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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA10-672

	Opinion Delivered FEBRUARY 16, 2011
DONNIE and VICKIE FARMER APPELLANTS	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT, SIXTH DIVISION
V.	[NO. CV-2005-575]
	HONORABLE TIM FOX, JUDGE
MARIETTA RIDDLE APPELLEE	AFFIRMED

JOSEPHINE LINKER HART, Judge

This court, in a previous appeal that was dismissed for want of a final order,[1] recounted the facts of this case as follows:

> When her husband died, Marietta Riddle's daughter and son-in-law—the Farmers—invited her to live with them. Ms. Riddle decided to do so. She sold her house and paid for converting the Farmers' detached garage into an apartment. Ms. Riddle expected to live in the apartment for the rest of her life. But a family dispute arose over a conversation that Ms. Riddle had with a neighbor about some tire ruts in the yard. Eventually, Ms. Riddle moved. She then sued the Farmers to recover the money that she had spent making the garage an apartment. After a bench trial, the circuit court found that Ms. Riddle had proven unjust enrichment and quantum meruit and awarded her $47,719.00. The court also ordered the Farmers to return certain personal property to her. The Farmers appeal.

We now have jurisdiction of the case, and the Farmers present three issues to this court for consideration. First, the Farmers argue that the circuit court clearly erred in finding unjust

[1] *Farmer v. Riddle*, CA08-435 (Ark. App.Dec. 3, 2008).

enrichment. Second, they contend that the court clearly erred in its calculation of quantum meruit recovery. And third, the Farmers assert that the statute of frauds precludes enforcement of the contract. We affirm, as we cannot say that the circuit court was clearly erroneous, which is required to reverse the circuit court. Ark. R. Civ. P. 52(a).

I. *Unjust Enrichment*

Quasi-contracts, or contracts implied in law, are legal fictions, created by the law to do justice. *Dews v. Halliburton Indus., Inc.*, 288 Ark. 532, 708 S.W.2d 67 (1986). The underlying principle is that one person should not unjustly enrich himself at the expense of another. *Id.* To find unjust enrichment, a party must have received something of value, to which he was not entitled and which he must restore. *Id.* There must also be some operative act, intent, or situation to make the enrichment unjust and compensable. *Id.* The basis for recovery under this theory is the benefit that the party has received and it is restitutionary in nature. *Id.* Recovery may be had under quasi-contract where services have been performed, whether requested or not, which have benefitted a party. *Id.* Courts, however, will only imply a promise to pay for services where they were rendered in such circumstances as authorized the party performing them to entertain a reasonable expectation of their payment by the party beneficiary. *Id.*

Here, Ms. Riddle's testimony established that she was invited by the Farmers to reside with them and that she sold her house and expended funds to convert the garage to an apartment that she expected to reside in for the rest of her life. Further, Ms. Riddle's

testimony supports the conclusion that she was told by the Farmers to leave the apartment and that she would have remained at the apartment but for their demand. We cannot say that the circuit court clearly erred in finding that Ms. Riddle had proven unjust enrichment. Ms. Riddle conferred upon the Farmers a benefit, an apartment that, upon asking Ms. Riddle to leave despite her belief that she had converted the garage to an apartment for the purpose of remaining there for the rest of her life, the Farmers now have for their own use, as evidenced by testimony that Donnie Farmer's mother now lives there.

II. *Quantum Meruit Recovery*

The Farmers also challenge the amount awarded by the circuit court. Under Arkansas law, a claim for quantum meruit recovery is generally made under the legal theory of unjust enrichment and does not involve the enforcement of a contract. *Sanders v. Bradley County Human Servs. Pub. Facilities Bd.*, 330 Ark. 675, 956 S.W.2d 187 (1997). The amount of a quantum meruit recovery is measured by the value of the benefit conferred upon the party unjustly enriched. *Id.*

Ms. Riddle testified that she spent over $62,085 in the conversion of the garage to an apartment. She provided as evidence photographs of the apartment. Her own witness calculated the apartment as being 1,170 square feet. The Farmers presented the testimony of an appraiser. The appraiser testified that she conducted an appraisal of the property to determine the value of the property and any contributory value for the conversion of the garage to an apartment. Her appraisal showed the value of the Farmers' main house to be $81

per square foot. She determined that even with the conversion of the garage to an apartment, she could not prove that the apartment had any value beyond its initial structure. She opined that because the property was zoned for single-family use, no loan could be obtained on the property without the Farmers first removing the kitchen from the apartment.

In calculating quantum meruit recovery, the circuit court stated that the house was a single-family residence and concluded that the apartment kitchen did not add anything. The court examined the photographs of the apartment, noted the square footage of the apartment indicated by Ms. Riddle's witness, which was less than that used by the Farmers' appraiser, and noted that according to the appraisal, the main house had a value of $81.42 per square foot. The court noted that the apartment had use as a bedroom and a sitting area and had other heated and cooled square feet. The court concluded that from looking at the photographs, it could determine that, at most, one-half of the space was used for a kitchen. By multiplying one-half of the apartment's square footage by the square-foot value of the main house, he determined that the award should be $47,719.[2]

Here, the circuit court used the square-foot value of the main house as an estimate of the value of heated and cooled space on the real property. The court then divided the apartment's heated and cooled area by one-half. The court multiplied that area by the square-

[2]We acknowledge that we are unable to determine how the circuit court determined that the square-foot value of the main house was $81.42, as opposed to $81. We also acknowledge that there may be a small error in the circuit court's math. The Farmers, however, do not specifically contest these matters.

foot value of heated and cooled space on that real property to arrive at a value for the apartment. We cannot say that using this methodology was clearly erroneous in determining the value of the benefit conferred on the Farmers. While the Farmers suggest that this valuation does not account for the value of the structure's original use as a garage, the demolition costs associated with removal of the kitchen, or consider that the property was zoned for single-family residences, the Farmers did not present evidence on these matters. They also assert that the court clearly erred in using the photographs to determine that the kitchen, at most, made up one-half of the size of the apartment, but they do not point to any evidence to show that the court's determination was incorrect. And while they further assert that the converted apartment had no value to them, we do note that the Farmers have moved Donnie Farmer's mother into the apartment.

III. *Statute of frauds*

The Farmers argue that the statute of frauds precludes enforcement of the "contract." The statute of frauds, which is an affirmative defense under Rule 8(c) of the Arkansas Rules of Civil Procedure, was not pled, raised, or ruled upon by the court. Accordingly, the Farmers are not entitled to rely on this defense now. *Majewski v. Cantrell*, 293 Ark. 360, 737 S.W.2d 649 (1987).

Affirmed.

WYNNE and BROWN, JJ., agree.