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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Charles B. Simmons, Master in Equity

Appellate Court Case No.: 2020-000396

Terrance "Terry" Carrol,. . . . . Appellant,

v.

Debra Mowery, TD Realty, Upstate RE Group,
Hawk Shadow Business Services, LLC, and Debra Mower Realtor, ... Respondents.

BRIEF OF APPELLANT

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March 10, 2021.

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STATEMENT OF THE ISSUES

I. Did the trial court err in dismissing the plaintiff's claim for constructive fraud?

II. Did the trial court err in dismissing the plaintiff's cause of action for breach of trust based on a finding that no evidence was offered as to a fiduciary relationship between the parties?

III. Did the trial court err in denying the plaintiff's claims unjust enrichment, interest in and for real estate, breach of contract, restitution, and quantum meruit?

STATEMENT OF THE CASE

Plaintiff initiated this case on May 16, 2018, by filing a Lis Pendens Notice of Pendency of Action, Summons and Notice with Complaint attached, and Complaint. Defendant was properly served with same. On June 15, 2018, Defendants filed an Answer and Counterclaim of Defendants. On June 18, 2018, Plaintiff filed an Amended Complaint alleging causes of action for (1) Unjust Enrichment, (2) Interest in and for Real Estate, (3) Intentional Infliction of Emotional Distress, (4) Specific Performance of Contract, (5) Breach of Contract, (6) Temporary Injunction, (7) Restitution, (8) Constructive Fraud, (9) Breach of Trust, and (10) Quantum Meruit. On June 26, 2018, Defendant filed an Answer to Amended Complaint and Counterclaim of Defendants denying Plaintiff's requests for relief, stating affirmative defenses of (1) Statute of Frauds, (2) Statute of Limitations, and (3) Laches, and alleging causes of action for (I) Interference with Contractual Relationship, (2) Abuse of Process, (3) Slander of Title, (4) Conversion, (5) Eviction, and (6) Offset.

This case was referred to the Master by an Order of Continuance and Order of Reference to Special Referee filed October 16, 2019, to act as special referee for Pickens County for final, non-jury adjudication of the matter and related motions. This matter was heard on December 17, 2019, for a hearing on Plaintiffs Motion to Compel Discovery, Defendants' Motion for Partial Summary Judgment, and a trial on the merits. At the call of the case, Plaintiff was present with his attorney, James P. O'Connell, and Defendant Debra Mowery was present with her attorneys, Bruce W. Bannister and Luke A. Burke. Plaintiff was denied relief on his claims and the Defendant denied relief on her claims. A timely notice of appeal was filed and J. Falkner Wilkes was substituted as counsel for Appellant.

STATEMENT OF FACTS

The parties met in 2006 in Hartford County, Maryland. R. 148. While in Maryland the parties agreed that they would invest in property by Mowery purchasing a house that Carroll would "fix it up". R. 149. While in Maryland Mowery and Carroll told Carroll's brother-in-law John Quinn about their business plans. R. 222. Quinn's wife Fern Quinn testified that Mowery had talked about her and Carroll's plans to buy and fix-up houses as a retirement plan. R. 226-R. 230. The parties discussed and agreed to put the Maryland house in Mowery's name to facilitate paperwork with the Maryland house. R. 169. While the parties still lived together in Maryland Carroll bought materials and completely renovated the Maryland house. R. 150; 221. The parties purchased the Maryland home for $61,000 and as a result of Carroll's renovations were able to sell it for $169,000. R. 160. Mowery admitted that a $100,000 profit from the Maryland house came in part from Carroll's work. R. 308.

After Carroll paid off the mortgage on the Maryland property the parties agreed to buy another house as a continuation of their retirement plan. R. 153. They looked and made offers on houses in Maryland and Florida but ended up buying a house at 109 Linda Lane in Easley, South Carolina. R. 154. Mowery obtained another mortgage on the Maryland home for the purchase of the Linda Lane home. R. 157. When the Maryland home was sold that mortgage was paid off leaving the parties with the Linda Lane home in Easley, no mortgages, and $71,000 in their joint bank account. R. 157-158; 281. Around the same time Carroll also put the proceeds from the $42,000 sale of his 53 foot Hatteras motoryacht into the joint account which was used to purchase materials used in the renovation of the Linda Lane property. R. 177; 209-210.

In 2010 Carroll was involved in a motor vehicle accident. R. 151. In approximately 2012

Carroll received a settlement close to $118,000 for his injuries. R. 152. Carroll deposited half of the settlement money into his checking account and half into a savings account, both in his name. R. 152. Within a month Carroll withdrew about $60,000 cash which he put into a joint safety deposit box at MBRS. R. 152. Carroll used the remaining funds from his settlement to pay off the $31,000 mortgage on the Maryland home. R. 157; 341. He also put $5,000 into Hawk Shadow and $5,000 into his boat rental business. R. 157; 341. Quinn testified that most of Carroll's money went into the parties' businesses. R. 222. The parties had a joint account at BB&T (8910) in the name of "Debra Mowery and Terence Carroll, 109 Linda Lane" that they used to purchase all of the South Carolina properties. R. 161; 343-345; 360; 367.

The parties resided in the Linda property home from 2015 until Mowery kicked Carroll out in 2018. 160. The Linda Lane property was purchased with loan money from AgFirst that was deposited into the parties' joint account at MBRS. R. 155. After the purchase Mowery stayed in Maryland and Carroll moved down to South Carolina to begin renovation work on the house. R. 155. Carroll completely renovated the house. 155; 420. Carroll installed new plumbing, bathroom, added closets, finished the basement, added a new exterior door. 155-156. He also put in a full 14 by 14 foot addition along with a 14 by 25 foot deck. R. 166. The parties purchased the home for $61,000 cash. 156. Carroll's work increased the home's equity over 100 percent. R. 156. Carroll estimated the value of the Linda Lane home to be $220,000. 166. Mowery estimated its value at $169,000. R. 321.

The parties later purchased an additional property at 204 South 9th Street with the intention of making it a rental. R. 162. The property was purchased for $10,000 that came from the sale of the parties' Maryland house proceeds which were deposited into the parties' joint

BB&T account. R. 161-162. With the help of some of his family Carroll totally renovated the 9th Street property. R. 161-163; 220-221. The house was purchased with funds from the parties joint account. R. 200. Most of the money spent on the house came out of the parties' joint account. R. 164. That house was rented at $800 a month. R. 164. Every month the rent was deposited into the TD account. R. 165. Carroll did all of the showings and dealt with the tenants. R. 165.

Shortly after purchasing the 9th Street property the parties purchased another property at 539 Pope Field Road. R. 168. The Pope Field house was also purchased with funds from the parties' joint account. R. 168-170. The purchase price on the property was $42,000. R. 323. Carroll performed $61,000 to $75,000 worth of work in renovating the Pope Field property. R. 200; 220-221. Without discussing it with Carroll, Mowery entered into a contract to sell the Pope Field house for $61,000 despite it being worth at least $90,000. R. 200.

In addition to buying and improving real property the parties had several businesses they ran together. TD Realty was formed with the intent to hold future purchases under the parties' retirement plan. R. 169. TD Realty was short for Terry/Debra. R. 207. Mowery led Carroll to believe that she had made him a part owner of TD Realty and that all of the South Carolina properties were held under TD Realty. R. 169. Hawk Shadow Business Services, LLC was a business started by Mowery as a tax preparation business. R. 146. Debra Mowery Realtor was a business started by the parties so that they would have access to the MLS system in buying rental houses. R. 147. That allowed them to find houses as soon as they came on the market. R. 147. Carroll's settlement money paid for Mowery getting her real estate license. R. 147; 204-205. Mowery had to work for a broker for two years before she could go out on her own as a real estate agent. R. 147. During that time Mowery worked at Charter Realty where she met realtor

Cole Reynolds. R. 205-207.

TD Realty was started by the parties as a real estate company to buy rental houses and collect rental income. R. 146. Carroll testified that he had been given and signed the paperwork to make him vice-president of TD Realty. R. 207. Carroll testified that he believed that he was the vice-president and part owner in TD Realty. R. 207-208. TD stands for "Terry/Debra". R. 207. Upstate RE Group was started by the parties as a real estate brokerage firm. R. 146. Carroll was also led to believe that he was also a vice president and part owner of Upstate Real Estate Group. R. 205-208. As a result Carroll invested money in Upstate. R. 205-206.Carroll remodeled the basement of the Linda Lane house as an office for Upstate. R. 146. The parties paid for Cole Reynolds to get his brokerage license. R. 146. Once Reynolds obtained his license he acted as the broker in charge of Upstate RE Group. R. 146. It was not until this litigation that Carroll discovered that the business records Mowery kept for the parties' businesses failed to show him as a part owner of any of the businesses. R. 207.

When Mowery broke off the relationship with Carroll she initially told him that they would split all of their assets 50/50. R. 171. The next day she cancelled his credit cards, took his name off the bank accounts, took all of the cash out of the safe, and most of his belongings. R. 172-173. She also took the keys to everything, including a Jaguar that the parties' purchased while still in Maryland. R. 173-174. Carroll was forced to pay for hotels rent housing. R. 176. Carroll estimated he should get somewhere around $300,000 for the lack of use of the Jaguar, damages, and mental anguish. R. 177.

At trial Mowery denied any agreement that Carroll would receive any money from the sale of the houses or receive any compensation for the work he put into any of the houses. R.

297. She claimed that she paid for all of his living expenses which she thought was a fair trade for his work on the properties. R. 297. When asked if at some point did she make a determination that she didn't want to be in a romantic relationship with Carroll, Mowery responded that they had not been romantic for many years and that it came to an end because she "no longer had any work available for him". R. 295. On cross-examination Mowery testified that now she has another man living with her at Linda Lane that doesn't pay rent. R. 306. When asked if he is living there for free Mowery testified: "He's working. He takes care of some things for me." R. 306, l. 14-16. When asked if he's doing the same thing Mr. Carroll did she responded "yes". R. 306, l. 14-16.

While claiming earlier in her testimony that she was not buying houses with Carroll, when asked if Pope Field was the last one "you-all" bought together Mowery responded: "That is correct." R. 323. When asked if Carroll ever deposited any of his money, boat proceeds, personal injury money, into any of the various accounts Mowery said: "Not that I know of. Not that I recall." R. 314, l. 6-21. When asked how the jaguar was paid for Mowery said: "That was paid with cash out of the box." R. 315, l. 4-5. Although Mowery had testified that Carroll had never paid for anything she could not explain how the mortgage on the Maryland house was paid for and denied knowing what Carroll paid $30,000 dollars for or where he got the money. R. 319. Mowery later admitted that Carroll wrote her checks. R. 320. When asked where she thought he got the money from to write her checks she responded: "He had a settlement." R. 320, l. 5-13. But then when asked a follow up question on what she thought Carroll did with the settlement proceeds she claimed she had no idea. R. 320. Mowery was so evasive in her testimony that the judge called her out repeatedly and only then did she admit that Carroll paid the $30,000 to

satisfy the mortgage on the Maryland house. R. 324; 384-385. In cross-examination Mowery admitted to having written a birthday card to Carroll that extolled his virtues contrary to her testimony about Carroll at trial. R. 328-329.

ARGUMENT

I. THE COURT ERRED IN DISMISSING THE PLAINTIFF'S CLAIM FOR CONSTRUCTIVE FRAUD.

Standard of Review

In an appeal from the granting of an involuntary nonsuit the appellate court must review the evidence and all inferences reasonably deducible therefrom in the light most favorable to [the non-moving party.] Winburn v. Insurance Company of North America, 287 S.C. 435, 339 S.E. (2d) 142 (Ct. App. 1985). If there is any evidence supporting a verdict for Carroll the judgment must be reversed and the case remanded for a new trial. *See* Ringer v. Graham, 286 S.C. 14, 331 S.E. (2d) 373 (Ct. App. 1985) *and* Seigler v. Yeargin Constr. Co., 290 S.C. 383, 384, 350 S.E.2d 518, 519 (Ct. App. 1986).

> The well-established rule in this state is that if there is any testimony whatever to go to the jury on an issue involved in a cause, or even if more than one inference can be drawn from the testimony, then it is the duty of the judge to submit the cause to the jury. This is true, even if witnesses for the plaintiff contradict each other, or if a witness himself in his testimony makes conflicting statements. The credibility of witnesses is entirely for the jury. *Id. at* 61, 80 S.E. (2d) *at* 744; *see also* Collum v. Southern Ry. Co., 189 S.C. 336, 1 S.E. (2d) 234 (1939); Kizer v. Woodmen of the World, 177 S.C. 70, 180 S.E. 804 (1935). [***4]

Seigler v. Yeargin Constr. Co., 290 S.C. 383, 385, 350 S.E.2d 518, 520 (Ct. App. 1986).

Discussion

The Court granted the defense motion for involuntary nonsuit and dismissed the Plaintiff's claim for constructive fraud based on a finding that Carroll "knew that all real property and other titled property were titled in Defendant Debra Mowery's name." This was clearly error.

In deciding on a motion for a nonsuit, the trial judge must consider the evidence in the light most favorable to the party resisting the motion. If more than one reasonable inference can

be drawn from the evidence, the judge must submit the case to the jury. Dunsil v. Jones Chevrolet, 268 S.C. 291, 233 S.E. (2d) 101 (1977). Rycroft v. Gaddy, 281 S.C. 119, 122, 314 S.E.2d 39, 42 (Ct. App. 1984). Here Carroll repeatedly testified that Mowery and he discussed having the South Carolina properties held under TD Realty which, as Carroll testified, was established specifically for that purpose. While Carroll admitted knowing that the Maryland property was put in Mowery's name, that was done with his knowledge to facilitate Mowery handling the property paperwork. However, Carroll testified that he was unaware that the real properties in South Carolina had not been titled under TD Realty until he received discovery in the present action.

> In Greene v. Brown, 199 S.C. 218, 223, 19 S.E. (2d) 114, 116 (1942), our Supreme Court defined constructive fraud as follows:
>
>> Constructive fraud is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests.
>>
>> Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud. An intent to deceive is an essential element of actual fraud. The presence or absence of such an intent distinguishes actual fraud from constructive fraud.
>
> (*citation omitted*); accord, O'Quinn v. Beach Associates, 272 S.C. 95, 249 S.E. (2d) 734 (1978).

Giles v. Lanford & Gibson, Inc., 285 S.C. 285, 287-88, 328 S.E.2d 916, 918 (Ct. App. 1985). In applying constructive fraud to a realtor this Court said:

> A breach of a legal or equitable duty, irrespective of moral guilt of the tort feasor, is a constructive fraud in the eyes of the law. An intent to deceive is an essential element of "actual fraud" but neither actual dishonesty of purpose nor intent to deceive is an essential element of "constructive fraud," and the presence or absence of such an intent distinguishes actual fraud from constructive fraud.

> Greene v. Brown, 199 S.C. 218, 19 S.E.2d 114 (1942). Moreover, constructive fraud has the same legal effect as actual fraud. State ex rel Daniel v. Strong, 185 S.C. 27, 192 S.E. 671 (1937).

Designer Showrooms v. Kelley, 304 S.C. 478, 480-81, 405 S.E.2d 417, 419 (Ct. App. 1991).

In the light most favorable to Carroll the record contained sufficient evidence to show that Mowery, having extensive business knowledge and being in the position of a realtor, misled Carroll into believing that the real property would be titled under TD Realty in which he had an ownership interest. The record was therefore sufficient to require the denial of the defense motion for nonsuit.

II. THE COURT ERRED IN DISMISSING THE PLAINTIFF'S CAUSE OF ACTION FOR BREACH OF TRUST BASED ON A FINDING THAT NO EVIDENCE WAS OFFERED AS TO A FIDUCIARY RELATIONSHIP BETWEEN THE PARTIES.

Standard of Review

As more fully set forth above, in an appeal from the granting of an involuntary nonsuit the appellate court must review the evidence and all inferences reasonably deducible therefrom in the light most favorable to [the non-moving party]. Winburn v. Insurance Company of North America, 287 S.C. 435, 339 S.E. (2d) 142 (Ct. App. 1985).

Discussion

The trial court dismissed Plaintiff's breach of trust cause of action based on a finding that the Plaintiff failed to offer any evidence of a fiduciary relationship between Carroll and Mowery. That was error.

The record shows that Mowery did all of the paperwork for the parties, ran a tax service, and later obtained her real estate license to further the parties' efforts in acquiring and renovating

property in an effort to build equity for their retirement. As a realtor Mowery owed Carroll a duty of disclosure and honesty in relation to the property which they were buying and renovating. A broker owes a duty to its principal to keep it fully and properly informed of all material facts. Vacation Time of Hilton Head, Inc. v. Lighthouse Realty, Inc., 286 S.C. 261, 332 S.E.2d 781 (Ct. App. 1985). This is especially true where Mowery was involved in the purchase and ownership of the properties. *See* Designer Showrooms v. Kelley, 304 S.C. 478, 481, 405 S.E.2d 417, 419 (Ct. App. 1991).

III. THE COURT ERRED IN DENYING THE PLAINTIFF'S CLAIMS OF UNJUST ENRICHMENT, INTEREST IN AND FOR REAL ESTATE, BREACH OF CONTRACT, RESTITUTION, AND QUANTUM MERUIT.

Discussion and Standard of Review

The Court dismissed the Plaintiff's claim on all other claims based on a finding that there was insufficient proof of amounts contributed by either party to enable the Court to determine any "profit" made on any of the real estate dealings between the parties. This was error.

The record shows clearly that the parties' investment in real property was based on a plan where Mowery arranged for the purchase of the properties and handled all of the paperwork. Carroll's contribution to the plan was to renovate the properties and thus create equity. In addition to the labor involved in the renovations the record shows that Carroll also contributed funds to the purchase of some of the materials used in the renovations. Despite whether or not the record allows a to the penny calculation of the costs, any difficulty in such a calculation is the direct result of Mowery's failure to maintain accurate records and should therefore, not result in a windfall to her in this case.

The record is sufficient to make a reasonable calculation of the parties' equity in the properties at issue. The parties' plan for purchasing and renovating real property began with the Maryland house which was completely renovated by Carroll. The subsequent sale of the Maryland house ultimately resulted in the parties' making $100,000 which was used to continue their investments. Despite Mowery's repeated attempts to avoid answering questions about Carroll's direct monetary contributions to the properties, the record is clear that Carroll also used $30,000 from his injury settlement to pay off the original mortgage on the Maryland house. The 9th Street property was purchased for $10,000 and after a complete renovation by Carroll was rented for $800 a month. The Pope Field property which was purchased for $42,000 from money out of the parties' joint BB&T account, was contracted for sale at $61,000. While Carroll testified that this was grossly underpriced, its value is clearly no less than the contracted price. The Linda Lane property was purchased for $61,000 cash. Carroll estimated the value of the Easley home to be $220,000 and Mowery at $169,000.

The record is clear that Carroll was the major contributor in the renovations of the properties at issue. And regardless of any dispute over other money contributed by Carroll under their plan the record is clear that he directly contributed $30,000 of his personal injury funds directly into the process which ultimately allowed for the purchase of the Linda Lane property. As a direct result of his work the Maryland property increased in value by $100,000, the Linda Lane property by no less than $108,000 (by Mowery's own testimony) and the Pope Field property by $19,000. Although the record is unclear on the exact value of the 9th Street property after renovation it does show that after renovation it was renting at $800 a month, which given the $10,000 purchase price would mean that the investment would be fully recovered in a single

year. Not even counting the 9th Street rental property or the $30,000 of money that Carroll directly injected into the process the record shows an increase in equity of no less than $127,000 in the South Carolina property alone by Mowery's own testimony. Nor does that include the fact that the initial investments in these properties were the direct result of Carroll's work on the Maryland property. As a result the record contains ample evidence of Carroll's contributions as well as the corresponding value of those contributions. The Court therefore erred in dismissing the Carroll's claims based on a finding that record failed to show sufficient proof of any "profit" on the parties' real estate dealings.

Breach of Contract. Interest in and for Real Estate

Standard of Review

When legal and equitable actions are maintained in one suit, each retains its own identity as legal or equitable for purposes of the applicable standard of review on appeal. Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 268, 705 S.E.2d 73, 75 (Ct. App. 2010). In an action at law, on appeal of a case tried without a jury, the appellate court's standard of review extends only to the correction of errors of law. The trial judge's findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. Consignment Sales, LLC v. Tucker Oil Co., 391 S.C. 266, 268, 705 S.E.2d 73, 75 (Ct. App. 2010).

Discussion

A contract may arise from oral or written words or by conduct. Prescott v. Farmers Tel. Co-op., Inc., 335 S.C. 330, 335, 516 S.E.2d 923, 926 (1999). "[F]or a contract to be valid and enforceable, the parties must have a meeting of the minds as to all essential and material terms of

the agreement." Davis v. Greenwood Sch. Dist. 50, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (2005); Allegro, Inc. v. Scully, 418 S.C. 24, 34, 791 S.E.2d 140, 145 (2016). Although the record contains conflicting testimony over the issue of an agreement between the parties to share in the benefits of the investment plan the evidence overwhelmingly supports the existence of an agreement. The course of conduct by the parties in the repeated purchase of properties followed by renovations by Carroll, combined with Carroll infusing the process with $30,000 of his personal injury money leads to no other reasonable conclusion. Especially when combined with the testimony of two witnesses that actually heard Mowery discuss the parties' agreement and plan to accumulate equity through the purchase and renovation of property. When compared to Mowery's evasive testimony, the corroborating testimony and course of conduct clearly establish the existence of a contract between Mowery and Carroll.

Quantum Meruit, Unjust Enrichment, and Restitution

Standard of Review

In an action in equity tried by a judge alone, the appellate court may find facts in accordance with its view of the preponderance of the evidence. However, this broad scope of review does not require the appellate court to disregard the findings made below. Fountain v. Fred's, Inc., 429 S.C. 533, 540, 839 S.E.2d 475, 479 (Ct. App. 2020)

Discussion

This Court has recognized *quantum meruit* as an equitable doctrine to allow recovery for unjust enrichment. *See* Player v. Chandler, 299 S.C. 101, 382 S.E.2d 891 (1989). Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that

benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. Webb v. First Federal Savings and Loan Ass'n., 300 S.C. 507, 388 S.E.2d 823 (Ct. App. 1989); Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 366 S.E.2d 12 (Ct. App. 1988). Columbia Wholesale Co. v. Scudder May N.V., 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994).

"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, [**691] 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) ("Restitution is a remedy designed to prevent unjust enrichment."). 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. Campbell v. Robinson, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012); Niggel Assocs., Inc. v. Polo's of N. Myrtle Beach, Inc., 296 S.C. 530, 532, 374 S.E.2d 507, 509 (Ct. App. 1988).

> "A cause of action for restitution is a type of the broader cause of action for money had and received, and generally the object to be attained in proceedings for restitution is the prevention of unjust enrichment of defendant and the securing for plaintiff of that to which he is justly and in good conscience entitled. A person who has been unjustly enriched at the expense of another is required to make restitution to the other, and if one obtains the property or the proceeds of property of another, without a right to do so, restitution in a proper case can be compelled. . . .
>
> "It is not necessary, in order to create an obligation to make restitution, that the party unjustly enriched should have been guilty of any tortious or fraudulent act; the question is: Did he, to the detriment of someone else, obtain something of value to which he was not entitled? In such cases the simple, but comprehensive, question is whether the circumstances are such that equitably

> defendant should restore to plaintiff what he has received." 77 *C.J.S. Restitution* at 322-323.

Harper v. McCoy, 276 S.C. 170, 172-73, 276 S.E.2d 782, 783-84 (1981).

The general law is that when, as here, an express contract fails because there is no meeting of the minds as to the essential terms, the laborer or contractor may still recover the reasonable value of the labor and materials furnished under an implied in law or quasi-contractual theory. *See* Costa & Sons Constr. Co. v. Long, 306 S.C. 465, 468, 412 S.E.2d 450 & n.1, 306 S.C. 465, 412 S.E.2d 450, 452 & n.1 (Ct. App. 1991) (*citing* 66 Am. Jur. 2d *Restitution and Implied Contracts* §§ 7 and 21 (1973)) (stating implied in law or quasi-contracts are not considered contracts at all, but are akin to restitution, which permits recovery of the amount the defendant has benefitted at the expense of the plaintiff in order to preclude unjust enrichment); Braswell v. Heart of Spartanburg Motel, 251 S.C. 14, 18, 159 S.E.2d 848, 850 (1968) (finding under the theory of implied contract, when there is no agreement as to the price to be paid for services, one is entitled to recover the fair or reasonable value of the services rendered); Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 8, 532 S.E.2d 868, 872 (2000) ("*[Q]uantum meruit*, quasi-contract, and implied by law contract are equivalent terms for an equitable remedy."). This quasi-contractual right of recovery, also known as *quantum meruit*, has been defined by *Black's Law Dictionary* as follows: "1. The reasonable value of services; damages awarded in an amount considered reasonable to compensate a person who has rendered services in a quasi-contractual relationship. 2. A claim or right of action for the reasonable value of services rendered." *Black's Law Dictionary* 1006 (7th ed. 2000).

Our courts have also held that 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." Stringer Oil Co. v. Bobo, 320 S.C. 369, 372, 465 S.E.2d 366, 369 (Ct. App. 1995); *see also* Atl. Coast Builders & Contractors, LLC v. Lewis, 398 S.C. 323, 333, 730 S.E.2d 282, 287 (2012) (Toal, C.J., *concurring in result in part and dissenting in part*) (*citing* Stringer, 320 S.C. at 372-73, 465 S.E.2d at 368-69) (stating "[t]he proper measure of damages for an unjust enrichment claim is the amount of increase in the fair market value of the subject property due to the improvements made by the plaintiff").

Here Mowery has clearly benefitted personally from Carroll's renovations of the properties by their increase in value. Carroll is therefore entitled to the amount by which Mowery has been unjustly enriched. Even if the record fails to show an express contract or meeting of the minds as to a plan to jointly build equity for their retirement through the purchase and renovation of property, Carroll is entitled to recovery of the reasonable value of his labor and materials. *See* Boykin Contracting, Inc. v. Kirby, 405 S.C. 631, 637, 748 S.E.2d 795, 798 (Ct. App. 2013). Not including the $30,000 direct infusion of cash into the process the value of Carroll's labor and materials in this case is limited as a matter of law to the increase in the value brought about by his construction and renovations. *See* Barrett v. Miller, 283 S.C. 262, 264, 321 S.E.2d 198, 199 (Ct. App. 1984).

The record shows an increase of no less than $127,000 in the South Carolina properties to which Carroll is entitled to recover. In addition Carroll is entitled recover for the value added to the 9th Street rental property which is currently rented at $800 per month as well as the $30,000 of money that Carroll directly injected into the parties' equity building process. The

Court therefore erred in dismissing Carroll's claims based on a finding that record failed to show sufficient proof of any "profit" on the parties' real estate dealings. The Court further erred in failing to award Carroll damages based on one or more of the grounds alleged.

Conclusion

Based on the foregoing the decision of the trial court should be reversed and the case remanded for a finding as to damages or in the alternative that damages be awarded by this Court based on the record presented.

Respectfully submitted,

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