹⁷ Ex. "110B" at 162:2 - 163:8.

¹⁸ Ex. "110B" at 165:10 - 169:4.

¹⁹ Plaintiff's Ex. "59".

²⁰ Plaintiff's Ex. "68".

²¹ Plaintiff's Ex. "53".

²² Plaintiff's Ex. "57".

²³ Plaintiff's Ex. "70".

²⁴ Plaintiff's Ex. "62".

a component of Count I(A) through VI(A) of the SAVC, that Plaintiff's Exhibits "59", "68", "53", "57", "70", and "62" are true and correct original executed Operating Agreements of 3439 Eagle Pass, LLC, 1252 Jonah, LLC, 3304 Morchester, LLC, 3942 Oconto, LLC, 3209 Penelope, LLC, and 2223 Salford, LLC, respectively²⁵.

21. In reaching its determinations in this matter, the Court found the proffered testimony of Peter Pashtenko (hereinafter "Peter") to be reliable and compelling evidence. Despite concerns of possible parental alienation, the Court finds it implausible that this evidence was pure fabrication. Rather, the Court finds that the proffered testimony corresponds logically, and reasonably, with other credible evidence. Cynthia's argument (supported only by her own testimony) that all the relevant LLC documentary evidence was fraudulently created, then forged, by Valentin is unavailing. The timing of the events, the testimony regarding the recovery of (allegedly) stolen documents, and the physical condition of the documents themselves fortify the credibility of Peter's proffer. Collectively, that evidence persuades this Court that the proffer is a reliable and accurate recitation of the following:
- A. That Peter was a witness to many of the monthly meetings of the LLCs which occurred between 2008 and 2012 at the Jameson Property.
 - B. That Peter (i) witnessed Valentin type up the handwritten Minutes of all such meetings, typically the same day and always within one to two days following such meetings, and (ii) observed Nina and Valentin execute and/or initial documents at the time that the Minutes were so typed.
 - C. That Peter was in the car when Cynthia took the minutes, which had been initialed by Nina and Valentin, to two different locations on multiple occasions. There were at least five occasions when Peter accompanied Cynthia to the home of a female friend of Cynthia's in the Venice/Englewood area where, in Peter's presence, Cynthia asked the female friend to affix Cynthia's initials to the

²⁵ This determination renders moot Counts I through VI of the SAVC with regard to the issue of the "reestablishment" of the unexecuted LLC Operating Agreements.

respective Minutes and the female friend did so. On at least twenty occasions, Peter observed Cynthia take Minutes with her, by car and with Peter present, to the home of Charles Watts and Cheryl Selby and on those at least twenty occasions, Cynthia asked Cheryl Selby to affix Cynthia's initials on such respective Minutes and Cheryl Selby did so in Peter's and Cynthia's presence.

- D. That Peter (i) recognized that others affixing Cynthia's initials to the Minutes at Cynthia's request was "unusual and/or inappropriate" and (ii) questioned Cynthia about it, whereupon Cynthia's response was "it's just business, don't worry about it. Don't tell Dad or Babi" [Babi being Nina].
- E. That Cynthia made physical threats toward Peter at the time she so instructed him not to communicate what had happened to Valentin and to Nina.
- F. That after the Minutes had been initialed by Cynthia's female friend in the Venice Englewood area, or by Cheryl Selby, Peter returned with Cynthia to where Valentin and Nina were located on multiple occasions and witnessed Cynthia return the minutes which, had been initialed as described above, to Valentin and Nina.
- G. That Peter was present at scores of meetings at the Jameson Property during which the commitments of Valentin and Cynthia incorporated in the Lifetime Care Obligation were reconfirmed by Valentin and Cynthia, with specific detail as to what Valentin and Cynthia indicated they would provide for Nina on specific dates.
- H. That Peter witnessed the events of July 25, 2013 including (i) the condition of the Kenoska Property immediately prior to the Tae Kwon Do session the evening of July 25, 2013 (hereinafter the "Tae Kwon Do Session") and that the Kenoska Property was in good order at that time, (ii) that LLC documentation was being maintained both in the den at the Kenoska Property and in a document safe maintained by Valentin at such property prior to the Tae Kwon Do Session, (iii) that Peter observed Cynthia in her distinctive Crown Victoria vehicle near the Kenoska Property

immediately prior to the Tae Kwon Do Session, (iv) that Cynthia did not appear at the Tae Kwon Do Session until more than two hours later, (v) that when Peter returned to the Kenoska Property immediately after the Tae Kwon Do Session that evening, he observed that the Kenoska Property was in disarray and that all of the LLC documentation in the den was gone and Valentin's document safe was also gone and (vi) that Peter's verbal exclamation upon the discovery of the post-Tae Kwon Do Session condition of the Kenoska property was "What has Mom done!"

- I. That Peter was present at Nina's home on Jameson Avenue later the evening of July 25, 2013 and personally discovered that Nina's copies of the LLC documents were also missing from that location.
- J. That Peter was present on three separate occasions when he and Valentin discovered missing LLC documents, twice at the Salford Property and once at the Big Jim's storage facility location, and that Peter was the one who crawled under the trailer at the Salford Property and discovered additional LLC documents located in recycling bin(s) under such trailer.²⁶
- K. Lastly, Valentin proffered Peter's testimony that Peter accompanied Cynthia to a closing on the sale of the Wexford Property in May 2013 whereat Cynthia presented the Operating Agreement of 7594 Wexford LLC²⁷ and indicated that Peter was physically present in the closing room when Cynthia acknowledged her signature on the Wexford Operating Agreement as being original and presented her driver's license to confirm the same. Peter witnessed Cynthia delivering the

²⁶ Peter's proffered testimony also indicated (i) that he personally witnessed Cynthia initiate physical violence toward Nina by slapping her and wrestling her to the ground on multiple occasions between 2009 and 2012 and that on each such occasion he witnessed Cynthia's verbal abuse of Nina using various profanities, and (ii) that he was present at the Jameson Property when Plaintiff's Ex. "65" (as hereinafter referenced) was discovered at such property by Nina and that Nina was visibly upset upon reading the contents of Plaintiff's Ex. "65".

²⁷ The signed Wexford Operating Agreement is attached as Exhibit "H" to Plaintiff's Verified Complaint filed October 14, 2013 (DIN 3) and Plaintiff's Amended Verified Complaint filed February 9, 2017 (DIN 131). The Court has reviewed the signed Wexford Operating Agreement consistent with the parties' agreement that the Court take judicial notice of its files in this matter and in noting its similarities to the signed Operating Agreements of the LLCs, finds further repudiation of Cynthia's claim that the LLC Operating Agreements were "manufactured" by Valentin after July 25, 2013.

Wexford Operating Agreement and confirming its authenticity to an employee named "Cindy" at the law firm handling such closing.

22. The Court reconciles Cynthia's apparently conflicting testimony confirming her execution of the Operating Agreements with her testimony that she never signed Operating Agreements (or had no recollection of signing them), based upon Cynthia's acknowledged memory problems. These were confirmed in Plaintiff's Trial Exhibit "97" and in Plaintiff's Post-Trial Aid to the Court "S." Plaintiff's Trial Exhibit "97" is a sworn handwritten Adult Function Report submitted by Cynthia to the Social Security Administration dated February 26, 2009. This report memorialized Cynthia's difficulty concentrating and getting along with others (at page 2, item 10) and her inability to remember to shower and brush her teeth or take her medication unless reminded by her husband and her friends (at page 3). Exhibit "97" documented Cynthia's statements under oath that, (i) her husband did not trust her with money (page 5, item 15b), and (ii) Cynthia "heard things that were not being said" and didn't hear things that "were being said" (at page 6, item 20), and (iii) Cynthia had problems completing tasks, understanding and getting along with others (page 6, item 20).
23. Exhibit "97" confirmed Cynthia's difficulties concentrating; difficulty following instructions; difficulty getting along with others (Section "D", Remarks, page 8); and difficulty following the instructions of authority figures (page 7, item 20h). Also, Plaintiff's Post-Trial Aid to the Court "S" documented and catalogued not less than 1,397 times when Cynthia testified "I don't recall" or words to that effect in the course of transcribed depositions and excerpts of depositions. Based upon the foregoing, the Court finds that the evidence established that Cynthia executed the Operating

Agreements for all of the respective LLCs. Subsequently, Cynthia may have had no actual recollection of doing so.²⁸

24. The Court notes that two other Exhibits impacted this analysis:

- A. Plaintiff's Exhibit "65" was the unfortunate e-mail of June 17, 2009 sent from Cynthia to Valentin, a copy of which was discovered and reviewed by Nina at her home at the Jameson Property. The Court notes the presence of Peter at the time of such discovery and the fact that Nina was "visibly upset" upon reading its contents. The Court does not consider it necessary to memorialize the full contents of this e-mail in this Final Judgment, but Plaintiff's Exhibit "65" contained a vile and racist condemnation of Ukrainian women, and by inference, Nina, as a Ukrainian woman. The Exhibit revealed Cynthia's animus toward Nina. The Court considered Plaintiff's Exhibit "65", not for the veracity of its contents, but as demonstrating Cynthia's motive to act adversely to Nina's interests.
- B. Plaintiff's Exhibit "78" was the composite documentation relative to the 2008 tax bill and purported tax payment on Nina's Covert Road property.²⁹ The Court received undisputed testimony that the handwriting on the 2008 tax bill and the deposit slip were Valentin's handwriting, as well as the undisputed testimony of Valentin and Cynthia that the handwriting containing the address on the certified mail receipt was Cynthia's handwriting. The Court concludes that Plaintiff's Exhibit "78" included what is clearly a cut and pasted official check and that other portions of Plaintiff's Exhibit "78" are actual documents that seem to reveal where

²⁸ This determination moots the issues of whether or not these Operating Agreements may have been executed by others at Cynthia's request, and whether Cynthia ratified such Operating Agreements and whether Cynthia is estopped from denying the execution of such Operating Agreements.

²⁹ Cynthia testified that she had received the \$2,000.00 from Nina and paid the taxes due, but the evidence at trial revealed that the taxes remained unpaid.

those cut and pasted portions came from. The Court further finds that the testimony of Valentin relative to his discovery of Exhibit “78” at the Kenoska Property subsequent to July 25, 2013 was credible testimony, and that the chain of custody which transferred Plaintiff’s Exhibit “78” first to Nina and then to Nina’s counsel, Stanley A. Goldsmith, was satisfactorily established. The Court finds that Cynthia’s claim that Plaintiff’s Exhibit “78” was something done by Valentin and that she had nothing to do with it is not credible and that Plaintiff’s Exhibit “78”, like so many of the other Exhibits, is supportive of Plaintiff’s causes of action in the SAVC.

25. Contrary to Cynthia’s argument, this Court finds the Statute of Frauds, as contained at §725.01, Fla. Stat., does not bar enforcement of (i) Nina’s Mandatory Repayment Agreement, or its significance as an agreement requiring performance as a prerequisite to contingent vesting of any equity interest of Valentin and Cynthia in the LLCs.

A. Oral agreements are not barred by the Statute of Frauds when a memorandum thereof is signed by or on behalf of the party to be charged.

§725.01, Fla. Stat., provides, in pertinent part, as follows:

Promise to pay another’s debt, etc.—No action shall be brought whereby to charge any executor or administrator upon any special promise to answer or pay any debt or damages out of her or his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person or to charge any person upon any agreement made upon consideration of marriage, or upon any contract for the sale of lands, tenements or hereditaments, **or of any uncertain interest in or concerning them**, or for any lease thereof for a period longer than 1 year, or **upon any agreement that is not to be performed within the space of 1 year** from the making thereof ... unless the agreement or promise upon which such action shall be brought, **or some note or memorandum thereof** shall be in writing and signed by the party to be charged therewith **or by some other person by her or him thereunto lawfully authorized** [emphasis supplied].

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- B. The written note or memorandum required by Statute of Frauds may take almost any form. *See, Rank v. Sullivan*, 132 So. 2d 32, 36 (Fla. 2d DCA 1961).
- C. The written memorandum may be signed by an agent of the party to be charged. *See, Bellaire Securities Corp. v. Brown*, 158 So. 625, 636 (Fla. 1936). *See also, Rohlring v. Tomorrow Realty & Auction Co., Inc.*, 528 So. 2d 463 (Fla. 5th DCA 1988).³⁰
- D. The agent need not sign the agent's name, but may sign the principal's name directly, as long as such agency exists (*Treister v. Pacetty*, 85 So. 2d 605, 607 (Fla. 1956)).
- E. Initials are as valid as a signature (*Gendzier v. Bielecki*, 97 So. 2d 604, 608 (Fla. 1957)).
- F. Multiple documents may be aggregated for purposes of satisfying the requirements of a written memorandum under §725.01, Fla. Stat., (*Kolski v. Kolski*, 731 So. 2d 169, 171 (Fla. 3d DCA 1999)).

Nina's Mandatory Repayment Agreement is both an enforceable written agreement and an enforceable oral agreement clearly documented by memoranda sufficient to satisfy §725.01, Fla. Stat.

Exhibit "73", the Minutes of November 15, 2009 is a key component of the written form of Nina's Mandatory Repayment Agreement.³¹ Exhibit "73", in conjunction with other written memoranda (i.e. LLC Minutes) demonstrate that Nina's Mandatory Repayment Agreement in oral form is sufficiently confirmed by written memoranda that it is not barred by §725.01, Fla. Stat.

Paragraph 1(i) of Exhibit "73", which was effectively unchallenged by Cynthia, delineates Nina's continued ownership of ONE HUNDRED PERCENT (100%) of all LLC interests if the LLCs failed

³⁰ In the present case, the persons authorized by Cynthia to affix Cynthia's initials to Minutes, including, without limitation, Plaintiff's Ex. "73", were Cheryl Selby and Cynthia's female friend in the Venice/Englewood area who, collectively, did so not less than twenty-five times, as per the proffered and factually unrefuted testimony of Peter Pashtenko.

³¹ Operating Agreements are enforceable contracts (*Dinuro Investments v. Camacho*, 141 So. 3d 731, 741 (Fla. 3d DCA 2014) at FN 6. *See also, Demir v. Schollmeier*, 199 So. 3d 442, 445 (Fla. 3d DCA 2016). As per Statute, Operating Agreements embody all written and oral understandings of the parties regarding the administration of LLCs per §605.0102(45), Fla. Stat., [previously §608.402(24), Fla. Stat.].

to return to Nina TWENTY-FIVE PERCENT (25%) of her initial investment in each of them, plus EIGHT PERCENT (8%) simple interest by year five of Nina's sole investment (with other agreed terms), or failed to return FIFTY PERCENT (50%) plus EIGHT PERCENT (8%) simple interest by year eight of NINA's investment in each of them (with other agreed terms). The organizational Minutes of the LLCs for Eagle Pass³², Jonah³³, Morchester³⁴, Oconto³⁵, Penelope³⁶, and Salford³⁷ constitute written memoranda which may be aggregated with Plaintiff's Exhibit "73" to satisfy §725.01, Fla. Stat. Such organizational Minutes reflect (i) that the "primary purpose" of each of the LLCs was to satisfy Nina's Mandatory Repayment Agreement, (ii) that no funds were to be withdrawn from the LLCs, by Valentin or Cynthia other than for operating expenses, until Nina's Mandatory Repayment Agreement had been satisfied, and (iii) that Valentin, Cynthia, and Nina would go to the bank to obtain a cashier's check for each LLC's component of Nina's Mandatory Repayment Agreement before the contingency for possible vesting of LLC equity interests to Valentin or Cynthia would be satisfied.

26. Those obligations of Valentin and Cynthia (i) not to withdraw funds prematurely, (ii) not to withdraw funds for any unauthorized purpose and (iii) to personally accompany Nina to obtain the required cashier's checks, refute the contention of Cynthia's Closing that the agreement embodying Nina's Mandatory Repayment Agreement was unenforceable against Cynthia because it was an LLC obligation exclusively rather than Cynthia's obligation. As Cynthia and Valentin initially undertook significant responsibilities in connection with the LLC properties, they were the primary actors who would determine the performance of the repayment obligation. They had specific

³² Ex. "117", handwritten version only has survived.

³³ Ex. "66", handwritten; Ex. "67", typed and initialed.

³⁴ Ex. "51", handwritten; Ex. "52", typed and initialed.

³⁵ Ex. "55", handwritten; Ex. "56", typed and initialed.

³⁶ Ex. "66", handwritten; Ex. "67", typed and initialed.

³⁷ Ex. "61", typed and initialed.

prohibitions on withdrawal and the utilization of funds so that the repayment obligation could be satisfied, and they were the persons who stood to benefit if Nina's Mandatory Repayment Agreement was satisfied.

27. Cynthia's contention that the Statute of Frauds bars Plaintiff's entitlement to establishment of Constructive Trusts (for Valentin's and Cynthia's failure to honor the Lifetime Care Obligation) is incorrect. *See, Zanakis v. Zanakis*, 629 So. 2d 181, 183 (Fla. 4th DCA 1993). [T]here are probably few rules more well-established than that constructive or resulting trusts involving real estate can be based on parole evidence³⁸), *Williams v. Grogan*, 100 So. 2d 410 (Fla. 1958), and *Quinn v. Phipps*, 113 So. 419, 423 (Fla. 1927), and §697.05, Fla. Stat. Nina fully performed all of her obligations under the respective Lifetime Care Obligations, by (i) including Valentin and Cynthia in the title to the Deed to the Jameson Property, (ii) including Valentin and Cynthia in the title to the Deed to the Kenoska Property, (iii) providing the funds for the acquisition of all of the LLC Properties, and (iv) providing Valentin and Cynthia a contingent opportunity to become equity owners of the LLCs if they satisfied Nina's Mandatory Repayment Agreement. Nina's full performance of the predicates to the enforcement of the Lifetime Care Obligation (as well as predicates to the enforcement of the forfeiture component of Nina's Mandatory Repayment Agreement) take these agreements outside the operation of the Statute of Frauds. *See, LynkUs Communications, Inc. v. WebMD Corp.*, 965 So. 2d 1161, 1167 (Fla. 2d DCA 2007), citing *Dionne v. Columbus Mills, Inc.*, 311 So. 2d 681, 683 (Fla. 2d DCA 1975).
28. The Court finds that Plaintiff properly plead and proved all of the necessary elements of Count XXIII of the SAVC. The Court the Court hereby enters declaratory judgment that Nina is the sole owner

³⁸ This exception to the parole evidence rule is consistent with and may well have emanated from our statute of frauds which specifically excepts these equitable trusts from having to be in writing even though they involve real property. Section 689.05 Florida Statutes. *Zanakis*, 629 So.2d at 183, citing *Quinn v. Phipps*, 93 Fla. 805, 113 So. 419 (1927).

of all of the LLCs' equity interests, and indirectly, the beneficial owner of all of the LLCs' physical properties, bank accounts, and other interests, both tangible and intangible, and that she has been such sole equity owner and the sole beneficial owner thereof since the inception of each of the respective LLCs.³⁹

29. Plaintiff plead and proved all of the elements required to establish a Constructive Trust for her sole and exclusive benefit in (i) the Jameson Property, (ii) the Kenoska Property, and (iii) all of the equity interests, both tangible and intangible, in all of the LLCs in order to prevent Valentin's and Cynthia's unjust enrichment at Nina's expense. *See, Zanakis v. Zanakis*, 629 So. 2d 181 (Fla. 4th DCA 1993), *Wadlington v. Edwards*, 92 So. 2d 629 (Fla. 1957), *Quinn v. Phipps*, 113 So. 419 (Fla. 1927), *Provence v. Palm Beach Taverns, Inc.*, 676 So. 2d 1022 (Fla. 4th DCA 1996), and *Saporta v. Saporta*, 766 So. 2d 379 (Fla. 3d DCA 2000).

A. The Court finds it significant that Valentin and Cynthia individually and collectively abandoned and utterly disregarded their obligations to protect Nina's business and financial interests. Cynthia maintains that Valentin directed her to make systematic and widespread withdrawals from the LLC accounts and transfers from Nina's pension account and social security and unemployment account at SunTrust Bank to a joint account in Valentin and Cynthia's name. While the Court finds that Valentin was complicit, Cynthia's suggestion that Nina authorized their conduct is unreliable. Cynthia's conduct violated her statutory and common law duties owed to

³⁹ As the Court has determined that Plaintiff is entitled to a Constructive Trust establishing her sole and exclusive ownership of all LLC assets, the Court need not premise its findings under Count XXIII of the SAVC on Plaintiff's equally conclusive demonstration that the testimony of Florida Licensed Residential Real Estate Appraiser, Marc Overfelt, in conjunction with Plaintiff's substantially uncontested Exhibit "95" and Plaintiff's Post-Trial Aids to the Court "K" through "Q", inclusive, that if Cynthia ever had any equity in any of the LLCs, such equity was fully withdrawn by her such that she has no equity interests in any of the LLCs.

Nina. The evidence established that Cynthia knew, or should have known, that Valentin was not truthful⁴⁰.

- B. Cynthia owed a duty to obtain Nina's consent prior to her systematic withdrawals and transfers. She admitted that she felt her status as a "managing member" afforded her the right to withdraw any money from the LLC accounts,⁴¹ She also acknowledged that she "took all the money" because she was the "one who took care of everything." Yet, Cynthia verified that she never obtained direct confirmation or authorization from Nina for these LLC withdrawals (regardless of the size or extent thereof)⁴², and never told Nina she was going to be transferring money from accounts in Nina's and Valentin's names [Nina's SunTrust pension account and Nina's SunTrust social security and unemployment compensation account] to Valentin and Cynthia's personal accounts⁴³. Valentin's testimony (supported by documentary evidence) revealed that by December 2010, he and Nina were aware that Cynthia withdrew funds from all the LLC accounts without authorization⁴⁴ (which at that time were maintained at Regions Bank). As a result, it was inconsistent with Valentin's statutory and common law duties owed to Nina for Valentin not to protect Nina from Cynthia.
- C. As the emissaries and interpreters of legal documents and other papers, and transactions involving use of the English language, both Valentin and Cynthia had an affirmative obligation to make full

⁴⁰ Cynthia testified at trial that she "started not trusting Val before we were married." She clarified that she "always" mistrusted her husband.

⁴¹ By Cynthia's own admission, Plaintiff's Exhibit "95" (Composite Cynthia Withdrawal Transaction Tickets or Equivalent of Withdrawals from LLCs) persuasively confirmed what Cynthia removed from the LLC accounts.

⁴² Exhibit "110D" at 233:14 — 234:8.

⁴³ Exhibit "110D" at 86:6 - 88:9.

⁴⁴ Exhibit "75" states in relevant parts: c) Cynthia concedes she withdrew all funds from all seven (7) LLC bank accounts without authorization [emphasis in original]. d) Cynthia agrees that she diverted funds by writing out checks to cash, through over the counter withdrawals, and through ATM withdrawals. Cynthia also agrees that she used electronic transfers to co-mingle and divert money to the seldom-used 2223 Salford, LLC bank account which she used as her own, unauthorized, personal account.

disclosure of all pertinent facts to Nina. Cynthia testified that she regularly withheld information from Nina, allegedly based on Valentin's instruction to do so, even when Cynthia considered it inappropriate to withhold such information.⁴⁵ Any such non-disclosure by Valentin or Cynthia in their position of fiduciaries to Nina is the equivalent to fraud in fact. *See, Soud v. Hike*, 56 So. 2d 462, 469 (Fla. 1952). Nina testified that she never authorized any transfers or withdrawals out of her SunTrust accounts or the LLC accounts. The Court finds that testimony reliable. Valentin and Cynthia acted on their own accord and consistently failed to satisfy their collective obligation to protect Nina's business and financial interests.

29. Regarding the Conversion Counts (XXII⁴⁶ and XXVI⁴⁷) the Court finds that Plaintiff failed to establish all of the elements necessary for recovery. Accordingly, the Court rules in favor of Cynthia on these claims. Conversion is an unauthorized act which deprives another of [her] property permanently or for an indefinite time. ... A conversion occurs when a person who has a right to possession of property demands its return and the demand is not or cannot be met. *Shelby Mutual Insurance Co. Of Shelby, Ohio v. Crain Press, Inc.*, 481 So.2d 501, 503 (Fla. 2d DCA 1985). However, withdrawal of funds from a bank account may form the basis of an action for conversion [only] if the specific money in question can be identified. To be a proper subject of conversion each coin or bill need not be earmarked, but there must be an obligation to keep intact or deliver the specific money in question, so that such money can be identified. Money is capable of identification where it is delivered at one time, by one act and in one mass, or where the deposit is special and the identical money is to be kept for the party making the deposit.... *Belford Trucking Co. v. Zagar*, 243 So. 2d 646, 648 (Fla. 4th DCA 1970).

⁴⁵ Plaintiff's Ex. "110E" at 34:17 - 35:19.

⁴⁶ Conversion of Nina's Pension Account (SunTrust Bank account [REDACTED])

⁴⁷ Conversion of Nina's Social Security and Unemployment Compensation Account (SunTrust Bank account [REDACTED]).

30. Collectively, the testimony established that Cynthia withdrew money from [REDACTED] routinely and openly. However, the evidence adduced regarding the cumulative amount of withdrawals was speculative and incohesive⁴⁸. Likewise, there was insufficient persuasive evidence regarding if or when Nina made demand for return of her money. While Cynthia did systematically (over a period of approximately four years) withdraw Nina's money, the Court finds that an indeterminate portion of that money was used for Nina's direct benefit. The Court cannot discern from the evidence *specific money* that would warrant recovery on the Conversion Counts. The Court distinguishes the evidence adduced on these claims from the compelling evidence (acknowledged, and unchallenged by Cynthia) related to the LLC accounts.
31. Cynthia's Closing makes various challenges to Plaintiff's entitlement to relief under the SAVC. Excluding the Conversion Counts addressed at paragraph 26, the Court finds the legal arguments set forth in Plaintiff's Closing Argument Part II to be persuasive and supported by the evidence. The thrust of Cynthia's argument (other than the Statute of Frauds addressed *supra*.) is that Plaintiff does not have a direct cause of action against Cynthia. The Court finds that argument unavailing. Plaintiff is entitled to bring a direct cause of action against Cynthia pursuant to §605.0801, Fla. Stat., both for claims arising out of the LLC relationship and claims independent thereof. In accordance with that provision, Nina established an actual or threatened injury arising out of her business relationship with Cynthia that is not solely the result of an injury suffered or threatened to be suffered by the LLCs. Plaintiff's claims are not based on a mere diminution in value of Nina's LLC interests. Rather, Nina holds unique separate and independent interests apart from the LLC relationship for which such direct cause of action is permitted. Nina's unique injuries (which derive from the injuries suffered by the LLCs) include: (i) the documents that were taken and hidden from Nina, were necessary to establish

⁴⁸ The Court sustained Cynthia's objections to various bank records.

Nina's exclusive ownership interests in the LLCs rather than merely required for purposes of operating the LLCs; (ii) the primary and initial objective of the LLCs was to repay Nina before accumulating income for subsequent real estate purchases or member distributions⁴⁹; (iii) prior to the sale of any property, no funds would be distributed from the LLC accounts until Nina had been repaid FIFTY PERCENT (50%) of the equity she contributed together with EIGHT PERCENT (8%) per annum interest thereon⁵⁰; (iv) until repayment had occurred Nina was to have a first lien on all LLC property in order to secure repayment⁵¹; and (v) breach of the written Operating Agreement by Cynthia and damage specific to Nina resulting therefrom⁵².

32. The Court further holds that even prior to the 2014 amendment to §605.0801, Fla. Stat. (which specifically sanctioned Plaintiff's direct cause of action against Cynthia) a direct cause of action was proper. *See, Dinuro Investments, LLC v. Camacho*, 141 So. 3d 731 (Fla. 3d DCA 2014)⁵³. Under Dinuro, Plaintiff's direct cause of action against Cynthia is justified based not only upon the contractual obligations contained in the Composite Operating Agreements, but also based on the breach of Cynthia's statutory duty of loyalty and duty of care owed to Nina. Cynthia and Valentin have breached both their duty of good faith and their duty of loyalty as mandated by §605.04091, Fla. Stat. through their conduct described herein.

⁴⁹ SAVC at ¶ 31.

⁵⁰ SAVC at ¶ 205 (breach of written agreement); SAVC at ¶ 209E (breach of oral agreement).

⁵¹ SAVC at ¶ 205E (breach and damage concerning Oral Agreement).

⁵² SAVC at ¶ 206. The written Operating Agreements contained specific provisions beneficial to one member in the event of a breach by another member. These included (i) a right to reallocate a breaching member's equity percentage based upon failure to honor performance obligations (pursuant to ¶¶ 7 and 12 of the Operating Agreements), (ii) the right to an adjustment of LLC interests based on the monetary impact of a personal use of LLC property at ¶ 52(iv) of the Operating Agreement and (iii) the right to adjustment of distributions based on performance obligations and other factors (pursuant to ¶¶ 17 and 37 of the Operating Agreement). Clearly, to the extent that Cynthia breached the Agreement, her percentage ownership and distribution could be reduced and Nina's percentage ownership and distribution could be increased. Cynthia's breaches therefore provide a benefit personal to Nina rather than an action attributable only to the LLC.

⁵³ A shareholder or member need not satisfy this two-prong test (direct harm and special injury) when there is a separate duty owed by the defendant(s) to the individual plaintiff under contractual or statutory mandates. Dinuro, 141 So.3d at 740.

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33. The Court finds that the case presented by Cynthia fails to rise to the level of proof to entitle her to relief under any of her Counterclaims or Crossclaims. In that context, the Court specifically finds that Nina is the actual and appropriate Plaintiff. While the Court recognizes that Valentin's deep-rooted animosity toward Cynthia is a feature of this litigation, the evidence persuasively established that Nina was, and remains, the injured party. Her motivation to bring this action (assisted by Valentin) was valid. Nina placed her trust and her life savings into the LLC investments. Defendants appropriated the money generated from those investments without Nina's consent. Although Valentin was involved in helping Nina find the lawyer who would ultimately prosecute her claims, there was no evidence that Valentin was involved in the strategy of the litigation. Likewise, he is appropriately named as a defendant in this case. Valentin is liable in part because Nina trusted him, and he disregarded and violated her trust.
34. Because this Court has determined that Plaintiff is entitled to a Constructive Trust for her exclusive benefit over the Jameson and Kenoska properties, this renders moot both (i) Cynthia's claims for partition of the Jameson and Kenoska properties⁵⁴, and (ii) Plaintiff's claims to set aside the Gift Deeds to the Jameson and Kenoska property and contingent request to set aside the Deed of Correction to the Jameson Property. Because the Court has determined that Plaintiff is entitled to a Constructive Trust for her sole and exclusive benefit over the Jameson and Kenoska properties and that Cynthia's claims for partition are not well-founded, the Court need not address Plaintiff's claims for offset as a prerequisite to any prospective partition and sale.
35. As the Court has determined that Plaintiff is entitled to a Constructive Trust establishing ownership in her favor of the Jameson Property, the Kenoska Property, and all of the LLC interests, properties, and

⁵⁴ The Court notes the existence of precedent for a finding for the imposition of a Constructive Trust rendering moot a Counterclaim for partition. *See, Zanakis v. Zanakis*, 629 So. 2d 181, 182 (Fla. 4th DCA 1993).

accounts, the Court need not address Plaintiff's claim for imposition of an equitable lien over these items.

36. The Court finds that neither Valentin nor Cynthia have any interest in (i) the Jameson Property (ii) the Kenoska Property or (iii) any of the LLC companies, properties, or assets that would be considered "marital assets" for equitable distribution in the Family Law Case. However, there will be "marital debts" that must be addressed in that proceeding.

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED AND ADJUDGED** as follows:

A. A Constructive Trust is established for the sole and exclusive benefit of Plaintiff, Nina Pashtenko in and to (i) the Jameson Property and (ii) the Kenoska Property.

B. In order to implement the Constructive Trusts established by this Final Judgment, the recording of this Final Judgment shall constitute the transfer and conveyance to Nina Pashtenko, subject to all existing mortgages and liens of record, if any, of all of the interest of Valentin Pashtenko and Cynthia Pashtenko, formerly husband and wife, in and to the following properties more particularly described as follows:

(i) LOT 6, BLOCK 469, 8TH ADDITION TO PORT CHARLOTTE, according to the plat thereof, recorded in Plat Book 12, Page 20, of the Public Records of SARASOTA County, Florida, also known as 2066 Jameson Avenue, North Port, Florida 34286, Parcel ID 0984-04-6906.

(ii) LOT 10 BLOCK 751, 12TH ADDITION TO PORT CHARLOTTE SUBDIVISION, a subdivision according to the plat thereof, recorded in Plat Book 13, Pages 8, 8A through 8V, of the Public Records of SARASOTA County, Florida, also known as 4675 Kenoska Street, North Port, Florida 34288, Parcel ID 1143-07-5110.

C. In order to avoid any possible confusion for record title purposes, the Court hereby sets aside and declares null and void ab initio the following Deeds recorded in the Public Record of Sarasota County, Florida:

(i) "Gift Deed" executed September 21, 2009, recorded September 29, 2009 as Instrument No. 2009119807, Public Records of Sarasota County, Florida;

(ii) "Gift Deed" executed September 21, 2009, recorded September 29, 2009 as Instrument No. 2009119320, Public Records of Sarasota County, Florida; and

(iii) "Deed of Correction" executed December 29, 2010, recorded December 30, 2010 as Instrument No. 2010158325, Public Records of Sarasota County, Florida.

D. A Constructive Trust is hereby established for Nina's sole and exclusive benefit in all of the interests in 3439 Eagle Pass, LLC, a Florida Limited Liability Company, 1252 Jonah, LLC, a Florida Limited Liability Company, 3304 Morchester, LLC, a Florida Limited Liability Company, 3942 Oconto, LLC, a Florida Limited Liability Company, 3209 Penelope, LLC, a Florida Limited Liability Company, and 2223 Salford, LLC, a Florida Limited Liability Company.

E. That Nina's Constructive Trust over the Eagle Pass, Jonah, Morchester, Oconto, Penelope, and Salford properties shall also include ONE HUNDRED PERCENT (100%) rights of ownership in such LLCs' bank accounts, real estate, and all other tangible and intangible property, retroactive to the formation of all such LLCs.

F. In order to implement the Constructive Trusts established by this Final Judgment, the recording of this Final Judgment shall also serve to convey and confirm unto Nina Pashtenko ONE HUNDRED PERCENT (100%) of the equity ownership, and indirectly, ONE HUNDRED PERCENT (100%) of the assets of the following Florida Limited Liability Companies: (i) 3439 Eagle Pass, LLC, Florida Document Number L09000014719, (ii) 1252 Jonah, LLC, Florida Document Number L09000089777, (iii) 3304 Morchester, LLC, Florida Document Number L09000009479, (iv) 3942 Oconto, LLC, Florida Document Number L09000009481, (v) 3209 Penelope, LLC, Florida Document Number L09000089780, and (vi) 2223 Salford, LLC, Florida Document Number

L09000029486. The vesting to Nina Pashtenko of such equity ownership interests in the LLCs identified in this paragraph shall be retroactive to the formation of all such LLCs, and shall indirectly include all rights in and to the LLC Properties, bank accounts, and other tangible and intangible assets.

G. That the Summary Judgment entered in Nina’s favor and against Valentin on May 29, 2020 (DIN 460) in this matter is now considered a Final Judgment in Nina Pashtenko’s favor, for which sum let execution issue⁵⁵.

H. That Plaintiff, Nina Pashtenko be awarded money damages from Cynthia Pashtenko in the sum of \$251,187.33 for which sum let execution issue⁵⁶, consisting of the following:

(i) Funds withdrawn, removed, or otherwise utilized or diverted by CYNTHIA without authorization from the following Florida LLCs in the amounts designated, as follows⁵⁷:

1252 Jonah, LLC	\$22,439.87
3209 Penelope, LLC	\$25,768.75
3304 Morchester, LLC	\$30,700.00
3439 Eagle Pass, LLC	\$37,880.00
2223 Salford, LLC	\$6,946.24
3942 Oconto, LLC	\$101,375.50
7594 Wexford, LLC	\$24,076.97

⁵⁵ Judgment in the amount of \$383,385.83 as of May 22, 2020 plus post-judgment interest.

⁵⁶ The Court cautions Plaintiff that this amount may be considered a “marital debt” subject to equitable distribution in the family law proceeding.

⁵⁷ Cynthia reviewed Exhibit “95” (Composite Cynthia Withdrawal Transaction Tickets or Equivalent of Withdrawals from LLCs) and conceded that she had no reason to believe it was not correct. She accepted the totals as accurate. Additionally, Plaintiff’s Post-Trial Aids to Court “K” – “Q” accurately characterize the evidence, and support these figures.

(ii) Funds entrusted by Plaintiff to Cynthia Pashtenko to settle Philadelphia tax liability:
\$2,000.00;

Total	\$251,187.33 ⁵⁸
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The Court retains jurisdiction to consider an award of attorney's fees and costs to Plaintiff and such other and further matters as may require resolution in this matter.

SO ORDERED AND ADJUDGED in Chambers at Sarasota County, Florida this 9 day of
FEB., 2021.



Stephen M. Walker, Circuit Judge

✓ Copies furnished:

2/9/21
SA

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⁵⁸ The Court finds that Plaintiff's arguments for additional money damages were too speculative and not adequately supported by competent substantial evidence.