THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM McCORMICK COUNTY
Court of Common Pleas
Honorable Alison Renee Lee, Circuit Court Judge

Appellate Case No. 2016-002462
Unpublished Opinion No. 2018-UP-467

Sonny Adams, ... Respondent,

vs.

Nadine Adams, ... Petitioner.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

I hereby certify that a Petition for Rehearing was filed with the South Carolina Court of Appeals on January 3, 2019. This Petition was denied on January 17, 2019.

Statement of Issues on Appeal

Question I: Did the Court of Appeals err as a matter of law in affirming the decision of the lower court that Nadine Adams owed Sonny Adams $44,850.64 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?

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.

The South Carolina Court of Appeals affirmed the decision in an unpublished opinion on December 19, 2018. A Petition for Rehearing was denied on January 17, 2019.

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.

Mr. Adams testified that he made the improvement to the mobile home. He did not testify as to any increase in value of the mobile home. Rec. on App. at 25-30. Mrs. Adams did testify that the improvements to the mobile home did not improve 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 Court of Appeals err as a matter of law in finding that Nadine Adams owed Sonny Adams $44,850.64 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. The trial judge specifically awarded damages "by the value of the improvements." Rec. on App. at 113. After Mrs. Adams filed her motion to reconsider, the trial court again stated, "The calculation of damage was based on the cost of improvements to the mobile home and the payment of taxes made by the plaintiff, not any increase in the value of the real estate." Rec. on App. at 115. The undisputed fact is the trial judge applied the wrong measure of damages.

Stringer Oil Co. V. Bobo, 320 S.C. 369, 465 S.E.2d 366 (Ct. App. 1995) should have been the controlling authority in this case. 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

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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.

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 for a determination of the value of the improvements.

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 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 his out of pocket costs 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).

The South Carolina Court of Appeals has on numerous occasions re-affirmed the holding of *Stringer Oil* that the proper measure of damages is the increased value of the property, if any, and not the costs of improvements. *See, Sorin Equip. Co. v. The Firm, Inc.*, 323 S.C. 359, 364, 474 S.E.2d 819, 822 (Ct. App. 1996) ("In an action in quantum meruit, the measure of recovery

is the value of the benefit conferred on the defendant.") In *Barnes v. Johnson*, 402 S.C. 458, 742 S.E.2d 6 (Ct. App. 2013) the Court of Appeals collected numerous opinions that it had decided over the years in affirming this principle. Now, in an unpublished opinion, the Court appears to have abandoned this principle and affirmed an award of damages based exclusively on the out of pocket expenses of one seeking a recovery for quantum meruit.

In affirming the lower court the Court of Appeals never cited or attempted to distinguish the *Springer Oil* decision. Citing *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009) the Court simply quoted from the case saying "Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff." The unpublished opinion simply ignored the method previously recognized as to how those damages are to be calculated.

As an unpublished opinion, this case does no damage to the long established line of cases that determine how damages are calculated in an unjust enrichment case in our state. But a party to an unpublished opinion is as entitled to our law being applied in a consistent manner as much as a party to a published opinion. And had the opinion in this matter been unpublished and had applied the law in keeping with the prior decision, the parties would have known the law had in fact been applied consistently. The same is not true in this case. The Court of Appeals failed to consider the facts and the lack of evidence as to the value of the improvements to the property of Mrs. Adams.

Mrs. Adams testified that the improvements to the mobile home do not benefit her. She had no intention to keep the mobile 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. In *Barnes* the Court of Appeals reversed a judgment for the plaintiff even though they found the plaintiff had spent considerable sums for the improvement of the property. In so ruling the Court said "We agree with Johnson's assertion that Barnes failed to introduce evidence showing that his efforts increased the market value of Johnson's property." *Id.* at 467, 742 S.E.2d at 10. The same principle applies here, but the Court of Appeals failed to apply this principle in this case.

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.

This Court has recognized the principle that the measure of damages in an unjust enrichment case is the value of the improvement to the property. "The Chief Justice would not find that the two-issue rule applies in this case. The thrust of her argument is that the master's order does not award damages for unjust enrichment, correctly noting that the actual expenditures made by Atlantic are not a proper measure for unjust enrichment." *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 285 (2012). As this Court has

recognized the proper measure of damages in an unjust enrichment case, the opinion in this case is in conflict with the *Atlantic Coast Builders* case. This error should be corrected.

Other states also agree with the position established by our Court of Appeals but not applied in this case. "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 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). Here, Mr. Adams was never charged rent the entire time he has lived on the property.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Writ of Certiorari and reverse the decision of the Court of Appeals and enter judgment in favor of Nadine Adams or remand the matter to the lower court for a determination as to the value of the improvements to the land.

February 15, 2019

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AFFIDAVIT OF SERVICE

PERSONALLY appeared before me, Sandy Traynham who, after being duly sworn, deposes and says that she is the Secretary for C. Rauch Wise, Attorney for the Petitioner in the above entitled case. That on February 15, 2019, she did deposit in the United States Mail with proper postage affixed thereto, a copy of the Petition for Writ of Certiorari and Appendix in the above case addressed to Scarlet B. Moore, P.O. Box 17615, Greenville, SC 29606.

Sandy Traynham

Sworn to and Subscribed
before me this 18th day
of February, 2019

Notary Public for South Carolina
My Commission Expires: 12/7/2019