THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM McCORMICK COUNTY
Court of Common Pleas

Appellate Case No. 2016-002462

Sonny Adams, ... Respondent,

vs.

Nadine Adams, ... Appellant.

FINAL BRIEF OF APPELLANT

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Question II: Did the trial court err in giving an alternative of having Mrs. Nadine Adams deed a portion of her property to Sonny Adams in lieu of the judgment the trial Court entered against her?

Statement of the Case

Procedural History

Sonny L. Adams filed his Complaint on May 18, 2015 seeking, in a first cause of action, to enforce an alleged verbal agreement to convey him some of the land upon which Mr. Adams possessed a mobile home given to him by Nadine Adams, the Defendant. In a second cause of action he sought damages for Unjust Enrichment for the improvements he made to a mobile home and the real estate upon which it was located. In his third cause of action he sought to enforce an alleged agreement to convey to him the mobile home and the land upon which it was situated through promissory estoppel. Mrs. Adams filed her answer and counterclaim on November 19, 2015. Mrs. Adams generally denied the allegations of the Complaint but did admit that she gave Mr. Adams the mobile home that is situated on her property. She further asserted a defense of the Statute of Frauds. She sought damages for the lis pendens placed on her property by Mr. Adams and for back rent for the property upon which the mobile home was situated.

This matter was heard before Judge Allison Lee, non-jury, on May 11, 2016. By Order dated August 15, 2016, and filed on August 19, 2017, (Rec. on App. at 113), Judge Lee awarded Mr. Adams a judgment in the amount of $45,883.12, which was the costs of the improvements and some taxes he had paid. In lieu of payment of the judgment, she ordered Mrs. Adams to deed to Mr. Adams "a portion of the real property upon which the Mobile Home sits . . . ." Rec. on App. at 113. On August 29, Mrs. Adams filed a Motion for Reconsideration pursuant to Rule 59e of the South Carolina Rules of Civil Procedure. By order dated October 28, 2016 and filed on November 3, 2016, (Rec. on App. at 114), Judge Lee affirmed her previous ruling but

amended the order as to deeding a portion of the property. The new order read "Defendant shall deed that portion of the real property upon which the Mobile Home sits to Plaintiff in acreage sufficient to satisfy the requirements of McCormick County governing authorities." Rec. on App. at 116. Mrs. Adams filed her Notice of Appeal on December 6, 2016.

Factual History

In 2004 Mrs. Nadine Adams purchased approximately 3 acres of land in McCormick County. She paid off the land in 2007 and obtained a deed at that time. Mrs. Adams was married to the brother of the Plaintiff, Sonny Adams. After she obtained title to the land, Mr. Adams asked her if he could have the mobile home located on the property. Rec. on App. at 21, l 18 to 22, l 10; 53, l 24 to 64, l 2. The mobile home was titled in the name of C. Wayne Day, the individual from whom she purchased the land. Rec. on App. at 75, ll 12-24.

In 2008, when Mr. Adams was given the mobile home, he began to make improvements to the mobile home, including a new roof and adding a bedroom. Mr. Adams moved into the mobile home in 2010. Rec. on App. at 29, l 25 to 30, l 1. He continued to make improvements after he moved into the mobile home. Included in the improvements was the repairing of a well and septic tank located on the property. Rec. on App. at 31, 4-16. In total, his testimony was he spent $44,850.64 improving the 1973 mobile home. Rec. on App. at 31, ll 5-10; 53, ll 20-23. He never testified as to the value of the mobile home nor the value of any improvements to the real property caused by his efforts.

After the improvements were completed, Mrs. Adams approached Mr. Adams about paying rent on the land upon which the mobile home was sitting. The testimony from Mrs. Adams was that Mr. Adams was suppose to move the trailer. Rec. on App. at 65, ll 9-16; 66, 12-

17. Through test messages, Mr. Adams also acknowledged he was to move the mobile home. Rec. on App. at 83, ll 13-23; 84, ll3-21; 85, ll 2-12. In 2014, Mrs. Adams asked Mr. Adams to sign a lease agreement for the real property. Rec. on App. at 29, l 24 to 18, l 4. After Mrs. Adams filed an action in magistrate's court to evict Mr. Adams, the present action was filed.

Mrs. Adams did acknowledge that the improvement to the mobile home did increase the value of the mobile home. Rec. on App. at 25-30. She did not testify that the improvements to the mobile home improved the value of her property. The Plaintiff did not call an expert as to the value of any improvements to the property of Mrs. Adams.

Argument

Question I

Did the trial court err in finding that Nadine Adams owed Sonny Adams $45,883.12 as unjust enrichments for the costs of the improvements to the property and not as a measure of the increase in the value of the property?

The lower Court made an award to Mr. Adams under the theory of unjust enrichment. Rec. on App. at 111. The testimony of Sonny Adams at trial was that he made improvements to the 1973 mobile home that cost him $44,850.64.[1] Mr. Adams presented no testimony as to how the improvements to the mobile home increased the value to the property of Nadine Adams. This case is controlled by *Stringer Oil Co. V. Bobo*, 320 S.C. 369, 465 S.E.2d 366 (Ct. App. 1995). In *Stringer Oil*, Bobo and Stringer had an agreement by which Stringer would provide gasoline products to Bobo. Based upon this agreement, Stringer made numerous improvements to the property, including the installation of underground storage tanks, gasoline dispensers and signs. In total Stringer spent a total of $74,642.58. When Bobo started buying his gasoline from another party, the company sued Bobo for breach of contract and unjust enrichment. The lower court, in two different proceedings, awarded Stringer Oil the costs of the improvements. The case was remanded in the first unpublished opinion.

Upon the second appeal, the Court held the lower court was in error in awarding to Stringer Oil the costs of the improvements they made. The Court stated "Upon remand, the master again calculated Stringer's damages based upon Stringer's initial investment, awarding

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[1] Nadine Adams does not contest that she in fact owes the taxes paid by Sonny Adams in the amount of $1,032.48

after appropriate credits, $74,642.58. This was in error." *Id.* at 372, 465 S.E.2d at 368. The Court then noted "While it is true that Stringer has made a substantial investment in Bobo's property, Stringer should not be permitted to shift that loss to Bobo unless it proved Bobo breached their contract." *Id.* at 372–73,465 S.E.2d at 368–69. In *Stringer Oil*, as in this case, there was no breach of contract. If Mr. Adams made a foolish decision to make improvement to a 1973 mobile home he did not own, Mrs. Adams should not be required to pay for that poor decision. *See, also, Barrett v. Miller*, 283 S.C. 262, 264, 321 S.E.2d 198, 199 (Ct. App. 1984) (Barrett could not, as a matter of law, be enriched more than the increase in the value of the one-acre lot brought about by the construction of the church.) Similarly, when a co-tenant improves jointly owned property "[T]he amount of compensation is estimated by and limited to the amount by which the value of the common property has been enhanced." *Ackerman v. Heard*, 287 S.C. 626, 629 340 S.E.2d 560, 562 (Ct. App.,1986).

Mrs. Adams testified that the improvements to the mobile home do not benefit her. She had no intention to keep the home on the property. The only testimony as to value came from Mrs. Adams who did not value the improvement as having increased the value of her property. Rec. on App. at 90, ll 13-14.

The lower Court's reliance upon *Boykin Contracting, Inc. v. Kirby*, 405 S.C. 631, 748 S.E.2d 795 (Ct. App. 2013) is misplaced. First, the *Boykin* case is based upon an implied contract. This case is based exclusively upon unjust enrichment. There was no implied contract between Mrs. Adams and Mr. Adams. In addition, the *Boykin* court stated "In *Stringer Oil*, however, the improvements to the gas station were made without expectation of repayment; rather, the expectation was that Bobo would continue to buy gasoline from Stringer Oil." Id. at

641,748 S.E.2d at 800. Likewise in this case, Mr. Adams made improvements with the expectation of improving the mobile home he would be living in, whether it be on the property of Mrs. Adams or another location. He did not make them with the expectation of Mrs. Adams reimbursing him.

Other states also agree with the position established by our Courts. "The measure of damages in a claim of unjust enrichment is the value of the benefit bestowed upon the defendant which, in equity, would be unjust to retain without recompense to the plaintiff. The measure of damages is not necessarily the value of the money, labor and materials provided by the plaintiff to the defendant, but the amount of benefit the defendant received which would be unjust for the defendant to retain." *Gillette v. Storm Circle Ranch*, 101 Idaho 663, 666, 619 P.2d 1116, 1119 (1980); "The measure of damages is the amount the property has been enhanced in value by such labor and improvements, less any damages suffered by the owner during the occupancy of the putative vendee or tenant." *Hardgrove v. Bowman*, 10 Wash. 2d 136, 138, 116 P.2d 336, 337 (1941); "To constitute [unjust enrichment], there would have to be an enhancement in the value of the land. Damages in this situation are not judged by the value of the efforts and expenditures incurred by the plaintiff. It must be further found that such are a benefit to defendant." *Heim v. Shore*, 59 N.J. Super. 78, 80, 157 A.2d 146, 147 (Ch. Div. 1959). In this case, the only testimony as to benefit, is that it did not benefit Mrs. Adams.

Furthermore, in determining if a party has been unjustly enriched, the Court may also consider how long the person who made the benefit has had the use of the property. The record in this case shows that Mr. Adams has had the benefit of free rent since he started the improvements on the property. As the South Carolina Supreme Court has said "[T]he plaintiffs

improvements on the property. As the South Carolina Supreme Court has said "[T]he plaintiffs would be able to enjoy their improvements for the term of the existing lease and that any retention of benefit by the defendant was a result of the initial terms of the lease." *Sauner v. Pub. Serv. Auth. Of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 168 (2003).

Question II

Did the trial Court err in giving an alternative of having Mrs. Nadine Adams deed a portion of her property to Sonny Adams in lieu of the judgment the trial Court entered against her?

The trial Court properly found that Sonny Adams did not have an enforceable contract to require Nadine Adams to deed to him a portion of the land owned by Mrs. Adams. She concluded "Since Plaintiff has not shown that Defendant promised to give Plaintiff the Land and has not produced a writing indicating such, Plaintiff has not proven that he should be awarded the Land under the doctrine of promissory estoppel." Rec. on App. at 112.. In the original order she simply stated "in lieu of payment of $45,883.12, Defendant shall deed a portion of the real estate property upon which the Mobile Home sits to Plaintiff." Rec. on App. 113. Such a ruling is ambiguous as to how much property would satisfy order, other than the exact property upon which the mobile home sits.

When the ambiguity of this order was called to the Court's attention, she modified the order to read "In lieu of payment of $45,883.12, Defendant shall deed that portion of the real estate property upon which the Mobile Home sits to Plaintiff in acreage sufficient to satisfy the requirement of McCormick County governing authorities." Rec. on App. at 116.

Mrs. Adams has two concerns with this finding. First, a court could interpret the

for which she will have received no compensation, other than satisfaction of a judgment. If a court interprets the provision in this manner, the order would have simply made an end run around the finding that the Plaintiff has failed in his attempt to require Mrs. Adams to deed him a portion of the property. The trial Court in the motion to re-consider did not change her finding that any claim for the property violated S. C. Code § 32-3-10. Second, the amount of property is still ambiguous. Mr. Adams never offered into evidence to the Court below as to what is the minimum amount of land needed. Would Mrs. Adams be required to deed the portion of the land that contains the well or septic tank system or both? If the septic tank is not included, will that increase the amount of land needed to be deeded to Mr. Adams? Should Mrs. Adams be required to deed the well which would require her to spend money to dig a new well if she desired to use the remaining property?

To the extent it is merely an alternative proposal to Mrs. Adams actually paying the money, it is likewise unenforceable. No boundary lines are set. If the County of McCormick permits the deeding of only one acre, what if Mr. Adams did not like the boundary line of that one acre? Would Mr. Adams have the veto power or would he have to accept the one acre Mrs. Adams proposed regardless of the boundary line. The trial Court erred in holding the "in lieu of" provision of the order granted any rights to Mr. Sonny Adams.

This Court should declare the "in lieu of" provision of the order hopelessly ambiguous and order that it not be enforced. Such a rule has been applied when one is held in contempt of court and the order is ambiguous. "Therefore, because the Order is ambiguous and contradictory, Mann cannot be held in contempt for failing to comply with the Order." *Cty. Of Greenville v. Mann*, 347 S.C. 427, 435, 556 S.E.2d 383, 387–388 (2001).

CONCLUSION

For the foregoing reasons, this Court should reverse the Order of the lower Court and enter judgment in favor of Nadine Adams.

September 14, 2017

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211 (b), SCACR.

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