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S.C. SUPREME COURT

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 REPLY BRIEF OF APPELLANT

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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 the increase in the value of the property?

The Respondent incorrectly states that *Stringer Oil Co. V. Bobo*, 320 S.C. 369, 465 S.E.2d 366 (Ct. App. 1995) is not applicable to this case. In *Stringer* this Court, in an unpublished opinion, first remanded a previous appeal for a correct determination of the amount of damages. This Court said, concerning the previous order, "The Court held Stringer was 'entitled to recover only to the extent its investment unjustly enriched Bobo to Stringer's detriment.' The Court remanded to the master 'for determination of the amount of the judgment.'" *Id.* at 372, 465 S.E.2d at 368. Upon remand, the master in equity again awarded damages in the amount of the improvements. In holding that the amount of the labor and materials was not the proper measure of damages this Court said "The prior opinion issued by this Court clearly directed the master to determine damages based upon 'the extent to which [Stringer's] investment unjustly enriched Bobo to Stringer's detriment.' Rather than employing that measure of damages, however, the master awarded damages to Stringer based solely on Stringer's initial investment, less the pre-judgment interest previously disapproved by this Court." *Id.* Here, as in *Stringer*, the lower court awarded damages in the amount of the improvements paid by Mr. Adams. There is no testimony in this case as to the value of the improvements made by Mr. Adams. Mrs. Adams testimony was that expenditures did not improve the value of the

property. Rec. on App. at 90.

The Respondent argues that *Stringer* is distinguishable because "the court had competing evidence on damages to assess, whereas in this case Mr. Adams provided receipts evidencing the work he performed on the mobile home and real property."[1] Br. of Resp. at 10. But the Respondent ignores the fact that as there was a competing value, the necessity of remanding this case back for a third hearing was avoided. As this Court said "Since this is an equitable matter, this Court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. Therefore, we find the value of the improvements made by Stringer to Bobo as of the time the parties ceased doing business together is $40,000.00." *Id.* at 374, 465 S.E.2d at 369. The plaintiff has the burden of offering competent evidence as to the value of the improvements and not just the costs of the improvements.

In *Stringer* this Court referred to Georgia cases to support the proposition that the true measure of damages is the value of the improvements to the property. *Remediation Servs., Inc. v. Georgia Pac. Corp.*, 209 Ga. App. 427, 433, 433 S.E.2d 631, 637 (1993)("a recovery in quantum meruit is authorized to the extent of the value of the work to the defendant, not the plaintiff's cost of producing the result to the defendant") *Brumby v. Smith & Plaster Co. of Ga.*, 123 Ga. App. 443, 444, 181 S.E.2d 303, 305 (1971) ("Where quantum meruit is an available remedy, 'value' means value to the owner rather than the cost of producing the result to the workman.).

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1 Based upon a reading of the opinion one is entitled to assume that in *Stringer* there were receipts and other documentary evidence of the costs of the improvements.

Finally, as this Court concluded in *Stringer,* "It is basic hornbook law that although the plaintiff's costs of performance might represent some evidence of value, they do not represent a recoverable item of restitution themselves. Dobbs, Dan B., *Remedies* § 45 at 261." *Stringer* at 374, 465 S.E.2d at 369. Here the lower court made the cost to Mr. Adams the "recoverable item of restitution." Such a finding is not in keeping with the law of our state. This Court should at the very least remand the matter back to the lower court for a determination of the increase in value to the property of Mrs. Adams.

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 Respondent is correct that the amended order does clarify, to some extent, the problems in the original order. The Respondent does not take exception to the fact that the claim, if any, of Mr. Adams to deed him some portion of the land is not enforceable. Upon what legal basis does the court then say the judgement can be satisfied by deeding Mr. Adams an undetermined amount of land with undetermined boundaries? Secondly, is this portion of the order actually enforceable by Mr. Adams or is it at the sole discretion of Mrs. Adams? The order implies the later but does not clearly so state.

The lower court did not state any legal authority for authorizing Mrs. Adams to satisfy the judgment by deeding Mr. Adams an undefined portion of the property. The reason for the lack of authority is there is none.

CONCLUSION

For the foregoing reasons this court should reverse the decision of the lower court and enter judgment for the defendant or in the alternative remand the matter for a hearing as to whether and to what extent, the value of the property of defendant has been increased.

September 14, 2017

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CERTIFICATE OF COUNSEL

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

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