

ANTHONY M. FUSCALDO

v.

PATRICIA A. WARD

Submitted on Briefs November 26, 2002
Decided January 10, 2003

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER,
CALKINS, and LEVY, JJ.

MEMORANDUM OF DECISION

Anthony Fuscaldo appeals from a judgment entered in his favor after a bench trial in Superior Court (Washington County, *Marden, J.*) on his claim for repayment of a loan he made to Patricia Ward to enable her to purchase a business. Contrary to Fuscaldo's contention, assuming *arguendo* that the contract between the parties was unenforceable under the statute of frauds, *but see Mercier v. Town of Fairfield*, 628 A.2d 1053, 1055 (Me. 1993); *Busque v. Marcou*, 147 Me. 289, 296, 86 A.2d 873, 877 (1952), the court did not err in finding that it is not inequitable to allow Ward to retain the benefit of the loan until she repays it in annual installments as agreed by the parties, *see Forrest Assocs. v. Passamaquoddy*

Tribe, 2000 ME 195, ¶ 14, 760 A.2d 1041, 1046. There is no legal basis for requiring Ward to repay to Fuscaldo the entire amount of the loan immediately, whether on a theory of unjust enrichment, *see id.*, money had and received, *see Jellison v. Jordan*, 68 Me. 373, 374 (1878), or money lent, *see Doughty v. Sullivan*, 661 A.2d 1112, 1123 (Me. 1995).

The entry is:

Judgment affirmed.

Attorney for plaintiff:

Barry K. Mills. Esq.
Hale & Hamlin, LLC
P O Box 729
Ellsworth, ME 04605-0729

Defendant did not file a brief.