

EXHIBIT A

FILED

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CLERK OF COURT
CHATEAUFORTS COUNTY
WAYNESVILLE, NC

Defendants thereafter presented witnesses and exhibits in support of their cases. Following the conclusion of the presentations by both parties, Defendants moved for summary judgment as to the claims against Ms. Biggerstaff, individually, asserting that Plaintiffs failed to meet their burden of showing any claims viable against Ms. Biggerstaff. Having heard the witnesses and considered the testimony, exhibits, and arguments of counsel, it is left to the Court to make findings of fact and conclusions of law, as set forth below.

LAW

“A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.” Dema v. Tenet Physician Servs.–Hilton Head, Inc., 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009). The remedy for unjust enrichment is restitution. See Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 409, 581 S.E.2d 161, 167 (2003). To recover restitution in the context of unjust enrichment, the plaintiff must show: (1) he conferred a non-gratuitous benefit on the defendant; (2) the defendant realized some value from the benefit; and (3) it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value. See Campbell v. Robinson, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012).

Notably, not just any benefit conferred meets the first element. See Inglese v. Beal, 403 S.C. 290, 742 S.E.2d 687 (Ct. App. 2013). Rather, the benefit must be non-gratuitous, either because it was conferred at the defendant’s request or because the circumstances were such that the plaintiff could reasonably rely on the defendant for repayment. See id. at 298, 742 S.E.2d at 691.

FINDINGS OF FACT & CONCLUSIONS OF LAW

After considering the testimony and evidence presented, as well as facts admitted by both parties, I make the following Findings of Fact and Conclusions of Law:

1. This matter came before me pursuant to the Order of Hon. J. Mark Hayes dated June 5, 2020.

2. In 2019, Plaintiff Kesha Petty sought to rent property for an event planning and event rental business. She made contact with Defendants Cathy Biggerstaff and B&B Amusement, Inc. (hereinafter "B&B") (collectively "Defendants"). B&B owned certain property located at 1330 Southport Road in Spartanburg (the "Property"). Ms. Biggerstaff is the owner of B&B.

3. Plaintiff and B&B engaged in discussions about terms of a lease and a potential agreement to purchase. While the parties agreed on some terms, they were ultimately unable to fully agree on the terms of a lease and Plaintiff was unable to obtain the financing to purchase.

4. B&B allowed Plaintiff to move into the Property while negotiations were ongoing, and Ms. Petty was in possession of the Property for nine months (March – November of 2019). See Plaintiff's Responses to Requests for Admission, No. 3. During this time, Plaintiff never paid any rent, utilities, or taxes to B&B Amusement for the Property.

5. When the discussions regarding the lease broke down, Plaintiff filed suit, while still using the Property. In fact, Plaintiff maintained possession of the Property even after Defendants filed a counterclaim for eviction and trespass. Plaintiff ultimately turned her key over to B&B in November of 2019.

6. When Plaintiff took possession of the Property, it was in need of cleaning and the parties agreed that Plaintiff would do such cleaning in exchange for the waiver of the security deposit as well as the first month's rent. The parties had agreed that the security deposit would be \$800 and the monthly rent would be the same.

7. Once she took possession of the Property, Plaintiff noticed water damage to one wall and communicated the issue to B&B.

8. The parties agreed that Plaintiff would repair the wall, with help from a friend of Ms. Biggerstaff, and that Defendants would pay for materials. However, Ms. Biggerstaff's friend was unable to assist due to a medical condition. Plaintiff acknowledges that B&B paid for drywall materials for the repair to the wall.

9. In addition to cleaning the space and repairing the wall, Plaintiff engaged in other work on the Property to transform the space into an event venue (the "Other Work"). This work included removing ceiling fans and replacing them with chandeliers, painting the bar, landscaping around her sign, and painting the floor white.

10. Plaintiff began the Other Work while negotiations with B&B were still ongoing and she acknowledged in her testimony that, while she obtained consent from B&B to perform the cleaning and wall repair work, B&B did not expressly consent to the Other Work, nor did B&B agree to compensate her for the same.

11. In fact, Plaintiff mentioned in an April 2019 text message, "I have did a lot of work to the building . . . going out on faith." *See* Text Messages, Plaintiff's Exhibit 9.

12. Plaintiff testified in her deposition that at some point, Ms. Biggerstaff discouraged her from doing further work.

13. Once she was given access to the space, Plaintiff moved some inventory from her home into the Property.

14. During her testimony at trial, Plaintiff initially denied holding events at the Property during her time in possession. However, when confronted with deposition testimony, she acknowledged holding events such as a family gathering, teen night, and grand opening for her business.

15. Numerous times during her testimony, Plaintiff was contradicted by her deposition testimony, impacting her credibility as a witness. This is of particular significance in a case where so much of Plaintiff's damages depend on uncorroborated receipts.

16. Plaintiff seeks the total sum of \$12,253.27 in restitution based on amounts she alleges she spent to improve the Property. This includes (1) \$6,560 for labor; (2) \$5,583.27 for materials; and (3) \$110 for locksmith services. Plaintiff testified that she paid for all labor in cash and presented as evidence receipts which she wrote.

17. From the receipts, those labor receipts relating to wall repair total \$1,600.00. Though the parties' agreement was that Defendants would pay for materials only, and though the only evidence of the amounts paid for labor is through receipts for cash hand-written by Plaintiff, B&B agreed at trial that B&B should pay Plaintiff \$1,600 for this work. I find that restitution is owed in the amount of \$1,600 for this work.

18. Plaintiff acknowledged that B&B paid for drywall materials. While Plaintiff presented a number of receipts into evidence, many of which were not legible, Plaintiff did not establish what amounts, if any, related to drywall repair. I therefore find Plaintiff has not met her burden to show that any restitution is owed for materials relating to wall repair, above what B&B already paid.

19. I find that the Other Work performed by Plaintiff does not meet the elements of Unjust Enrichment. As recited above, to recover under a theory of Unjust Enrichment, a party must establish that she has conferred a non-gratuitous benefit on another. See Campbell, 398 S.C. at 24, 726 S.E.2d at 228. Not just any benefit conferred meets this element. See Inglese, 403 S.C. at 298, 742 S.E.2d at 691. Rather the benefit must be non-gratuitous, either because it was conferred at the defendant's request or because the circumstances were such that the plaintiff could

reasonably rely on the defendant for repayment. See id. 298, 742 S.E.2d at 691. Plaintiff has not met her burden on this point. Plaintiff presented no testimony that Defendants requested the Other Work. In fact, testimony established that B&B had discouraged her from taking such steps.

20. Furthermore, Plaintiff did not meet her burden of establishing that Defendants received value for the Other Work. The proper amount of damages in quantum meruit is the value received, not the amount spent. See Stringer Oil Co., Inc. v. Bobo, 320 S.C. 369 (1995) (“In an action in quasi-contract, the measure of recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff.”). The January 15, 2020 property tax receipt shows the property was valued at \$154,350.00. *See* Defendants’ Exhibit 4. In April 2020, Defendant sold the property to a third party for \$130,000. *See* Defendants’ Exhibit 9. There appears to be no increased value to Defendants based on Plaintiff’s Other Work. The work performed was to benefit Plaintiff’s event business, and was not necessarily to increase the property’s value for B&B. Given these issues, no restitution is warranted to Plaintiff for the Other Work.

21. As noted above, though Plaintiff testified that she was to have the security deposit waived as compensation for cleaning (a total of \$800), Ms. Biggerstaff testified that the agreement was that Plaintiff would have the security deposit waived and receive the first month’s rent free (a total of \$1,600). I therefore adopt the valuation of Ms. Biggerstaff and find restitution is warranted for the cleaning in the amount of \$1,600.

22. After Plaintiff filed suit, Defendants presented counterclaims based on unpaid rent, utilities, property taxes, and insurance.

23. I find that Defendant B&B is entitled to restitution under the theory of Unjust Enrichment for these items. Plaintiff undoubtedly was benefitted by being in possession of the

Property for the nine-month period, during which she utilized the space for storage of her inventory and during which time she hosted a number of events and attempted to start an event venue business. It is undisputed that B&B paid the utilities, property taxes, and insurance on the Property.

24. Defendants submitted into evidence the utility bills and tax receipts for the Property during the time period in which Plaintiff was in possession and I find that these amounts are owed as restitution. *See A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC*, 422 S.C. 579, 591–92, 812 S.E.2d 759, 765 (Ct. App. 2018) (finding rent owed as damages for quantum meruit claim). These total \$ 5,336.63 (broken-down as follows):

- a. Duke Energy: \$2,515.71
- b. Spartanburg Water: \$256.83
- c. Spartanburg County Property Tax (Pro-Rated): \$2,564.09

25. To determine the amount owed for the nine months that Plaintiff was in possession of the Property, I find that the best valuation is the rental figure that the parties had agreed upon in attempting to negotiate the lease. Rent restitution is therefore calculated at \$800/month for the total of \$7,200.¹

26. The total amount of restitution owed to B&B therefore totals \$10,265.80.

27. Receipts Plaintiff provided showed labor for the wall repair totaling \$1,600. When added with the \$1600 from the cleaning, Plaintiff is owed restitution of \$3,200.

28. When offset by the restitution owed to Plaintiff, I find that B&B is owed the total sum of \$7,065.80.

¹ Plaintiff and B&B did agree that the security deposit and first month's rent would be waived as part of the cleaning. However, as the lease was not put into effect and these calculations are being made for the purpose of restitution only (with restitution being awarded to Plaintiff for the cleaning), I am including the first month's rent in this calculation of B&B's damages in order to ensure a balanced calculation.

29. Defendants presented documents and testimony to establish that the Property was owned by B&B, sold by B&B, proceeds of the sale were received by B&B, all utilities were paid by B&B, checks were written from a B&B account, and the proposed lease was to be entered into between Plaintiff and B&B. Plaintiff presented no evidence to establish liability on behalf of Cathy Biggerstaff, the sole shareholder B&B. Plaintiff cites to no law or theory by which a shareholder of a corporation is liable for the alleged liability or obligations of the corporation, and such a position is contrary to South Carolina law. See, e.g., S.C. Code Ann. § 33-6-220(b) (“[A] shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.”); see also 16 Jade Street, LLC v. R. Design Constr. Co., 405 S.C. 384, 747 S.E.2d 770 (2013) (finding builder who was a member of the LLC did not have an independent duty to the plaintiff by virtue of holding a residential builder’s license). Given this, I find that there is no genuine issue of material fact as to the liability of Cathy Biggerstaff and I find for her on Plaintiff’s remaining claim for Unjust Enrichment. See Tupper v. Dorchester County, 326 S.C. 318, 325, 487, 187, 191 (1997).

30. Defendants provided Plaintiff a key to the property, and she returned it when it was demanded back. The Court declines to find Plaintiff trespassed on the property. This claim is dismissed with prejudice.

It is therefore ORDERED THAT:

1. Defendants’ trespass claim is dismissed with prejudice.
2. Defendant Cathy Biggerstaff is not personally liable on Plaintiff’s claim of unjust enrichment.
3. As to Plaintiff’s claim for unjust enrichment against B&B, B&B owes restitution to Plaintiff in the total amount of Three Thousand Two Hundred and No/100 Dollars (\$3,200.00).

4. As to Defendant B&B's claim for unjust enrichment, Plaintiff owes restitution to B&B in the total amount of Ten Thousand Two Hundred Sixty Five and 80/100 Dollars (\$10,265.80).

5. Defendant Biggerstaff is not owed in her personal capacity.

6. With these amounts offset, I award judgment to B&B in the total amount of Seven Thousand Sixty Five and 80/100 Dollars (\$7,065.80).

7. Each party is to bear its own attorney's fees and costs.



Spartanburg Common Pleas

Case Caption: Kesha Petty VS Cathy Biggerstaff , defendant, et al
Case Number: 2019CP4203418
Type: Master/Order/Other

IT IS SO ORDERED.

s/ Shannon M. Phillips - 3087