

Court Of Appeals Number: 37143-0-II

COURT OF APPEAL, DIVISION II
STATE OF WASHINGTON

EARL E. YATES, APPELLANT

vs.

JANE C. ELLIS, RESPONDENT

BRIEF OF APPELLANT

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY  DEPUTY

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I. ASSIGNMENTS OF ERROR

The trial court erred in entering an Order granting Defendant's Motion For Summary Judgment on November 21, 2007 and in entering a second Order on December 11, 2007 denying Plaintiff's Motion For Reconsideration of that Summary Judgment Order.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Defendant Jane Ellis (hereinafter "Defendant") and Earl Yates (hereinafter "Plaintiff") were involved in a project to develop real property owned by Defendant and located in Jefferson County, Washington. The property was titled in the name of the Defendant. The Defendant promised to transfer a one half interest to the Plaintiff. Thereafter, the Plaintiff expended substantial sums and thousands of hours of his own labor in the development of the property . At various times, the Plaintiff requested that the Defendant complete the transfer of a one half interest, but the Defendant simply would not respond, either positively or negatively. Ultimately, on May 15, 2001, the Plaintiff demanded that the agreement to transfer an interest to him be consummated or that he be reimbursed for his expenditures. At that point, the Defendant ordered him off the property and further

ordered that he never return to the property. Under these circumstances, where the Plaintiff worked on a joint project and provided substantial improvement to the Defendant's property in reliance on the Defendant's promises right up to the time when he was ordered off the property, did the statute of limitations begin run on the Plaintiff's claim for unjust enrichment on the date he was ordered off the property and stopped investing in the project? (Assignment Of Error 1)

II. STATEMENT OF THE CASE

From 1981 through May 15, 2001, Plaintiff and Defendant were involved in a long term relationship. The relationship included romantic aspects, personal and social aspects, and business aspects. CP 72.

During the course of the relationship, Defendant purchased a five acre parcel of property with over two hundred feet of water frontage on Dabob Bay near Quilcene, Washington. Defendant made the final payment on the purchase contract in February, 1991. CP 72. Located on the property was a twenty four foot livable trailer. The parties stayed in that trailer while they worked on the property, a joint effort. CP 73.

In approximately 1995 or 1996, the Defendant expressed her desire to build a home on the property. Ultimately, the Defendant decided to build a log home on the property. CP 73. The Defendant hired a local contractor to remove trees from the property where the home would be built. In the middle of 1997, the Plaintiff and Defendant set the markers for the footprint of the home. CP 73.

Once the parties determined the footprint of the home, the Defendant applied for a septic permit and hired a draftsman to prepare plans for the home. At this point, the Plaintiff did not consider himself to be an owner of the project, but simply believed that he was aiding his longtime companion in the development of the project. CP 73.

In early 1998, the relationship of the parties relative to this project changed. While the contractor that the parties had hired was on site removing trees, the Defendant approached the Plaintiff regarding his involvement in the project. The Defendant indicated "this is your project too and I want you involved." CP 73. She promised that she would transfer a one half interest in the property with the log home to the Plaintiff. CP 73. Although the Plaintiff was initially reluctant, the Defendant insisted that he become involved as

an owner and the Plaintiff finally agreed to her proposal. CP 73.

From the date of that discussion forward, the Plaintiff participated financially and actively in the development of the property. CP 73. He spent approximately \$116,000.00 in the development of the Quilcene property by way of cash outlays for contractors, labor, and material. CP 48 and CP 73. He spent hundreds or thousands of hours of labor on the Quiclene property. CP 74. In fact, the hours that he spent on the project exceeded those spent by the Defendant. CP 74.

In further reliance on the promise of the Defendant to transfer a half interest in the property to him, the Plaintiff purchased a home in joint ownership with the Defendant. CP 73. This home purchase was part and parcel of the transaction involving the Quilcene property. CP 73. The parties purchased the home in Port Ludlow in order to be close to the construction project on Dabob Bay. CP 73. That is, the parties made a decision that rather than commute from the east side of Puget Sound where they lived to work on the Quilcene property, they would purchase a home closer to the project. The home was purchased in their joint names. CP 73 and CP 74. Neither party had any long term interest in maintaining ownership of the Port Ludlow

property and that property has now been listed for sale. CP 74.

Throughout the construction process, the Defendant continued to represent to the Plaintiff and to others that the Plaintiff was one of the beneficial owners of the project. Unfortunately, the Defendant never completed the process of executing the transfer of a one half interest in the property to the Plaintiff. CP 74.

Over the course of time, the Plaintiff raised the issue with the Defendant of the need to complete the transfer of the Quilcene property. CP 115. The Defendant simply would not address the issue. She neither refused to complete the transfer nor acknowledged that it would be done on a specific date. CP 115. Her only response was that she was under pressure related to the construction of the home and that the request to complete the transfer was adding to the pressure. CP 115.

The Plaintiff recognized the stress associated with purchasing and developing the raw land. CP 115. Because of his concern for the Defendant's feelings, the Plaintiff elected to simply defer this issue and did not confront the Defendant. CP 115.

Finally, as the home was nearing completion, the Plaintiff met with the Defendant at the property and provided her with a detailed

accounting of the money that he had spent. CP 75 and CP 115. On May 15, 2001, for the first time, the Defendant unambiguously made clear that she was going to renege on her promise to transfer an interest in the property to the Plaintiff. On May 15, 2001, the Defendant indicated that she had no intention of completing her promised transfer. CP 75. On May 15, 2001, the Defendant ordered the Plaintiff off the property and further ordered that the Plaintiff never return to the property. CP 75 and CP 115.

Until May 15, 2001, the Plaintiff had acted in every respect as if he were an owner of the property and the parties had worked together in every respect as if they were jointly developing the property. Because the Plaintiff had intended to live on the property with the Defendant, much of his personal property had already been moved into the home. CP 75. On the day that he was ordered off the property, he was able to retrieve a portion of his property in his truck which was also on the property, but he left behind Christmas decorations, clothing, tools, supplies, fencing materials, rock polishing materials, tarps, and a myriad of other personal property. CP 75. Until May 15, 2001, he had assumed that this would be the permanent home for him and his personal property had been moved

on the property accordingly.

Also until May 15, 2001, the Plaintiff had worked on a daily basis on the property. CP 76. Decisions regarding the development of the property had been made together. Specific accommodations for the Plaintiff's personal habits had been made in the design and layout of the home, even including the smallest detail such as the installation of appropriate outlets in the Plaintiff's computer room. CP 75 and CP 76. In every respect, the Plaintiff went forward with this project as if it were his own until May 15, 2001.

The Plaintiff was hopeful that the passage of time would relieve the "pressure" that the Defendant was feeling. He chose to take no immediate legal action. On May 13, 2004, he filed a Complaint for unjust enrichment and other relief in Jefferson County Superior Court. CP 1 through CP 4. The Complaint sought damages for the Defendant's refusal to consummate the promised transfer of the property on Dabob Bay to the Plaintiff. CP 1 through CP 4. The Complaint also sought relief related to the purchase of the Port Ludlow home. CP 2 through CP 5. All issues related to the Port Ludlow home have now been resolved by agreement of the parties and approval of the parties' CR 2A Agreement by the Court.

The Defendant moved for Summary Judgment on the issue of the statute of limitations as it applies to the unjust enrichment claim of the Plaintiff. Specifically, the Defendant asserted that the central issue was whether "all payments for which Plaintiff seeks recovery under theories of unjust enrichment and reimbursement were made more than three years before he filed his lawsuit." CP 59.

The Motion For Summary Judgment was heard by Judge Verser in Jefferson County Superior Court. Judge Verser granted the Motion For Summary Judgment. CP 105 and CP 106. A Motion For Reconsideration was filed. Judge Verser denied the Motion For Reconsideration. CP 122.

III. ARGUMENT

1. Standard of Review

As to issues which were decided on Summary Judgment below, this Court reviews those decisions de novo. The Court engages in the same inquiry as the trial court to determine whether the moving party is entitled to Summary Judgment as a matter of law and whether there are genuine issues of material fact requiring a trial. Michak v. Transnation Title Insurance Company, 148 Wn.2d 788, 64 P.3d 22 (2003). The trial court's determination of factual disputes on

Summary Judgment is entitled to no weight. The appellate court reviews the record de novo. All facts and reasonable inferences therefrom must be viewed in the light most favorable to the party resisting the motion. Even if the facts are undisputed, if reasonable minds could draw different conclusions, summary judgment is not appropriate. Chelan County Deputy Sheriffs Association v. Chelan County, 109 Wn.2d 282, 745 P.2d 1 (1987).

2. Plaintiff Yates filed his Complaint within the time allowed by the applicable statute of limitations.

For purposes of the Summary Judgment Motion, the Defendant conceded that the Plaintiff has a valid claim for unjust enrichment. This includes a claim for recovery of the monies that he expended on the project and the labor that he supplied on the project. The issue, then, becomes when did the statute of limitations accrue on the Plaintiff's claim for monies and labor expended.

The appellate courts in Washington have imposed a three year statute of limitations on claims for unjust enrichment. Seattle Professional Engineering Employees' Association v. Boeing Company, 139 Wn.2d 824, 911 P.2d 1126(2000); Eckert v. Skagit Corp., 20 Wn.App. 849, 583 P.2d 1239 (1978). The appellate courts have

determined that RCW 4.16.080(3) provides the applicable limitation period. That section reads, in relevant part, as follows:

The following actions shall be commenced within three years:

...

(3) except as provided in RCW 4.16.040(2) an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

...

RCW 4.16.080(3).

All parties acknowledge that the three year limitation applies. However, this is only the first portion of the inquiry. The real question is when does the statute of limitations accrue.

In order to understand and identify the starting date for the statute of limitations, it is necessary to identify the relationship between these parties. Unjust enrichment involves three elements which the Plaintiff must establish. Those elements are as follows:

1. There must be a benefit conferred by one party on another;
2. The party receiving the benefit must have an appreciation

or knowledge of the benefit; and

3. The receiving party must accept or retain the benefit under circumstances which would make it inequitable for the receiving party to retain the benefit without payment.

See, e.g., Baile Communications, Ltd. v. Trend Business Systems, Inc., 61 Wn.App, 151, 810 P.2d 12(1991). All three of these essential elements must be established before the Plaintiff is entitled to recover on a claim for unjust enrichment.

In Washington, the statutory limitation period begins to run at such time as the Plaintiff has the right to apply to the Court for relief. To be able to apply for relief, each element of the cause of action must be susceptible of proof. Therefore, we must analyze Plaintiff's cause of action and determine when each element of the claim could have been proven by the Plaintiff. See, e.g. Haslund v. Seattle, 86 Wn.2d 607, 547 P.2d 1221(1976).

Applying this accrual rule to the three elements of unjust enrichment cited above, it is clear that the Plaintiff's claim did not accrue until May 15, 2001. Certainly, prior to that date, there had been a benefit conferred on the Defendant and the Defendant had a full knowledge and appreciation of the benefit she was receiving,

the first and second elements of unjust enrichment. However, until May 15, 2001, there was nothing inequitable about the Defendant receiving or retaining these benefits. That is, until the Defendant refused and acknowledged that she would continue to refuse to convey a one half interest in the property, the Plaintiff had no right to bring a claim for unjust enrichment as he could not have proven the third element of unjust enrichment. Simply stated, the Defendant was entitled to retain the benefit she was receiving if she completed her obligation to convey a one half interest in the property. The Plaintiff had no right to apply to the Court for relief until her refusal to convey a one half interest and the Plaintiff's cause of action accrued when she did so. The cause of action accrued on May 15, 2001 and the Plaintiff's Complaint was timely filed.

The Defendant and the trial Court analyzed this case as if it were a contract dispute. That is, the Defendant and the trial Court equated the third element of unjust enrichment analysis with a contract breach. The Defendant argued and the Court below concluded that the Defendant breached her contract with the Plaintiff prior to May 15, 2001 and, therefore, it was at that point that it became "inequitable" for her to maintain the benefits conferred by the

Plaintiff. As this case essentially arises out of a contractual relationship, it may be useful to analyze when the Defendant's breach actually occurred.

The Defendant argues that she breached her agreement with the Plaintiff by not conveying a partial interest to the Plaintiff at some date prior to May 15, 2001. Her position is that her ambiguous, non responsive statements amounted to breach of her agreement to convey an interest to the Plaintiff. This analysis is simply wrong.

In Washington, a party's intent not to perform a contractual obligation may not be implied from doubtful or indefinite statements that performance may or may not take place. Wallace Real Estate Investment v. Groves, 124 Wn.2d 881, 898, 881 P.2d 1010 (1994).; Lovric v. Dunatov, 18 Wn.App. 274, 567 P.2d 678(1977). The law requires a "positive statement or action by the promisor indicating distinctly and unequivocally that either he will not or can not substantially perform any of his contractual obligations." Wallace Real Estate Investment, supra, at 898, and cases cited therein. As applied to this case, it is clear that the Defendant did not breach her agreement with the Plaintiff until May 15, 2001. Prior to that date, she simply would not address the issue of completing her obligation to

convey a one half interest to the Plaintiff. When the issue was raised, she simply indicated that she was “under too much pressure”, suggesting that dealing with the transfer issue at the time would simply add to the pressure. At no time prior to May 15, 2001 did she “distinctly and unequivocally” communicate that she was not going to perform her contractual obligations.

Using the analysis suggested by the Defendant and applied by the trial Court, the only possible conclusion is that the Defendant’s “breach” occurred on May 15, 2001. If this anticipatory contract breach is truly what triggered the limitation period, as suggested by the Defendant, then the Plaintiff filed his Complaint within three years of that triggering date and his Complaint was timely filed. There was no basis to dismiss his Complaint, even if analyzed on a purely contract claim basis.

This result finds support by analogy to similar cases in parallel areas of the law. For example, in a closely analogous setting, in a partnership dissolution the statute of limitations for damages to a partner accrues on the date that the partnership is dissolved. Until the partnership is dissolved or a partner is excluded from continuing participation in partnership affairs, the excluded partner has no right

of action. Thus, only upon dissolution does the partner's cause of action accrue. Laue v. Estate of Elder, 106 Wn.App. 699, 25 P.3d 1032(2001); Malnar v. Carlson, 128 Wn.2d 521, 910 P.2d 455(1996). Even though the specific acts which damaged the excluded partner may have occurred well before the partnership dissolution, it is the dissolution of the partnership which triggers the statute of limitations.

It is impossible to distinguish the analysis in this case from the analysis in Laue and Malner. That is, not until the Defendant ejected the Plaintiff from the property and made clear that she was not going to transfer the property interest to him was it clear that he had been damaged. Until that date, the Plaintiff had a legitimate anticipation that his investment, both in terms of his time and his money, would be rewarded by fulfillment of the agreement by the Defendant. Not until the Plaintiff was ejected had the Defendant breached her agreement.

IV. CONCLUSION

The Plaintiff is requesting that the Summary Judgment Order entered on November 21, 2007 be reversed. Plaintiff is requesting that the Court remand this matter to the Jefferson County Superior

Court for trial and other appropriate relief.

Dated: 1-29-08

Respectively submitted.

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by 'Frawley' and a horizontal line extending to the right.

John Frawley, WSBA #11819
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DIVISION II

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WASHINGTON STATE COURT OF APPEALS
DIVISION II

EARL E. YATES, a single person,
Plaintiff,

vs.

JANE C. ELLIS, a single person,
Defendant.

No. 37143-0-II

DECLARATION OF MAILING

The undersigned declares that on July 30, 2008, I placed in the United States Postal Box with correct prepaid postage the Brief Of Appellant, addressed to the following: Richard Shattuck, 4102 NW Anderson Hill Road, Silverdale, WA 98383.

I declare pursuant to RCW 9A.72.085 and under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Date: 7/30/08


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