THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Kristie F. Curtis, Circuit Judge

Appellate Case No. 2020-001490
Common Please Case No. 2020-CP-14-00023

New Residential Mortgage, LLC,

Plaintiff,

v.

Todd S. Crawford, Tricia L. Crawford, William T. Geddings, Jr., Jane U. Geddings, and USAA Federal Savings Bank,

Defendants,

Of Whom William T. Geddings, Jr. and Jane U. Geddings are the

Appellants/Respondents,

and

New Residential Mortgage LLC is the

Respondent/Appellant,

and

USAA Federal Savings Bank is the

Respondent.

REPLY BRIEF OF RESPONDENT/APPELLANT

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ARGUMENT

I. This Court has already ruled on, and rejected, the Geddings' jurisdictional argument.

Although the Geddings contend this Court does not have jurisdiction over New Residential's cross-appeal (Geddings' Respondents' Brief at 5–8), this Court has already rejected that argument. (Order on Motions to Dismiss). Specifically, the Geddings already made the exact same argument – citing the same authorities – to this Court in the course of a motion to dismiss New Residential's cross-appeal (Geddings' Motion to Dismiss Cross-Appeal) and a subsequent reply in support of the motion (Geddings' Reply to Motion to Dismiss Cross-Appeal). This Court has already evaluated these arguments and found them to be without merit. (Order on Motions to Dismiss). This Court should reach the same conclusion it reached previously for the reasons outlined in New Residential's response to the Geddings' motion to dismiss (*see* New Residential's Response to Geddings' Motion to Dismiss Cross-Appeal), which New Residential incorporates by reference.

This Court already concluded it had jurisdiction over the Geddings' appeal. (Order on Motion to Dismiss). To the extent there is jurisdiction over the Geddings' appeal, this Court also has jurisdiction over New Residential's cross-appeal from the same trial court order. *See Edge v. State Farm Mut. Auto Ins. Co.*, 366, S.C. 511, 517, 623 S.E.2d 387, 390 (2005) (considering cross-appeal from denial of motion to dismiss where leading appeal from order granting a motion to dismiss was properly before the court; explaining "An order that is not directly appealable may be considered if there is an appealable issue before the court."); *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 413 & n.1, 574 S.E.2d 228, 231 & n.1 (Ct. App. 2002) (considering cross-appeal from denial of Rule 12(b)(6) motion to dismiss where leading appeal from denial of temporary injunction was properly before the court).

The Geddings insist New Residential's cross-appeal "has nothing to do with" and "is not significantly connected with" their appeal. (Geddings' Respondents' Brief at 5, 7). But, of course, New Residential is appealing from the exact same order that forms the basis of the Geddings' appeal, namely the September 2, 2020 Order on New Residential's Rule 12(c) Motion for Judgment on the Pleadings and Motion to Strike. (*Compare* R. pp. 185–187, *with* R. p. 188–192). In that circumstance, this Court has jurisdiction over New Residential's cross-appeal. *See Edge*, 366 S.C. at 517, 623 S.E.2d at 390 ("Here, an order in this case which is appealable is before the Court and, in an effort to avoid another appeal in the future and potentially narrow the issues for trial (i.e. judicial economy), we will consider [the] cross-appeal.").

II. The argument raised in New Residential's cross-appeal is properly preserved for appeal.

Apart from relitigating this Court's prior denial of the Geddings' motion to dismiss New Residential's cross-appeal, the Geddings also contend New Residential did not preserve for review the lone issue raised in its cross-appeal. (Geddings' Respondents' Brief at 8–9). Specifically, the Geddings argue that the trial court's denial of New Residential's motion for judgment on the pleadings as to the Geddings' unjust enrichment counterclaim was somehow not a ruling because the trial court did not explain its reasoning. (*See* Geddings' Respondents' Brief at 8 ("No order . . . was ever issued below."); *id.* at 9 ("did not receive a ruling on it"); *id.* ("never ruled on by the circuit court")).

But, of course, the trial court *did* rule on New Residential's motion, denying the motion as to as to the unjust enrichment counterclaim based on its express determination that the Geddings' allegations stated a valid claim for unjust enrichment. (*See* R. p. 3). *Vespazianni v. McAlister* – on which the Geddings' rely – is clearly inapplicable to the facts here.

In *Vespazianni*, this Court affirmed a judgment on the pleadings primarily because "the record [on appeal did not] contain the proceedings in the Circuit Court," which prevented this Court from understanding the basis of the trial court's decision. 307 S.C. 411, 412, 415 S.E.2d 427, 428 (Ct. App. 1992). That is not the case here because all of the following documents (and incorporated arguments) from the trial court proceedings are part of the record on appeal, which fully inform this Court about the basis of the trial court's ruling:

- In its Rule 12(c) motion, New Residential argued that "[t]he Geddings' claim for unjust enrichment fails to state a claim upon which relief may be granted because they fail to allege facts showing that any benefits to New Residential were non-gratuitously conferred." (R. p. 59, ¶ 8);

- In its memorandum of law in support of the Rule 12(c) motion, New Residential fleshed this argument out in detail, including an entire section of the brief with the heading: "The Geddings claim for unjust enrichment fails because the alleged benefit to New Residential is gratuitous." (R. pp. 133–134, 138–139);

- In its memorandum in opposition to New Residential's Rule 12(c) motion, the Geddings – relying on *Myrtle Beach Hosp., Inc. v. City of Myrtle Beach*, 341 S.C. 1, 532 S.E.2d 868 (2000), just as they do here on appeal, *see infra* Section III – contend that conferral of a non-gratuitous benefit is not an element of an unjust enrichment claim. (R. p. 164);

- The issue was discussed at length at the hearing on New Residential's Rule 12(c) motion (R. p. 106, line 12 – p. 107, line 4; R. p. 113, line 24 – p. 114, line 16);

- In the portion of its order denying the Rule 12(c) motion as to the unjust enrichment claim, the trial court stated: "The Court finds that the Geddings have stated a valid claim for relief as to their counterclaim for Unjust Enrichment, and will deny New Residential and USAA FSB's motions for judgment on the pleadings as to this claim." (R. p. 3); and

- The trial court based its decision upon the aforementioned "briefs and other materials submitted by the parties" and "the arguments of counsel," and it concluded – based on those arguments – that it was "fully informed and advised" of the relevant issues and arguments. (R. p. 1).

New Residential acknowledges that it "has the burden of presenting a sufficient record for review" of the decision forming the basis of its cross-appeal, *Vespazianni*, 307 S.C. at 413, 415 S.E.2d at

428, and it has fully satisfied that obligation. Therefore, New Residential's cross-appeal is properly preserved for appellate review by this Court.[1]

III. The conferral of a non-gratuitous benefit is, in fact, an element of a claim for unjust enrichment, and the Geddings fail to allege facts sufficient to satisfy that element.

New Residential previously argued that to obtain quantum meruit recovery for unjust enrichment, a plaintiff must show, *inter alia*, that he conferred a non-gratuitous benefit on the defendant. *Inglese v. Beal*, 403 S.C. 290, 297, 742 S.E.2d 687, 691 (Ct. App. 2013). Because the Geddings fail to state sufficient facts to establish a non-gratuitous benefit (and therefore fail to allege a cause of action for unjust enrichment), New Residential's Rule 12(c) motion should be granted as to the Geddings' unjust enrichment counterclaim.

The Geddings do not dispute the fact that any benefit they conferred was entirely gratuitous, i.e., it was not "either (1) at the defendant's request or (2) in circumstances where the plaintiff reasonably relies on the defendant to pay for the benefit and the defendant understands or ought to understand that the plaintiff expects compensation and looks to him for payment." *Campbell v. Robinson*, 398 S.C. 12, 24, 726 S.E.2d 221, 228 (Ct. App. 2012). Instead, the Geddings, relying on *City of Myrtle Beach*, contend that conferral of a non-gratuitous benefit is not an element of a claim for unjust enrichment. But because a subsequent decision of the South Carolina Supreme Court says otherwise, and since "the later decision of course controls," *Exxon Corp. v. S.C. Tax Comm'n*, 273 S.C. 594, 605, 258 S.E.2d 93, 99 (1979), the Geddings are wrong.

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[1] Although the Geddings suggest New Residential had some obligation to file a motion to reconsider under Rule 59 of the South Carolina Rules of Civil Procedure to preserve its appellate argument for review (Geddings' Respondents' Brief at 9), any such obligation is limited to circumstances "[w]here a matter is not ruled on by the Circuit Court," *Vespazianni*, 307 S.C. at 413, 415 S.E.2d at 428, which is not the case here.

In *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 581 S.E.2d 161 (2003), decided **after** the *City of Myrtle Beach* decision, the South Carolina Supreme Court made clear that "[t]o recover on a theory of restitution, the plaintiff must show," *inter alia*, "the he conferred a non-gratuitous benefit on the defendant." *Id.* at 409, 581 S.E.2d at 167.[2] Subsequent decisions by this Court have made clear that *Sauner* modified *City of Myrtle Beach* in relevant part. *See, e.g.*, *Church v. McGee*, 391 S.C. 334, 345, 705 S.E.2d 481, 487 (Ct. App. 2011) (noting, in context of quantum meruit claim, the elements from *City of Myrtle Beach* but subsequently explaining: "In *Sauner* . . ., the supreme court specified that the benefit conferred must be nongratuitous.").

In attempting to explain why *Sauner* and *Church* are not dispositive of the elements, the Geddings make four successive erroneous statements. ***First***, the Geddings argue that *Sauner* "does not hold" that conferral of a non-gratuitous benefit is an element of an unjust enrichment claim. (Geddings' Respondents' Brief at 10). That is plainly incorrect. *Sauner* specifically held that the conferral of a non-gratuitous benefit is an element of an unjust enrichment claim with regard to the remedy of restitution. *See* 354 S.C. at 409, 581 S.E.2d at 167. ***Second***, the Geddings contend that this Court's holding in *Church* is "against controlling Supreme Court precedent." (Geddings' Respondents' Brief at 10). That is wrong as well. *Church* is fully consistent with the Supreme

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[2] The plaintiffs in *Sauner*, like the Geddings, characterized their claim as one for unjust enrichment. The fact that *Sauner* uses the term "restitution" in the context of evaluating an unjust enrichment claim, and the fact that the Geddings assert their claim "under the doctrine of quantum meruit and/or unjust enrichment" (R. p. 24, ¶ 42), is a difference without a distinction. *See JASDIP Prop. SC, LLC v. Estate of Richardson*, 395 S.C. 633, 640, 720 S.E.2d 485, 488 (Ct. App. 2011) ("The terms 'restitution' and 'unjust enrichment' are modern designations for the older doctrine of quasi contracts. [Q]uantum meruit, quasi contracts, and implied by law contract are equivalent terms for an equitable remedy." (internal quotation and quotation marks omitted) (alteration in original)); *see generally Sandviks v. PhD Fitness, LLC*, 2018 WL 1393745, at *4 n.3 (D.S.C. March 20, 2018) ("In South Carolina law, the terms . . . quantum meruit, . . . restitution, and unjust enrichment have often been used interchangeably to refer to the same type of claim for equitable relief.").

Court's holding in *Sauner* that the conferral of a non-gratutious benefit is a necessary element of a claim for unjust enrichment. ***Third***, the Geddings argue that *Church* "does not so hold" that conferral of a non-gratuitous benefit is an element of an unjust enrichment claim. (Geddings' Respondents' Brief at 10). That is incorrect too because *Church* says exactly that in the context of a claim for compensation in quantum meruit. *See* 391 S.C. at 345, 705 S.E.2d at 487. And ***fourth***, the Geddings mistakenly claim that the portion of *Church* regarding the element of conferral of a non-gratutious benefit was only "dicta." (Geddings' Respondents' Brief at 11). Not so; to the contrary, *it was the holding of the case*. *See* 391 S.C. at 345, 705 S.E.2d at 487 ("Because the testimony shows that Church's services were gratuitous, her quantum meruit claim must fail.").

Because conferral of a non-gratuitous benefit is a required element of the Geddings' claim for "*quantum meruit* and/or unjust enrichment," and because the Geddings fail to state sufficient facts to establish that element – indeed the Geddings themselves do not contend otherwise on appeal – New Residential's Rule 12(c) motion should be granted as to the Geddings' unjust enrichment counterclaim.

IV. The dismissal of the Geddings' counterclaim for unjust enrichment should be with prejudice.

Finally, because the Geddings have not alleged – *and cannot allege* – the conferral of a non-gratuitous benefit, this Court should dismiss the Geddings' counterclaim for "quantum meruit and/or unjust enrichment" *with prejudice*. (*See* Geddings' Respondents' Brief at 11–12). New Residential does not dispute that – at least in the comparable Rule 12(b)(6) context – a dismissal is "generally" and "in most cases" without prejudice to the opportunity to amend. *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 192, 826 S.E.2d 585, 594 (2019) (quoting *Spence v. Spence*, 268 S.C. 106, 129, 628 S.E.2d 869, 881 (2006)). However, where, as here, it appears

certain that no relief could be granted under any set of facts that could be proved, rendering an amendment futile, dismissal with prejudice is appropriate. *See Skydive Myrtle Beach, Inc.*, 426 S.C. at 191–91, 826 S.E.2d at 593–94; *Spence*, 368 S.C. at 129–31, 628 S.E. 2d at 881–82.

Here, the Geddings allege they made improvements to the underlying property, but at the same time they admit they never had any communications whatsoever with New Residential. (R. p. 23, ¶ 37 ("The Defendants attempted to communicate with the purported mortgage holders several times and received no response")). Absent communications with the Geddings, New Residential could not possibly have requested or induced the Geddings to make the improvements on which they base their claim for unjust enrichment and/or quantum meruit. In other words, the Geddings' own allegations show that no set of facts could be proved to establish the conferral of a non-gratuitous benefit, so any amendment would be futile. This Court can make that determination in the first instance. *Cf. Skydive Myrtle Beach, Inc.*, 426 S.C. at 192, 826 S.E.2d 585, 594 ("[I]f the court of appeals determines an amendment is clearly futile, instead of remanding, it may in its discretion affirm the dismissal of the complaint with prejudice" (internal quotation marks omitted)); *Spence*, 368 S.C. at 131, 628 S.E.2d at 882 (same).

The Geddings contend: "New Residential . . . does not argue that 'there is no set of facts upon which relief can be granted[,]' nor does it provide this court with information that could make this court certain of that." (Geddings' Respondents' Brief at 12). There are two problems with this statement. First, New Residential did, in fact, argue there are no set of facts upon which relief could be granted. (*See* New Residential's Appellant's Brief at 9 & 10 (arguing the Geddings "do not – *and cannot* – allege" the conferral of a non-gratuitous benefit (emphasis added))). Second, it is the Geddings (not New Residential) who have the burden to come forward with additional factual allegations or new theories of recovery that might state a viable claim. *Cf. Spence*, 368

S.C. at 130, 628 S.E.2d at 881–82 (an appellate court "may modify the lower court's order to find the dismissal is without prejudice" when "*the plaintiff* presents additional factual allegations or a different theory of recovery which, taken as true in a well-pleaded complaint, may state a claim upon which relief may be granted" (emphasis added)). Here, the Geddings present no new facts and identify no new theories of recovery that might reveal an amended complaint to be anything but futile. For these reasons, the Court should grant New Residential's Rule 12(c) as to the Geddings' unjust enrichment counterclaim *with prejudice*.[3]

CONCLUSION

For the foregoing reasons and those set forth in New Residential's Appellant's Brief, this Court should reverse the portion of the trial court's September 3, 2020 Order denying New Residential's motion for judgment on the pleadings as to the Geddings' counterclaim for unjust enrichment/quantum meruit, and it should enter judgment in New Residential's favor dismissing the Geddings' counterclaim for unjust enrichment/quantum meruit.

[3] Although the Geddings have already refiled their counterclaims – including the refiling of a substantively identical counterclaim for unjust enrichment (*see* R. p. 53, ¶¶ 65–70) – this Court should nevertheless grant New Residential's Rule 12(c) motion with regard to the Geddings' previously filed unjust enrichment counterclaim *with prejudice*. In doing so, this Court should explain to the trial court that its ruling should be dispositive as to the Geddings' newly filed unjust enrichment counterclaim and provide guidance and instructions for the trial court, in the first instance, to dismiss the Geddings' newly filed unjust enrichment claim for failure to allege the conferral of a non-gratuitous benefit.

This 1st day of November 2021.

/s/ Jonathan E. Schulz

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RULE 211(b) CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **REPLY BRIEF OF RESPONDENT/APPELLANT** complies with SCACR 211(b) because it is identical to Respondent/Appellant's previously filed Initial Reply Brief except for references to the record and correction of typographical errors and misspellings.

This the 1st day of November 2021.

/s/ Jonathan E. Schulz
Jonathan E. Schulz (SC Bar No. 79850)