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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Roger M. Young, Sr., Circuit Court Judge

Appellate Case No. 2020-001581

Rudolph Cochran .....Appellant

v.

Omegas of Charleston Community Uplift Project .....Respondent

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INITIAL BRIEF OF APPELLANTS

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August 9, 2021

Charleston, South Carolina

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in determining that Appellant was not entitled to payment for unjust enrichment for even the portion of time that Respondent received beneficial use of central heating and air conditioning units paid for by Appellant?

STATEMENT OF THE CASE

This action arises out of the purchase and renovation of a real property and improvements by the local, Charleston-area alumni chapter of a national fraternal organization. Appellant, Rudolph Cochran, is a member of the Respondent fraternal organization, Omegas of Charleston Community Uplift Project. During the time period relevant to this action, he was president of Lowcountry Men of Phi Mu, the predecessor in interest to the Respondent entity. Due to lack of adequate funds available to the organization, Appellant contributed personal funds to assist the with the installation of HVAC units with the oral understanding that he would be reimbursed at such time as the organization was financially able to do so.[1]

Respondent became title owner to the property through a conveyance from its predecessor in interest, Lowcountry Men of Phi Mu, by way of a quitclaim deed involving no consideration. In November of 2017, the property was sold to a third party. Appellant made demand for repayment of the funds expended for installation of the HVAC units. Respondent denied Appellant's request. Thereafter, Appellant filed suit asserting breach of implied contract, conversion and unjust enrichment. Only the unjust enrichment claim is at issue in this appeal.

A non-jury trial was held in Charleston County on September 28, 2020, before Roger M. Young, Sr., Circuit Court Judge. The trial court heard took testimony from six witnesses, received several exhibits marked by the parties and admitted into the record the deposition transcript of Appellant. At the conclusion of the trial, Judge Young dismissed Appellant's claim for conversion, concluding that there was no evidence of conversion.

By Order filed October 7, 2020, Judge Young ruled that Appellant had failed to prove by a preponderance of the evidence the existence of an enforceable oral contract providing that

[1] There is testimony in the trial record that Appellant had done so on other occasions and had always been reimbursed by the organization without dispute.

Appellant would be reimbursed for the funds he paid to have the HVAC units installed. Judge Young further ruled that Appellant could not recover for unjust enrichment as there was no evidence that Respondent realized any benefit from the HVAC units at the time of the sale in 2017 since the units had been stolen several years prior to that time. Appellants timely filed a Motion to Reconsider and supporting memorandum on October 14, 2020. Judge Young denied the Motion to Reconsider October 26, 2020.

Appellants filed a timely Notice of Intent to Appeal on November 24, 2020.

STATEMENT OF FACTS

On November 19, 2007, Lowcountry Men of Mu Alpha, the predecessor in interest to Omegas of Charleston Community Uplift Project (Respondent), purchased real property located at 6619 Toogoodoo Road in Charleston County from Toogoodoo Road, LLC and Ruthie M. Simmons for $105,000.00. The purpose of the purchase was to provide a clubhouse and social gathering space for the fraternal organization. At the time of the purchase, the building had no functioning central HVAC system. Appellant, Rudolph Cochran, a member of the fraternal organization, offered to have a central HVAC system installed at his expense with the verbal understanding among the membership that he would be reimbursed the cost of same 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.

Appellant contracted with Mr. William Brown of Brown Heating & Air Conditioning for the installation of three five-ton split heat pump units. The price of the contract for installation was $23,000.00. Appellant paid Mr. Brown $13,800.00 on March 3, 2008, upon completion of sixty (60%) percent of the work. Appellant paid the balance of $9,200.00 on April 4, 2008, upon completion of the work.

On March 27, 2013, the successor entity, Omegas of Charleston Community Uplift Project was incorporated. The testimony is conflicting as to why the new entity was created, but all parties concede that the predecessor entity had ceased functioning and that the new entity stepped in to take on the role previously served by the Lowcountry.[2] On September 26, 2013, Lowcountry Men of Mu Alpha conveyed its interest in the property to Omegas of Charleston Community Uplift Project, the new legal entity with the identical fraternal purpose and membership, by Quit Claim

[2] There was testimony at trial that the new entity was created at the direction of the national organization to add a greater level of protection from liability to the national organization.

Deed with $0 consideration. On November 9, 2017, Omegas of Charleston Community Uplift Project sold the property to JRC Real Properties, Inc. for good and valuable consideration of $125,000.00.

At some point after completion of the project, the HVAC units were stolen from the premises. No claim was filed with the insurance carrier and no replacement units installed prior to the sale of the property in 2017. The testimony was conflicting as to whether the theft took place in 2008 or 2009. In either event, it took place while the predecessor in interest, Lowcountry Men of Mu Alpha, still had title to the property.

After the sale of the property, Appellant made demand for repayment of the funds expended for installation of the HVAC units. Respondent indicated that there was no contract or written agreement evidencing the intent to repay Appellant and denied the request. Appellant filed suit asserting breach of implied contract, conversion and unjust enrichment.

For the purposes of this appeal, Appellant seeks only review of the Trial Court's decision not to award any compensation for unjust enrichment, even if only for the portion of time Respondent had beneficial use of the HVAC units.

ARGUMENT

I. Standard of Review

The sole issue on appeal is the question of whether or not Respondent was unjustly enriched for the time period when it had use of the HVAC units in the building. The question is one of equity. "In an equitable action tried without a jury, the appellate court can correct errors of law and may find facts in accordance with its own view of the preponderance of the evidence." *Blackmon v. Weaver, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005).*

II. The trial court erred in determining that Appellant was not entitled to payment for unjust enrichment for even the portion of time that Respondent received beneficial use of central heating and air conditioning units paid for by Appellant.

In ruling in favor of Respondent on the question of unjust enrichment, the trial court applied the appropriate analysis to the question of whether or not a quasi-contract existed, but then failed to recognize that Respondent received a value from the HVAC units, even if it did not receive a cash benefit for the HVAC units from the sale of the property. Appellants would argue that there was beneficial use for a certain time and that this beneficial use, in and of itself, had value. The failure to calculate and award this value to Appellant was an error.

"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 without paying its value." *Myrtle Beach Hospital, Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868, 872 (2000).* The trial court correctly concluded that Lowcountry Men of Mu Alpha[3] had a benefit conferred on it by Appellant. The court then concluded in error that Respondent did not realize any benefit from Appellant's expenditure, referencing the fact that Respondent did not receive any value for

[3] In his Final Order, Judge Young concluded that Respondent is a "clear continuation of Mu Alpha." As no exception was taken to that determination, it is the law of the case.

the HVAC units in the price it received from the sale of the property. Having concluded that Respondent received no benefit, the trial court also concluded in error that there was nothing inequitable or unjust about the sale that the court needed to remedy.

The trial court focused solely on the sale and the lack of financial benefit of the HVAC units conferred on Respondent therefrom. The trial court failed to understand or appreciate that there was benefit arising out of the period for which Respondent enjoyed beneficial use of the HVAC units prior to their theft. There was testimony in the record that Respondent held at least six meetings or functions at the property during the time when the HVAC units were still present and functioning. Certainly, the use of functioning HVAC units for a minimum of six functions has value. It is uncontroverted that Respondent never compensated Appellant for the value of same. It is both inequitable and unjust that Respondent should retain such benefit without compensation to Appellant.

This Court is presented with the question of how to determine the just compensation for Appellant in return for the benefit conferred on Respondent. "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., Inc. v. Bobo, 320 S.C. 369, 373, 465 S.E. 2d 366, 369 (Ct. App. 1995) citing United States Rubber Products, Inc. v. Batesburg, 183 S.C. 49, 190 S.E. 120 (1937).* In the instant case, there is certainly an equitable amount due and owing to Appellant for the benefit received by Respondent. "Unjust enrichment is an equitable doctrine, which permits recovery of the amount that the defendant has been unjustly enriched at the expense of the plaintiff." *Chase Home Fin., LLC v. Risher, 405 S.C. 202, 212, 746 S.E.2d 471, 476 (Ct. App. 2013) quoting, Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 256–57, 715 S.E.2d 348, 356 (Ct. App. 2011).* The Court must balance the equities and enter an award for Appellant in keeping with same.

CONCLUSION

If this Court were, like the trial court, to ignore the period during which Respondent had use of the HVAC units, albeit only a portion of the overall period of ownership, it would render an already inequitable situation even more unjust. Appellant has learned a hard lesson that even fraternal bonds are not strong enough to suffice in lieu of a written agreement. He also recognizes that the cost of the theft of the HVAC units should not be borne exclusively by Respondent. However, to fail to compensate him for even that period of beneficial use, would be to heap inequity on top of inequity.

The Court is respectfully requested to find that the trial court's failure to award Appellant even some measure of damages for unjust enrichment is not supported by the facts, applicable case law and equity and to award Appellant fair and equitable compensation for the period Respondent was unjustly enriched. In the alternative, Appellant seek remand for a determination of the amount due to Appellant consistent with this finding.

Respectfully submitted,

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PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant on Omegas of Charleston Community Uplift Project by depositing a copy of the Initial Brief of Appellant with sufficient postage to its address of record on August 9, 2021.

August 9, 2021

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August 9, 2021

VIA ELECTRONIC MAIL
The Honorable Jenny Abbott Kitchings
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Re: Rudolph Cochran v. Omegas of Charleston Community Uplift Project
Appellate Case No.: 2020-001581

Dear Ms. Kitchings:

Enclosed please find for filing the following items for filing in connection with the referenced appeal:

Initial Brief of Appellant
Proof of Service – Initial Brief of Appellant
Designation of Matter to be Included in Record on Appeal
Proof of Service – Designation of Matter

In accordance with the standing court rules, these documents are being filed electronically only. Respondent has elected to proceed *pro se* and the undersigned counsel has not been provided with an e-mail address for Respondent for the purposes of electronic filing. Accordingly, counsel is serving these documents on Respondent through the U.S. Mail.

Thanking you in advance for your courtesies, I am

Very truly yours,

s/ Thomas B. Pritchard

Thomas B. Pritchard

TBP
Enclosures
cc: Omegas of Charleston Community Uplift Project, via U.S. Mail only (w/enclosures)