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DISTRICT IV

December 22, 2014

To:

Hon. Juan B. Colas
Circuit Court Judge
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Madison, WI 53703

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Raphael D. Ripp
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You are hereby notified that the Court has entered the following opinion and order:

2013AP1959 Raphael D. Ripp v. George P. Hackett (L.C. # 2011CV2582)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

George Hackett appeals a judgment in favor of Raphael Ripp for $13,000 as compensation for keeping Hackett's tools and auto parts in Ripp's pole barn.[1] The judgment is on Ripp's unjust enrichment claim. Hackett argues that Ripp cannot have an equitable remedy because WIS. STAT. § 704.05(5)(a) (2009-10),[2] pertaining to the storage and disposition of property left by a tenant, provides a legal remedy, and that Ripp failed to timely pursue the

[1] Hackett's briefs use the party designation of appellant and respondent when referring to himself and Ripp. This is a violation of WIS. STAT. RULE 809.19(1)(i) (2011-12). Unfortunately Hackett's use of the party designations led Ripp, a self-represented person, to follow suit. Hackett's brief also fails to give any record references in its statement of the case and statement of facts. This is a violation of RULE 809.19(1)(d) (2011-12).

[2] Changes to WIS. STAT. ch. 704 were made in 2011 and are not applicable to this case. All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

remedies under that statute and before expiration of the statute of limitations applicable to unjust enrichment claims. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12). We affirm the judgment.

In 1997 the parties had a verbal agreement for Hackett to lease two storage bays in Ripp's pole barn for $200 per month. Hackett used the space to disassemble scrap vehicles for parts. In November 2003 Hackett stopped working at the property but did not remove the last of his personal property until late 2010, when he sold it for scrap and retained the proceeds of sale. Ripp commenced this action in June 2011 and alleged four causes of action: breach of contract, breach of good faith and fair dealing attendant to every contract, unjust enrichment, and promissory and equitable estoppel.

The case was tried to the court.[3] The circuit court first determined that the breach of contract claims fail because there was not any actionable contract between the parties.[4] As to the unjust enrichment claim, the circuit court found that a benefit was conferred to Hackett by the retention of his personal property and his subsequent ability to retrieve it, sell it, and retain the proceeds of sale. The court used $200 per month as the fair value of the benefit conferred.

[3] Earlier in the action the circuit court denied the parties' motions for summary judgment because of the existence of disputed material facts as to the scope of the agreement, how and when the tenancy terminated, whether there were promises to pay rent between 2004 and 2010, and whether Hackett was asked to remove his property before 2010.

[4] The circuit court determined that if the oral agreement was for storage space within a self-service facility, it was not valid in face of the requirement in WIS. STAT. § 704.90(2m) that the agreement be in writing. It also determined that if the verbal month-to-month lease was for working space, it was terminated by abandonment in 2003 or 2004 when Hackett ceased actively using the premises and the statute of limitations on the contract claim had expired.

Applying a six-year statute of limitation to the unjust enrichment claim, it calculated the compensation to be $13,000 from June 2005 to October 2010.

Hackett argues that because Ripp had remedies available to landlords at the termination of the lease under WIS. STAT. § 704.05(5)(a) to retain or sell property left behind by tenants, Ripp is not entitled to recover on the equitable doctrine of unjust enrichment. Citing ***Builder's World Inc. v. Marvin Lumber & Cedar Inc.***, 482 F. Supp. 2d 1065, 1075 (E.D. Wis. 2007), and ***Kramer v. Bohlman***, 35 Wis. 2d 58, 65, 150 N.W.2d 357 (1967), Hackett claims that a precondition to equitable relief is that the party has no adequate remedy at law. He also points out that "[t]he doctrine of unjust enrichment does not apply where the parties have entered into a contract." ***Continental Cas. Co. v. Patients Comp. Fund***, 164 Wis. 2d 110, 118, 473 N.W.2d 584 (Ct. App. 1991). His argument ignores that the circuit court determined that there was not a valid contract between the parties to use the pole barn as a self-storage unit and the statute of limitation expired regarding the tenancy for use of the pole barn to disassemble vehicles. Thus, Ripp had no remedy at law. Moreover, the remedies under § 704.05(5) are not exclusive. Section 704.05(5)(d) provides: "The remedies of this subsection are not exclusive and shall not prevent the landlord from resorting to any other available judicial procedure."

Additionally, Ripp's unjust enrichment claim is not barred by the verbal lease agreement because the agreement related only to using the pole barn for the disassembling of vehicles and did not encompass the long-term storage of the tools and auto parts. In ***Kramer v. Alpine Valley Resort***, 108 Wis. 2d 417, 321 N.W.2d 293 (1982), the court permitted a promissory estoppel claim, an equitable claim that would be barred by the existence of a contract, despite the existence of a lease agreement between the parties. ***Id.*** at 425-26. The court reasoned that the lease did not bar the plaintiff's claim because it did not incorporate the obligations for which the

plaintiff sought recovery under promissory estoppel. ***Id.*** at 424 ("The lease agreement represents one minor aspect of a larger business relationship. It is because the lease agreement fails to incorporate the obligations of Foxfire to plaintiff in its business endeavor generally that plaintiff is allowed recovery under promissory estoppel."). ***Gorton v. Hostak, Henzl & Bichler, S.C.***, 217 Wis. 2d 493, 577 N.W.2d 617 (1998), also recognizes that payment for services performed in addition to contracted work may be sought under theories other than breach of contract. *See* ***id.*** at 509 n.13 ("An attorney may have a claim in quantum meruit or implied contract where 'he renders services in addition to those contemplated by the contingent fee arrangement.'" (quoted source omitted)). Because the long-term storage of Hackett's property was a benefit that fell outside the scope of the parties' contractual relationship, Ripp is not precluded from seeking equitable relief for the benefit conferred.

Hackett suggests that allowing recovery for unjust enrichment compromises his constitutional right to rely on the statute of limitations to extinguish the claim. *See* ***Westphal v. E.I. du Pont de Nemours & Co., Inc.***, 192 Wis. 2d 347, 373, 531 N.W.2d 386 (Ct. App. 1995) ("Defendants have a constitutional right to rely upon statutes of limitations to limit the claims against them."). The statute of limitations extinguished Ripp's claims as a landlord and limited him to what proof he could make for equitable relief. The statute of limitations served its purpose in limiting Ripp's claim. If Hackett's argument is that equity should not reward Ripp for his delay, we reject it. The evidence supports the circuit court's determination that the elements of unjust enrichment were proven.[5]

[5] Unjust enrichment requires proof of three elements: (1) a benefit conferred on the defendant by the plaintiff, (2) appreciation or knowledge by the defendant of the benefit, and (3) acceptance or (continued)

Hackett's argument that the circuit court misapplied the six-year statute of limitations to the unjust enrichment claim is undeveloped. He simply claims that the time limitation began to run in 2004 when the lease expired and had fully run when Ripp commenced this action in June 2011. We do not address the issue.[6] *See* ***League of Women Voters v. Madison Cmty. Found.***, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 707 N.W.2d 285 (we do not decide undeveloped arguments).

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

retention of the benefit by the defendant under circumstances making it inequitable for the defendant to retain the benefit. ***Puttkammer v. Minth***, 83 Wis. 2d 686, 689, 266 N.W.2d 361 (1978).

[6] We question whether statutes of limitations apply to equitable relief because equitable actions are governed by the doctrine of laches. *See* ***Suburban Motors of Grafton, Inc. v. Forester***, 134 Wis. 2d 183, 187, 396 N.W.2d 351 (Ct. App. 1986) ("The timeliness of the commencement of actions at law is governed by statutes of limitations whereas equitable actions are governed by considerations of laches.").