STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON RUDOLPH COCHRAN Plaintiff, vs. OMEGAS OF CHARLESTON COMMUNITY UPLIFT PROJECT Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2018-CP-10-02784 **FINAL ORDER**

This matter came before the court for a bench trial on September 28, 2020. After hearing testimony and examining the documents admitted in evidence, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. In 2007 the Plaintiff Rudolph Cochran (hereafter "Cochran") was president of a nonprofit fraternal organization known as Low Country Men of Mu Alpha (hereafter "Mu Alpha"), which was affiliated with the national Mu Alpha fraternal organization.
2. On November 19, 2007, Mu Alpha purchased certain real property located at 6619 Toogoodoo Road in Charleston County from Toogoodoo Road, LLC and Ruthie M. Simmons for $105,000.00.
3. The purpose of the purchase was to provide a clubhouse and social gathering space for the fraternal organization.
4. Cochran, who was president of the Mu Alpha at the time, was tasked with purchasing the building and took sole responsibility of purchasing and refurbishing the building. Mu

Alpha provided funds to Cochran to purchase and refurbish the building; however, they soon realized the costs would exceed their budgeted funds.

5. At the time of the purchase, the building had no functioning central HVAC system.
6. Since there was not enough funds available to purchase and do all the refurbishing, Cochran offered to pay to have a central HVAC system installed at his expense, believing that he had a verbal understanding among the membership of Mu Alpha that he would be reimbursed at such time as the organization was able to afford to do so, but no later than the time that the organization elected to sell the property.
7. The by-laws of Mu Alpha required the approval of its board for any expenditures exceeding $500.00. There are no records of the board approving this transaction, nor are there are any documents supporting any agreement to reimburse Cochran for the HVAC purchase and installation.
8. Cochran contracted with Mr. William Brown of Brown Heating & Air Conditioning for the installation of three five-ton split heat pump units. Brown testified the price of the contract for installation was $23,000.00. Cochran paid Brown $13,800.00 on March 3, 2008, upon completion of sixty (60%) percent of the work. Cochran paid the balance of $9,200.00 on April 4, 2008, upon completion of the work.
9. Cochran did not make any demand or request for reimbursement during the ensuing ten years.
10. On March 27, 2013, the Defendant Omegas of Charleston Community Uplift Project (hereafter "Omegas") was incorporated. It is also affiliated with national Mu Alpha. This was apparently done at the request of the national Mu Alpha organization because it sought protection from lawsuits filed against local chapters nationwide.

11. On September 26, 2013, Mu Alpha conveyed its interest in the property to Omegas by Quit Claim Deed with $0 consideration listed.

12. During the ensuing years the property was not used as much as in the past, and at some point, the aforesaid HVAC units were apparently stolen without anyone noticing they were gone.

13. On November 9, 2017, Omegas sold the property to JRC Real Properties, Inc. for $125,000.00.

14. The HVAC units were not attached to or located anywhere on the property at the time of the 2017 sale.

15. After the sale Cochran made both oral and written demands for reimbursement.

16. Omega's current officers assert that they are not aware of any promise to repay Cochran, and at the time of the sale the HVAC units were already stolen.

17. When payment was not forthcoming, Plaintiff filed the instant suit.

CONCLUSIONS OF LAW

1. **Breach of contract.**[1]

The court finds Cochran failed to prove by a preponderance of evidence the existence of an enforceable oral contract that he would be reimbursed for the funds he paid to have the HVAC units installed.

The necessary elements of a contract are offer, acceptance, and valuable consideration. Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). Valuable consideration may consist of "some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the

[1] Cochran dropped his conversion cause of action at the directed verdict stage of the trial.

other." Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship, 331 S.C. 385, 389, 503 S.E.2d 184, 186 (Ct.App.1998). With certain exceptions, a contract need not be in writing to be enforceable. Gaskins v. Firemen's Ins. Co. of Newark, N. J., 206 S.C. 213, 216, 33 S.E.2d 498, 499 (1945) (noting that if there is a meeting of the minds with regard to the essential elements of a contract, it is immaterial whether the contract is written or oral). To recover for a breach of contract, the plaintiff must prove: (1) a binding contract; (2) a breach of contract; and (3) damages proximately resulting from the breach. Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). There was not a written contract. The only evidence produced was of an oral contract was that Cochran paid for the HVAC units with an "understanding" that he would be reimbursed at some point in the future if the property was ever sold. Cochran admitted on cross-examination that no one ever explicitly promised him that he would be reimbursed, but rather the evidence was more that it was sort of a "gentleman's agreement". Cochran was president at the time, the club needed the money to pay for the HVAC since the project was running over budget, and he had the funds to pay for it. However, there was evidence presented that the club's bylaws required board approval for any expenditure exceeding $500.00, and there is no question neither the board nor the membership formally approved this understanding. Furthermore, there is no evidence of any consideration flowing between the parties to this arrangement. While Mu Alpha benefited from getting the HVAC units installed, there is no evidence of any benefit Cochran received in return.

Based upon this vague "gentleman's agreement" understanding that Cochran would be repaid the funds if and when the property was ever sold, along with the failure to prove any

consideration to support such an agreement, the court finds Cochran has failed to prove the existence of an enforceable oral contract.

2. Unjust enrichment.

Unjust enrichment developed from the concept of the existence of an obligation "arising out of quasi-contract, that is, a contract arising out of the 'law of natural immutable justice and equity.' " See 66 Am.Jur.2d *Restitution and Implied Contracts* Section 2 (1973). The terms "restitution" and "unjust enrichment" are modern designations for the older doctrine of quasi-contracts. Martin v. Bozeman, 173 So.3d 382 (La.Ct.App.1965). "Unjust enrichment is usually a prerequisite for enforcement of the doctrine of restitution; if there is no basis for unjust enrichment, there is no basis for restitution.". Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470, 366 S.E.2d 12 (S.C. App. 1988) (quoting 474 66 Am.Jur.2d *Restitution and Implied Contracts* Section 4 (1973)).

The essential elements of a quasi-contract are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by defendant of the benefit under conditions that make it inequitable for him to retain it without paying its value. 66 Am.Jur.2d *Restitution and Implied Contracts* Section 4 (1973); Anno. 62 A.L.R.3d 288, 294 (1975).

While Mu Alpha realized a benefit in having the HVAC units installed and paid for by Cochran in 2007, the evidence is undisputed that the HVAC units were stolen by the time Omegas sold the property in 2017. Therefore, there is no way Omegas received any value from them in the price it received when it sold the property. Since Mu Alpha essentially gave the property to Omegas in 2013, they did not receive any benefit in the sales price either. There is simply nothing inequitable or unjust about the 2017 sale that needs the court

to remedy since Omegas did not benefit from a sales price which reflected the existence of a HVAC unit being included with the property when it was sold.

3. Successor Liability.

Ordinarily, in the absence of a statute, a successor or purchasing corporation is not liable for the debts of a predecessor or seller unless: (1) there was an agreement to assume such debts; (2) the circumstances surrounding the transaction amount to a consolidation or merger of the two corporations; (3) the successor company was a mere continuation of the predecessor; or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims. Brown v. American Ry. Express Co., 128 S.C. 428, 123 S.E. 97 (1924).

While the evidence is clear that Omegas was a clear continuation of Mu Alpha, as stated above, Cochran failed to prove the existence of an enforceable oral contract, nor did he prove Omegas were unjustly enrichment when it sold the property in 2017 without paying him back for the funds he paid to have the HVAC units installed in 2007. Therefore, there can be no successor liability claim under the facts of this case.

ACCORDINGLY, IT IS ORDERED, ADJUDGED AND DECREED THAT THE PLAINTIFF'S ACTION IS DISMISSED.

AND IT IS SO ORDERED.

October 5, 2020
Charleston, South Carolina

Roger M. Young, Sr.
Circuit Court Judge

Charleston Common Pleas

Case Caption: Rudolph Cochran VS Omegas of Charleston Community Uplift Project

Case Number: 2018CP1002784

Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134